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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Ninth Chamber) of 23 November 2017 — Servizi assicurativi del commercio estero SpA (SACE), Sace BT SpA v European Commission, Italian Republic

(Case C-472/15 P) ([1])

(Appeal — State aid — Export credit insurance — Reinsurance cover provided by a public undertaking to its subsidiary — Capital contributions to cover the subsidiary's losses — Notion of State aid — Imputability to the State — Private investor test)

(2018/C 022/02)

Language of the case: Italian

Parties

Appellants: Servizi assicurativi del commercio estero SpA (SACE), Sace BT SpA (represented by: M. Siragusa and G. Rizza, avvocati)

Other parties to the proceedings: European Commission (represented by: L. Flynn, G. Conte and D. Grespan, acting as Agents) Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Servizi assicurativi del commercio estero SpA (SACE) and Sace BT SpA to bear their own costs and to pay those incurred by the European Commission in the appeal;*

3. *Orders the Italian Republic to bear its own costs.*

([1]) OJ C 381, 16.11.2015.

Judgment of the Court (Third Chamber) of 23 November 2017 — Bionorica SE (C-596/15 P), Diapharm GmbH & Co. KG (C-597/15 P) v European Commission

(Joined Cases C-596/15 P and C-597/15 P) ([1])

(Appeal — Public health — Consumer protection — Regulation (EC) No 1924/2006 — Health claims on foods — Article 13(3) — List of permitted health claims on foods — Botanical substances — Claims on hold — Action for failure to act — Article 265 TFEU — Defined position of the European Commission — Interest in bringing proceedings — Locus standi)

(2018/C 022/03)

Language of the case: German

Parties

Appellants: Bionorica SE (C-596/15 P), Diapharm GmbH & Co. KG (C-597/15 P) (represented by: M. Weidner, T. Guttau and N. Hußmann, Rechtsanwälte)

Other party to the proceedings: European Commission (represented by: S. Grünheid and M. Wilderspin, acting as Agents)

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 16 September 2015, Bionorica v Commission (T-619/14, not published, EU:T:2015:723);*

2. *Dismisses the action for failure to act lodged by Bionorica SE in Case T-619/14 as inadmissible;*

3. *Dismisses the appeal in Case C-597/15 P;*

4. *Orders Bionorica SE and the Commission each to bear their own costs incurred both at first instance in Case T-619/14 and on appeal in Case C-596/15 P;*

5. *Orders Diapharm GmbH & Co. KG to pay the costs incurred on appeal in Case C-597/15 P.*

([1]) OJ C 16, 18.1.2016.

Judgment of the Court (Fourth Chamber) of 16 November 2017 (request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — Robeco Hollands Bezit NV and Others v Stichting Autoriteit Financiële Markten (AFM)

(Case C-658/15) ([1])

(Reference for a preliminary ruling — Directive 2004/39/EC — Markets in financial instruments — Article 4(1)(14) — Definition of 'regulated market' — Scope — System in which the participants are brokers representing investors and 'open end' investment fund agents required to execute orders relating to their funds)

(2018/C 022/04)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicants: Robeco Hollands Bezit NV, Robeco Duurzaam Aandelen NV, Robeco Safe Mix NV, Robeco Solid Mix NV, Robeco Balanced Mix NV, Robeco Growth Mix NV, Robeco Life Cycle Funds NV, Robeco Afrika Fonds NV, Robeco Global Stars Equities, Robeco All Strategy Euro Bonds, Robeco High Yield Bonds, Robeco Property Equities

Defendant: Stichting Autoriteit Financiële Markten (AFM)

Operative part of the judgment

Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning that the concept of a 'regulated market' within the meaning of that provision covers a trading system in which multiple fund agents and brokers represent, respectively, 'open end' investment funds and investors, the sole purpose of which is to facilitate those investment funds in their obligation to execute the purchase and selling orders for shares placed by those investors.

([1]) OJ C 98, 14.3.2016.

Judgment of the Court (Grand Chamber) of 14 November 2017 (request for a preliminary ruling from the Cour de cassation — France) — President of the Autorité de la concurrence v Association des producteurs vendeurs d'endives (APVE) and Others

(Case C-671/15) ([1])

(Reference for a preliminary ruling — Common agricultural policy — Article 42 TFEU — Regulation (EC) No 2200/96 — Regulation (EC) No 1182/2007 — Regulation (EC) No 1234/2007 — Anticompetitive practices — Article 101 TFEU — Regulation No 26 — Regulation (EC) No 1184/2006 — Producer organisations — Associations of producer organisations — Responsibilities of those organisations and associations — Practice of fixing minimum sale prices — Practice of concertation on quantities placed on the market — Practice of exchanges of strategic information — French endive market)

(2018/C 022/05)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: President of the Autorité de la concurrence

Defendants: Association des producteurs vendeurs d'endives (APVE), Comité économique régional agricole fruits et légumes de Bretagne (Cerafel), Fraileg SARL, Prim'Santerre SARL, Union des endiviers, formerly Fédération nationale des producteurs d'endives (FNPE), Soleil du Nord SARL, Comité économique fruits et légumes du Nord de la France (Celfnord), Association des producteurs d'endives de France (APEF), Section nationale de l'endive (SNE), Fédération du commerce de l'endive (FCE), France endives société coopérative agricole, Cambrésis Artois-Picardie endives (CAP'Endives) société coopérative agricole, Marché de Phalempin société coopérative agricole, Primacoop société coopérative agricole, Coopérative agricole du marais audomarois (Sipema), Valois-Fruits union de sociétés coopératives agricoles, Groupe Perle du Nord SAS, Ministre de l'Économie, de l'Industrie et du Numérique

Operative part of the judgment

Article 101 TFEU, read in conjunction with Article 2 of Regulation No 26 of the Council of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products, Article 11(1) of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables, Article 2 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products, as amended by Council Regulation (EC) No 1234/2007 of 22 October 2007, Article 3(1) of Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96, as well as the first paragraph of Article 122 and Articles 175 and 176 of Regulation No 1234/2007, as amended by Council Regulation (EC) No 491/2009 of 25 May 2009, must be interpreted as meaning that:

— *practices that relate to the collective fixing of minimum sale prices, a concertation on quantities put on the market or exchanges of strategic information, such as those at issue in the main proceedings, cannot escape the prohibition of the agreements, decisions and concerted practices laid down in Article 101(1) TFEU if they are agreed between a number of producer organisations or associations of producer organisations, or are agreed with entities not recognised by a Member State in order to achieve an objective defined by the EU legislature under the common organisation of the market concerned, such as professional organisations not having the status of producer organisation, association of producer organisation or interbranch organisation, within the meaning of EU legislation, and*

— *practices that relate to a concertation on prices or quantities put on the market or exchanges of strategic information, such as those at issue in the main proceedings, may escape the prohibition of agreements, decisions and concerted practices laid down in Article 101 (1) TFEU if they are agreed between the members of the same producer organisation or the same association of producer organisations recognised by a Member State and are strictly necessary for the pursuit of one or more of the objectives assigned to the producer organisation or association of producer organisations concerned in compliance with EU legislation.*

([1]) OJ C 90, 7.3.2016.

Judgment of the Court (Sixth Chamber) of 22 November 2017 — European Commission v Bilbaína de Alquitranes, SA and Others

(Case C-691/15 P) ([1])

(Appeal — Environment — Regulation (EC) No 1272/2008 — Classification, labelling and packaging of certain substances and mixtures — Regulation (EU) No 944/2013 — Classification of pitch, coal tar, high-temperature — Categories of acute aquatic toxicity (H400) and chronic aquatic toxicity (H410) — Duty to act diligently — Manifest error of assessment)

(2018/C 022/06)

Language of the case: English

Parties

Appellant: European Commission (represented by K. Talabér-Ritz and P.-J. Loewenthal, acting as Agents)

Other parties to the proceedings: Bilbaína de Alquitranes, SA, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Koppers Netherlands BV, Rütgers basic aromatics GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o. o., Bawtry Carbon International Ltd, Grupo Ferroatlántica, SA, SGL Carbon GmbH, SGL Carbon GmbH, SGL Carbon, SGL Carbon, SA, SGL Carbon Polska S.A., ThyssenKrupp Steel Europe AG, Tokai erftcarbon GmbH (represented by: K. Van Maldegem, C. Mereu and M. Grunchard, avocats, and by P. Sellar, Advocate); European Chemicals Agency (ECHA) (represented by N. Herbatschek, W. Broere and M. Heikkilä, acting as Agents), GrafTech Iberica, SL (represented by: C. Mereu, K. Van Maldegem and M. Grunchard, avocats, and by P. Sellar, Advocate)

Interveners in support of the applicant: Kingdom of Denmark (represented by: C. Thorning and M. N. Lyshøj, acting as Agents), Federal Republic of Germany (represented by: T. Henze, J. Möller and R. Kanitz, acting as Agents), Kingdom of the Netherlands (represented by: M. Bulterman, C.S. Schillemans and J. Langer, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to pay, in addition to its own costs, those incurred by Bilbaína de Alquitranes SA, Deza a.s., Industrial Química del Nalón SA, Koppers Denmark A/S, Koppers UK Ltd, Koppers Netherlands BV, Rütgers basic aromatics GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o.o., Bawtry Carbon International Ltd, Grupo Ferroatlántica SA, SGL Carbon GmbH (Germany), SGL Carbon GmbH (Austria), SGL Carbon, SGL Carbon SA, SGL Carbon Polska S.A., ThyssenKrupp Steel Europe AG and Tokai erftcarbon GmbH, including the costs relating to the interlocutory proceedings that gave rise to the order of the Vice-President of the Court of 7 July 2016, Commission v Bilbaína de Alquitranes and Others (C-691/15 P–R, not published, EU:C:2016:597);*

3. *Orders the Kingdom of Denmark, the Federal Republic of Germany and the Kingdom of the Netherlands to bear their own costs;*

4. *Orders GrafTech Iberica SL and the European Chemicals Agency to bear their own costs.*

([1]) OJ C 106, 21.3.2016.

Judgment of the Court (Grand Chamber) of 14 November 2017 — British Airways plc v European Commission

(Case C-122/16 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — European airfreight market — Commission decision concerning agreements and concerted practices in respect of several elements of the pricing of airfreight services — Defective statement of reasons — Plea involving a matter of public policy raised by the EU courts of their own motion — Prohibition on ruling ultra petita — Form of order set out in the application at first instance seeking the partial annulment of the decision at issue — The General Court of the European Union prohibited from annulling the decision at issue in its entirety — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy)

(2018/C 022/07)

Language of the case: English

Parties

Appellant: British Airways plc (represented by: J. Turner QC and R. O'Donoghue, Barrister, instructed by A. Lyle-Smythe, Solicitor)

Other party to the proceedings: European Commission (represented by: N. Khan and A. Dawes, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders British Airways plc to pay the costs.*

(1) OJ C 191, 30.5.2016.

Judgment of the Court (Grand Chamber) of 14 November 2017 (request for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — United Kingdom) — Toufik Lounes v Secretary of State for the Home Department

(Case C-165/16) (1)

(Reference for a preliminary ruling — Citizenship of the Union — Article 21 TFEU — Directive 2004/38/EC — Beneficiaries — Dual nationality — Union citizen having acquired the nationality of the host Member State while retaining her nationality of origin — Right of residence in that Member State of a third-country national who is a family member of the Union citizen)

(2018/C 022/08)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Toufik Lounes

Defendant: Secretary of State for the Home Department

Operative part of the judgment

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that, in a situation in which a citizen of the European Union (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38. The third-country national is however eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.

(1) OJ C 191, 30.5.2016.

Judgment of the Court (Tenth Chamber) of 22 November 2017 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Asotsiatsia na balgarskite predpriyatia za mezhdunarodni prevozi i patishtata (Aebtri) v Nachalnik na Mitnitsa Burgas

(Case C-224/16) ([1])

(Reference for a preliminary ruling — Customs union — External transit — Road freight transport operation carried out under cover of a TIR carnet — Article 267 TFEU — Jurisdiction of the Court to interpret Articles 8 and 11 of the TIR Convention — TIR operation not discharged — Liability of the guaranteeing association — Article 8(7) of the TIR Convention — Duty of the competent authorities to require payment so far as possible from the person or persons directly liable before making a claim against the guaranteeing association — Explanatory notes annexed to the TIR Convention — Regulation (EEC) No 2454/93 — Article 457(2) — Community Customs Code — Articles 203 and 213 — Persons who acquired or held the goods and who were aware or should reasonably have been aware that they had been removed from customs supervision)

(2018/C 022/09)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Asotsiatsia na balgarskite predpriyatia za mezhdunarodni prevozi i patishtata (Aebtri)

Defendant: Nachalnik na Mitnitsa Burgas

Operative part of the judgment

1. *The Court has jurisdiction to give preliminary rulings on the interpretation of Articles 8 and 11 of the Customs Convention on the international transport of goods under cover of TIR carnets, signed in Geneva on 14 November 1975, and approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978, in its amended and consolidated version published by Council Decision 2009/477/EC of 28 May 2009.*

2. *Article 8(7) of the Customs Convention on the international transport of goods under cover of TIR carnets, approved on behalf of the Community by Regulation No 2112/78, in its amended and consolidated version published by Decision 2009/477, must be interpreted as meaning that, in a situation such as that in the main proceedings, the customs authorities have fulfilled the obligation laid down in that provision to require payment of the import duties and taxes concerned, so far as possible, from the holder of the TIR carnet as the person directly liable for those sums, before bringing a claim against the guaranteeing association.*

3. *The third indent of Article 203(3) and Article 213 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, must be interpreted as meaning that the fact that a recipient acquired or held goods which he knew to have been conveyed under cover of a TIR carnet and the fact that it has not been established that those goods were presented and declared to the customs office of destination, are not sufficient, in themselves, for it to be concluded that such a recipient was aware or should reasonably have been aware that those goods had been removed from customs supervision within the meaning of the first of those provisions and must therefore be held jointly and severally liable for the customs debt pursuant to the second of those provisions.*

([1]) OJ C 243, 4.7.2016.

Judgment of the Court (First Chamber) of 23 November 2017 (request for a preliminary ruling from the Commissione tributaria provinciale di Siracusa — Italy) — Enzo Di Maura v Agenzia delle Entrate — Direzione Provinciale di Siracusa

(Case C-246/16) ([1])

(Reference for a preliminary ruling — Value added tax (VAT) — Taxable amount — Sixth Directive 77/388/EEC — Second subparagraph of Article 11C(1) — Restriction of the right to reduce the taxable amount in the event of non-payment by the other party to the contract — Scope for implementation by the Member States — Proportionality of the period of pre-financing by the trader)

(2018/C 022/10)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Siracusa

Parties to the main proceedings

Applicant: Enzo Di Maura

Defendant: Agenzia delle Entrate — Direzione Provinciale di Siracusa

Operative part of the judgment

Article 11C(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the law of the Member State relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years.

([1]) OJ C 260, 18.7.2016.

Judgment of the Court (Tenth Chamber) of 16 November 2017 — Ludwig-Bölkow-Systemtechnik GmbH v European Commission

(Case C-250/16 P) ([1])

(Appeal — Arbitration clause — Sixth framework programme for research, technological development and demonstration activities (2002-2006) — Partial repayment of the sums paid to the appellant — Liquidated damages)

(2018/C 022/11)

Language of the case: German

Parties

Appellant: Ludwig-Bölkow-Systemtechnik GmbH (represented by: M. Núñez Müller, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: T. Maxian Rusche and F. Moro, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ludwig-Bölkow-Systemtechnik GmbH to pay the costs.*

(1) OJ C 222, 20.6.2016.

Judgment of the Court (Fourth Chamber) of 22 November 2017 (request for a preliminary ruling from the Supreme Court — Ireland) — Edward Cussens, John Jennings, Vincent Kingston v T. G. Brosnan

(Case C-251/16) (1)

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Sixth Directive 77/388/EEC — Article 4(3)(a) and Article 13B(g) — Exemption of the supply of buildings, and of the land on which they stand, other than as described in Article 4(3)(a) — Principle that abusive practices are prohibited — Applicability in the absence of national provisions transposing that principle — Principles of legal certainty and of the protection of legitimate expectations)

(2018/C 022/12)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Appellants: Edward Cussens, John Jennings, Vincent Kingston

Respondent: T.G. Brosnan

Operative part of the judgment

1. *The principle that abusive practices are prohibited must be interpreted as being capable, regardless of a national measure giving effect to it in the domestic legal order, of being applied directly in order to refuse to exempt from value added tax sales of immovable goods, such as the sales at issue in the main proceedings, carried out before the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), was delivered, and the principles of legal certainty and of the protection of legitimate expectations do not preclude this.*

2. *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 must be interpreted as meaning that, if the transactions at issue in the main proceedings should be redefined pursuant to the principle that abusive practices are prohibited, those of the transactions which do not constitute such a practice may be subject to value added tax on the basis of the relevant provisions of national legislation providing for such liability.*

3. *The principle that abusive practices are prohibited must be interpreted as meaning that, in order to determine, on the basis of paragraph 75 of the judgment of 21 February 2006, Halifax and Others (C-255/02, EU:C:2006:121), whether the essential aim of the transactions at issue in the main proceedings is to obtain a tax advantage, account should be taken of the objective of the leases preceding the sales of immovable property at issue in the main proceedings in isolation.*

4. *The principle that abusive practices are prohibited must be interpreted as meaning that supplies of immovable property such as those at issue in the main proceedings are liable to result in the accrual of a tax advantage contrary to the purpose of the relevant provisions of Sixth Directive 77/388 where the properties had, before their sale to third party purchasers, not yet been actually used by their owner or their tenant. It is for the referring court to verify whether that is the case in the main proceedings.*

5. *The principle that abusive practices are prohibited must be interpreted as being applicable in a situation such as that at issue in the main proceedings, which concerns the possible exemption of a supply of immovable property from value added tax.*

(1) OJ C 243, 4.7.2016.

Judgment of the Court (First Chamber) of 23 November 2017 (reference for a preliminary ruling from the Helsingin hallinto-oikeus) — Proceedings brought by A Oy

(Case C-292/16) (1)

(Reference for a preliminary ruling — Freedom of establishment — Direct taxation — Corporation tax — Directive 90/434/EEC — Article 10(2) — Transfer of assets — Non-resident permanent establishment transferred, in the course of a transfer of assets, to a receiving company also non-resident — Right of the Member State of the transferring company to tax that establishment's profits or capital gains resulting from the transfer of assets — National legislation providing for immediate taxation of the profits or capital gains in the year of transfer — Collection of the tax due as revenue of the tax year in which the transfer of assets took place)

(2018/C 022/13)

Language of the case: Finnish

Referring court

Helsingin hallinto-oikeus

Parties to the main proceedings

A Oy

Operative part of the judgment

Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, where a resident company, in the course of a transfer of assets, transfers a non-resident permanent establishment to a company that is also non-resident, first, provides for the immediate taxation of the capital gains resulting from the transfer and, second, does not allow deferred collection of the tax, whereas in an equivalent national situation such capital gains are not taxed until the disposal of the transferred assets, in so far as that legislation does not allow the deferred collection of the tax.

(1) OJ C 270, 25.7.2016.

Judgment of the Court (Second Chamber) of 16 November 2017 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Kozuba Premium Selection sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie

(Case C-308/16) (1)

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 12(1) and (2) — Article 135(1)(j) — Taxable transactions — Exemption for the supply of buildings — Concept of 'first occupation' — Concept of 'conversion')

(2018/C 022/14)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Kozuba Premium Selection sp. z o.o.

Defendant: Dyrektor Izby Skarbowej w Warszawie

Operative part of the judgment

Articles 12(1)(a) and 135(1)(j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national law, such as that at issue in the main proceedings, which makes the VAT exemption on the supply of buildings subject to the condition that the first occupation thereof arises in the context of a taxable transaction. The same provisions must be interpreted as not precluding such a national law from making that exemption subject to the condition, in the case of the 'upgrade' of an existing building, that the costs incurred have not exceeded 30 % of the initial value thereof, provided that that concept of 'upgrade' is interpreted in the same way as that of 'conversion' in Article 12(2) of Directive 2006/112, namely as meaning that the building concerned must have been subject to substantial modifications intended to modify the use or alter considerably the conditions of occupation.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (Fifth Chamber) of 15 November 2017 (requests for a preliminary ruling from the Bundefinanzhof — Germany) — Rochus Geissel, in his capacity as liquidator of RGEX GmbH i.L v Finanzamt Neuss (C-374/16), and Finanzamt Bergisch Gladbach v Igor Butin (C-375/16)

(Joined Cases C-374/16 and C-375/16) ([1])

(References for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 168(a), Article 178(a) and Article 226(5) — Deduction of input tax — Compulsory content of invoices — Legitimate expectation on the part of the taxable person regarding the existence of the conditions giving rise to the right to deduct)

(2018/C 022/15)

Language of the case: German

Referring court

Bundefinanzhof

Parties to the main proceedings

Applicant: Rochus Geissel, in his capacity as liquidator of RGEX GmbH i.L. (C-374/16), Finanzamt Bergisch Gladbach (C-375/16)

Defendant: Finanzamt Neuss (C-374/16), Igor Butin (C-375/16)

Operative part of the judgment

Article 168(a) and Article 178(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 226(5) thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the exercise of the right to deduct input VAT subject to the condition that the address where the issuer of an invoice carries out its economic activity must be indicated on the invoice.

([1]) OJ C 392, 24.10.2016.

Judgment of the Court (Tenth Chamber) of 23 November 2017 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Salvador Benjumea Bravo de Laguna v Esteban Torras Ferrazzuolo

(Case C-381/16) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 207/2009 — EU trade mark — Article 16 — Trade mark as an object of property — Dealing with EU trade marks as national trade marks — Article 18 — Transfer of a trade mark registered in the name of the agent or representative of the trade mark's proprietor — National provision allowing the possibility of bringing an action for recovery of ownership of a national trade mark registered in fraud of the owner's rights or in breach of a legal or contractual obligation — Whether compatible with Regulation No 207/2009)

(2018/C 022/16)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Salvador Benjumea Bravo de Laguna

Defendant: Esteban Torras Ferrazzuolo

Operative part of the judgment

Articles 16 and 18 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark must be interpreted as not precluding the application to an EU trade mark of a national provision, such as that at issue in the main proceedings, under which a person harmed, by the trade mark registration which was applied for in fraud of his rights or in breach of a legal or contractual obligation, is entitled to claim ownership of that trade mark, provided that the situation concerned does not fall within those covered by Article 18 of that regulation.

([1]) OJ C 335, 12.9.2016.

Judgment of the Court (First Chamber) of 23 November 2017 (requests for a preliminary ruling from the Sofiyski rayonen sad — Bulgaria) — CHEZ Elektro Bulgaria AD v Yordan Kotsev (C 427/16), and FrontEx International EAD v Emil Yanakiev (C-428/16)

(Joined Cases C-427/16 and C-428/16) ([1])

(Reference for a preliminary ruling — Competition — Freedom to provide services — Setting of minimum fee amounts by a lawyers' professional organisation — Court prohibited from ordering reimbursement of fees in an amount less than those minimum amounts — National legislation considering value added tax (VAT) to form part of the price of a service provided in the performance of professional activities)

(2018/C 022/17)

Language of the case: Bulgarian

Referring court

Sofiyski rayonen sad

Parties to the main proceedings

Applicants: CHEZ Elektro Bulgaria AD (C-427/16), FrontEx International EAD (C-428/16)

Defendants: Yordan Kotsev (C-427/16), Emil Yanakiev (C-428/16)

Operative part of the judgment

1. *Article 101(1) TFEU, read in conjunction with Article 4(3) TEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which, first, does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a lawyers' professional organisation, such as the Vissh advokatski savet (Supreme Council of the Legal Profession, Bulgaria), without that lawyer being subject to a disciplinary procedure, and, secondly, which does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount, is capable of restricting competition in the internal market within the meaning of Article 101(1) TFEU. It is for the referring court to confirm whether such legislation, in the light of the specific detailed rules for the application thereof, actually meets legitimate objectives and whether the restrictions thus imposed are limited to what is necessary to ensure that those legitimate objectives are given effect.*

2. *Article 101(1) TFEU, read in conjunction with Article 4(3) TEU and Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, by virtue of which individuals and sole traders obtain reimbursement of lawyers' remuneration, ordered by a national court, if they have been defended by a legal adviser.*

3. *Point (a) of the first subparagraph of Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation such as that at issue in the main proceedings, by virtue of which VAT forms an inseparable component part of a registered lawyers' fees, if that legislation leads to double taxation of those fees in respect of VAT.*

([1]) OJ C C 371, 10.10.2016.

Judgment of the Court (Sixth Chamber) of 15 November 2017 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Entertainment Bulgaria System EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika', Sofia

(Case C-507/16) ([1])

(Reference for a preliminary ruling — Taxation — Directive 2006/112/EC — Article 168(a), Article 169 (a), Article 214(1)(d) and (e), and Articles 289 and 290 — Deductibility of input value added tax (VAT) due or paid — Output transactions carried out in other Member States — Tax deduction scheme in the Member State in which the right to deduct is exercised)

(2018/C 022/18)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Entertainment Bulgaria System EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika', Sofia

Operative part of the judgment

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/162/EU of 22 December 2009, must be interpreted as meaning that it does preclude Member State legislation that prevents a taxable person, established in the territory of that Member State, deducting input value added tax due or paid in that Member State in respect of services provided by taxable persons established in other Member States and used to provide services in Member States other than the Member State in which that taxable person is established, on the ground that that taxable person is identified for value added tax purposes by virtue of one of the two cases referred to in Article 214(1)(d) and (e) of Directive 2006/112, as amended by Directive 2009/162. However, Article 168(a) and Article 169(a) of Directive 2006/112, as amended by Directive 2009/162, must be interpreted as meaning that they do not preclude legislation of a Member State that prevents a taxable person, established in the territory of that Member State and eligible there for a tax deduction scheme, exercising its right to deduct input value added tax due or paid in that Member State for services provided by taxable persons established in other Member States and used to provide services in Member States other than the Member State in which that taxable person is established.

([1]) OJ C 441, 28.11.2016.

Judgment of the Court (Third Chamber) of 23 November 2017 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Gasorba SL, Josefa Rico Gil, Antonio Ferrándiz González v Repsol Comercial de Productos Petrolíferos SA

(Case C-547/16) ([1])

(Competition — Article 101 TFEU — Agreements between undertakings — Business relationships between service station operators and oil companies — Long-term exclusive supply agreement for fuel — European Commission decision making an undertaking's commitments binding — Extent to which national courts are bound by a commitment decision adopted by the Commission — Articles 9(1) and 16 (1) of Regulation (EC) No 1/2003)

(2018/C 022/19)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Gasorba SL, Josefa Rico Gil, Antonio Ferrándiz González

Defendant: Repsol Comercial de Productos Petrolíferos SA

Operative part of the judgment

Article 16(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] must be interpreted as meaning that a commitment decision concerning certain agreements between undertakings, adopted by the European Commission under Article 9(1) of that regulation, does not preclude national courts from examining whether those agreements comply with the competition rules and, if necessary, declaring those agreements void pursuant to Article 101(2) TFEU.

([1]) OJ C 22, 23.1.2017.

Appeal brought on 14 July 2017 by Vilislav Andreev Kaleychev against the order of the General Court (First Chamber) delivered on 22 June 2017 in Case T-58/17: Kaleychev v European Court of Human Rights

(Case C-424/17 P)

(2018/C 022/20)

Language of the case: English

Parties

Appellant: Vilislav Andreev Kaleychev (represented by: K. Mladenova, адвокат)

Other party to the proceedings: European Court of Human Rights

By order of 22 November 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 31 July 2017 — Benedikt Brisch v TUIfly GmbH

(Case C-455/17)

(2018/C 022/21)

Language of the case: German

Referring court

Amtsgericht Hannover

Parties to the main proceedings

Applicant: Benedikt Brisch

Defendant: TUIfly GmbH

By order of 21 September 2017 the case was removed from the register of the Court of Justice.

Request for a preliminary ruling from the Oberlandesgericht Köln (Germany) lodged on 31 July 2017 — Gabriela Verena Glanzmann, Sara Glanzmann, Loris Glanzmann v Deutsche Lufthansa AG

(Case C-456/17)

(2018/C 022/22)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicants: Gabriela Verena Glanzmann, Sara Glanzmann, Loris Glanzmann

Defendant: Deutsche Lufthansa AG

By order of 6 October 2017, the case was removed from the Register of the Court of Justice.

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 7 August 2017 — Teresa Coria Garcia and Others v Austrian Airlines AG

(Case C-470/17)

(2018/C 022/23)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicants: Teresa Coria Garcia, Marina Velasco Coria, Miriam Coria Garcia

Defendant: Austrian Airlines AG

The case was removed from the Register of the Court of Justice by order of the Court of 25 October 2017.

Appeal brought on 19 September 2017 by Ukraine against the order of the General Court (Sixth Chamber) delivered on 19 July 2017 in Case T-346/14 DEP: Yanukovych v Council

(Case C-549/17 P)

(2018/C 022/24)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, Advocate)

Other parties to the proceedings: Viktor Fedorovych Yanukovych, Council of the European Union, Republic of Poland, European Commission

By order of 23 November 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 19 September 2017 by Ukraine against the order of the General Court (Sixth Chamber) delivered on 19 July 2017 in Case T-347/14 DEP: Yanukovych v Council

(Case C-550/17 P)

(2018/C 022/25)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, Advocate)

Other parties to the proceedings: Olga Stanislavivna Yanukovych, as heir of Viktor Viktorovych Yanukovych, Council of the European Union, European Commission

By order of 23 November 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Appeal brought on 19 September 2017 by Ukraine against the order of the General Court (Sixth Chamber) delivered on 19 July 2017 in Case T-348/14 DEP: Yanukovych v Council

(Case C-551/17 P)

(2018/C 022/26)

Language of the case: English

Parties

Appellant: Ukraine (represented by: M. Kostytska, Advocate)

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

By order of 23 November 2017 the Court of Justice (Tenth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 2 October 2017 — Bundesamt für Fremdenwesen und Asyl

(Case C-577/17)

(2018/C 022/27)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Bundesamt für Fremdenwesen und Asyl

Parties involved in the proceedings: Clinton Osas Alake alias Klenti Solim, Cynthia Nomamidobo and Prince Nomamidobo

Questions referred

1. Can the requested Member State — and the Member State responsible in accordance with the criteria set out in Chapter III of the Dublin III Regulation ([1]) — effectively accept the take back request under Article 23(1) of the Dublin III Regulation even though the time limit for replying specified in Article 25(1) of that regulation has already passed and the requested Member State had previously refused the take back request within the time limit and also negatively replied within the time limit to the request for re-examination based on Article 5(2) of the Implementing Regulation? ([2])

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

   As a consequence of the refusal, communicated within the prescribed period, of the take back request by the Member State responsible in accordance with the criteria set out in Chapter III of the Dublin III Regulation, must the requesting Member State in which the new application was lodged examine that application in order to ensure that the application is examined by a Member State in accordance with Article 3(1) of the Dublin III Regulation?

([1]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

([2]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain) lodged on 10 October 2017 — Prenatal S.A. v Tribunal Económico Administrativo Regional de Cataluña (TEARC)

(Case C-589/17)

(2018/C 022/28)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: Prenatal S.A.

Defendant: Tribunal Económico Administrativo Regional de Cataluña (TEARC)

Questions referred

1) Where an application for remission has been made and the Commission notifies its decision that the case has elements of fact and law similar to a previous case already resolved by the Commission or its decision that there is a comparable case pending resolution, is either of those decisions to be regarded as an act with legal content which is binding on the authorities of the Member State in which application for remission is made and is therefore open to appeal by the person seeking remission [Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1])] or requesting that there be no entry in the accounts (Article 220(2)(b) of the Community Customs Code)?

2) If it is not to be regarded as a Commission decision with binding legal content, is it then for the national authorities to evaluate whether there are comparable elements of fact or law in the case?

3) In the event of an affirmative reply, if that analysis has been made and led to the conclusion that such elements are not present, is it necessary to apply Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code and, therefore, must the Commission issue a decision with legal content binding on those national authorities?

4) In the event of an affirmative reply, does the use of the term 'the Member State' in Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ([2]) mean that every authority, including the judicial authority, is under an obligation to request the Commission to take a decision?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 1993 L 253, p. 1.

Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 16 October 2017 — Belgisch Syndicaat van Chiropraxie and Others

(Case C-597/17)

(2018/C 022/29)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Belgisch Syndicaat van Chiropraxie, Bart Vandendries, Belgische Unie van Osteopaten and Others, Plast.Surg. and Others, Belgian Society for Private Clinics and Others

Other party: Ministerraad

Questions referred

1. Should Article 132(1)(c) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax be interpreted as meaning that that provision reserves the exemption to which it refers, in the case of both conventional and non-conventional practices, to practitioners of a medical or a paramedical profession that is subject to national legislation governing the healthcare professions and who meet the requirements laid down by that national legislation, and that persons who do not meet those requirements, but who are affiliated to a professional association of chiropractors or osteopaths and who meet the requirements laid down by that association, are excluded from that exemption?

2. Should Article 132(1)(b), (c) and (e), Article 134 and Article 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with points 3 and 4 of Annex III to that directive, in particular from the point of view of the principle of fiscal neutrality, be interpreted as meaning:

   (a) that they preclude a national provision which provides for a reduced rate of VAT to be applicable to medicinal products and medical aids supplied in connection with an operation or treatment of a therapeutic nature, whereas medicinal products and medical aids supplied in connection with an operation or treatment of a purely aesthetic nature, and closely related thereto, are subject to the normal rate of VAT;

   (b) or that they permit or require equal treatment of both the aforementioned cases?

3. Is there an obligation on the Constitutional Court to maintain, on a temporary basis, the effects of the … provisions to be annulled, as well as those of the provisions which, if necessary, must be annulled in whole or in part, if it follows from the answer to the first or the second question to be referred that those provisions are contrary to EU law, in order to enable the legislature to bring them into line with EU law?

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

Request for a preliminary ruling from the Gerechtshof 's-Hertogenbosch (Netherlands) lodged on 16 October 2017 — A-Fonds v Inspecteur van de Belastingdienst

(Case C-598/17)

(2018/C 022/30)

Language of the case: Dutch

Referring court

Gerechtshof 's-Hertogenbosch

Parties to the main proceedings

Applicant: A-Fonds

Defendant: Inspecteur van de Belastingdienst

Questions referred

1) Is the extension of the scope of an existing system of aid as a result of a taxable person successfully invoking the right to the free movement of capital as laid down in Article 56 of the EC Treaty (now: Article 63 TFEU) to be regarded as a new system of aid resulting from an alteration to existing aid?

2) If so, does the task to be performed by the national court under Article 108(3) TFEU preclude the taxable person from being granted a tax advantage which that taxable person claims under Article 56 of the EC Treaty (now: Article 63 TFEU), or should a proposed judicial decision to grant that advantage be notified to the Commission, or should the national court take any other action or implement any other measure, in view of the supervisory task assigned to it under Article 108(3) TFEU?

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 18 October 2017 — Dirk Harms and Others v Vueling Airlines SA

(Case C-601/17)

(2018/C 022/31)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Dirk Harms, Ann-Kathrin Harms, Nick-Julius Harms, Tom-Lukas Harms, Lilly-Karlotta Harms, Emma-Matilda Harms, the latter four represented by their parents Dirk Harms und Ann-Kathrin Harms

Defendant: Vueling Airlines SA

Question referred

Must the concept of 'reimbursement … by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought' in accordance with Article 8(1)(a) of Regulation No 261/2004 ([1]) be interpreted as referring to the amount paid by the passenger for the ticket in question, or is it the amount which the defendant air carrier has actually received, where an intermediary undertaking is involved in the booking process and collects the difference between what the passenger pays and what the air carrier receives without disclosing this?

([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 Varhoven kasatsionen sad (Bulgaria) lodged on 23 October 2017 — PM v AH

(Case C-604/17)

(2018/C 022/32)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad

Parties to the main proceedings

Appellant: PM

Respondent: AH

Question referred

Does Regulation (EC) No 2201/2003 ([1]) permit the examination of cases concerning parental responsibility, where the conditions laid down in Articles 8 and 12 of that regulation have not been fulfilled, by a court of a Member State which has jurisdiction to examine the divorce case under Article 3 of the regulation, where the national legislation of that Member State requires the court to rule ex officio on the exercise of parental rights, measures concerning access, maintenance and use of the marital home, at the same time as the divorce application?

([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).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 20 October 2017 — IBA Molecular Italy Srl v Azienda ULSS n. 3 and Others

(Case C-606/17)

(2018/C 022/33)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: IBA Molecular Italy Srl

Defendants: Azienda ULSS n. 3, Regione Veneto, Ministero della Salute, Ospedale dell'Angelo di Mestre

Questions referred

1. Do the EU rules on the award of public works contracts, public service contracts and public supply contracts, and in particular Articles 1 and 2 of Directive 2004/18/EC ([1]), include within their scope complex operations whereby a public contracting authority means to award directly to a given economic operator specific-purpose funding, the sole purpose of which is the manufacture of products intended to be supplied free of charge, without any subsequent tendering procedure, to various authorities which are not required to make any payment to the supplier; and, consequently, do the abovementioned rules of EU law preclude national rules which permit the direct award of specific-purpose funding for the manufacture of products intended to be supplied free of charge, without any subsequent tendering procedure, to various authorities which are not required to make any payment to the supplier?

2. Do the EU rules on the award of public works contracts, public service contracts and public supply contracts, and in particular Articles 1 and 2 of Directive 2004/18/EC and Articles 49, 56 and 105 *et seq.* of the EU Treaty, preclude national rules which treat private 'classified' hospitals as the equivalent of public hospitals, by bringing them within the system of national public healthcare planning, governed by special agreements that are distinct from ordinary accreditation relationships with other private parties that participate in the system of provision of healthcare services, in the absence of the requirements for recognition as a body governed by public law and the requirements for direct awards in accordance with the 'in-house provision' model, and thereby take them outside the scope of national and EU rules on public contracts, including in cases where such classified hospitals are entrusted with the manufacture and supply, free of charge, to public healthcare establishments of specific products which are necessary for the provision of healthcare services and where, at the same time, they receive specific-purpose public funding for the purpose of providing such supplies?

([1]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Corte dei Conti (Italy) lodged on 24 October 2017 — Federazione Italiana Golf (FIG) v Istituto Nazionale di Statistica — ISTAT, Ministero dell'Economia e delle Finanze

(Case C-612/17)

(2018/C 022/34)

Language of the case: Italian

Referring court

Corte dei Conti

Parties to the main proceedings

Applicant: Federazione Italiana Golf (FIG)

Defendants: Istituto Nazionale di Statistica — ISTAT, Ministero dell'Economia e delle Finanze

Questions referred

1. Must the concept of 'public intervention in the form of general regulations applicable to all units working in the same activity' referred to in Paragraph 20.15 of [Annex A to] Regulation (EU) No 549/2013 ([1]) ('the ESA 2010') be understood broadly as covering also the powers of guidance of a sporting nature (so-called soft law) and the powers of recognition, laid down by law, for the purposes of acquiring legal personality and enablement powers in the sports sector, both powers relating generally to all Italian national sports federations?

2. Must the general indicator of control referred to in Paragraph 20.15 of [Annex A to] Regulation (EU) No 549/2013 ('the ESA 2010') ('the ability to determine the general policy or programme of [a non-profit institution]') be interpreted in a substantive sense as the ability to manage, constrain and influence the management activity of the non-profit institution or can it be understood in a non-technical sense as also covering powers of external supervision other than those defined by the specific indicators of control referred to in subparagraphs (a), (b), (c), (d) and (e) of Paragraph 20.15 (such as, for example, powers to approve budgets, appoint auditors, and approve statutes and certain types of regulations, sports guidelines or recognition for the purposes of sport)?

3. On the basis of the combined provisions of Paragraphs 20.15, 4.125 and 4.126 of [Annex A to] Regulation (EU) No 549/2013 ('the ESA 2010'), can account be taken of membership fees for the purposes of establishing the existence or otherwise of public control, specifying whether a high level of such fees, together with other own revenues, can demonstrate, in the light of the particular features of the case at issue, that the non-profit institution has significant ability to exercise self-determination?

([1]) Regulation (EU) No 549/2013 of the European Parliament and the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (Text with EEA relevance) (OJ 2013 L 174, p. 1).

Request for a preliminary ruling from the Corte dei Conti (Italy) lodged on 24 October 2017 — Federazione Italiana Sport Equestri (FISE) v Istituto Nazionale di Statistica — ISTAT

(Case C-613/17)

(2018/C 022/35)

Language of the case: Italian

Referring court

Corte dei Conti

Parties to the main proceedings

Applicant: Federazione Italiana Sport Equestri (FISE)

Defendant: Istituto Nazionale di Statistica — ISTAT

Questions referred

1. Must the concept of 'public intervention in the form of general regulations applicable to all units working in the same activity' referred to in Paragraph 20.15 of [Annex A to] Regulation (EU) No 549/2013 ([1]) ('the ESA 2010') be understood broadly as covering also the powers of guidance of a sporting nature (so-called soft law) and the powers of recognition, laid down by law, for the purposes of acquiring legal personality and enablement powers in the sports sector, both powers relating generally to all Italian national sports federations?

2. Must the general indicator of control referred to in Paragraph 20.15 of [Annex A to] Regulation (EU) No 549/2013 ('the ESA 2010') ('the ability to determine the general policy or programme of [a non-profit institution]') be interpreted in a substantive sense as the ability to manage, constrain and influence the management activity of the non-profit institution or can it be understood in a non-technical sense as also covering powers of external supervision other than those defined by the specific indicators of control referred to in subparagraphs (a), (b), (c), (d) and (e) of Paragraph 20.15 (such as, for example, powers to approve budgets, appoint auditors, and approve statutes and certain types of regulations, sports guidelines or recognition for the purposes of sport)?

3. On the basis of the combined provisions of Paragraphs 20.15, 4.125 and 4.126 of [Annex A to] Regulation (EU) No 549/2013 ('the ESA 2010'), can account be taken of membership fees for the purposes of establishing the existence or otherwise of public control, specifying whether a high level of such fees, together with other own revenues, can demonstrate, in the light of the particular features of the case at issue, that the non-profit institution has significant ability to exercise self-determination?

([1]) Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (Text with EEA relevance) (OJ 2013 L 174, p. 1).

Request for a preliminary ruling from the Tribunal correctionnel de Foix (France) lodged on 26 October 2017 — Procureur de la République v Mathieu Blaise and Others

(Case C-616/17)

(2018/C 022/36)

Language of the case: French

Referring court

Tribunal correctionnel de Foix

Parties to the main proceedings

Applicant: Procureur de la République

Defendants: Mathieu Blaise, Sabrina Dauzet, Alain Feliu, Marie Foray, Sylvestre Ganter, Dominique Masset, Ambroise Monsarrat, Sandrine Muscat, Jean-Charles Sutra, Blanche Yon, Kevin Leo-Pol Fred Perrin, Germain Yves Dedieu, Olivier Godard, Kevin Pao Donovan Schachner, Laura Dominique Chantal Escande, Nicolas Benoit Rey, Eric Malek Benromdan, Olivier Eric Labrunie, Simon Joseph Jeremie Boucard, Alexis Ganter, Pierre André Garcia

Other party: Espace Émeraude

Questions referred

1. Is Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]) compatible with the precautionary principle when it provides no specific definition of an active substance, leaving it to the applicant to determine what it designates as the active substance in its product and granting it scope to focus its whole application dossier on a single substance, while its end product placed on the market is made up of several substances?

2. Is the precautionary principle observed and the impartiality of the authorisation to place products on the market maintained when the tests, analyses and evaluations necessary for compilation of the dossier are conducted by the applicants alone, who may be biased in their presentation, without any independent counter-analysis or publication of the application reports on the pretext of protecting industrial secrecy?

3. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when it takes no account of there being multiple active substances or of their cumulative use, in particular when it makes no provision for any comprehensive specific analysis at European level of cumulation of active substances within a single product?

4. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when, in Chapters III and IV, it exempts from toxicity tests (genotoxicity, carcinogenicity assessment, assessment of endocrine disruptors, etc.) pesticide products in the commercial formulations in which they are placed on the market and in which consumers and the environment are exposed to them, requiring only summary testing, which is anyway performed by the applicant itself?

(1) OJ 2009 L 309, p. 1.

Request for a preliminary ruling from the Tribunal d'instance de Limoges (France) lodged on 30 October 2017 — BNP Paribas Personal Finance SA v Roger Ducloux, Josée Ducloux, née Lecay

(Case C-618/17)

(2018/C 022/37)

Language of the case: French

Referring court

Tribunal d'instance de Limoges

Parties to the main proceedings

Applicant: BNP Paribas Personal Finance SA, successor in title to Solfea

Defendants: Roger Ducloux, Josée Ducloux, née Lecay

Question referred

Where the annual percentage rate of credit is 5,97377 %, does the rule provided for in Directives 98/7/EC of 16 February 1998 ([1]) and 2008/48/EC of 23 April 2008, ([2]) according to which, in the French version, '*Le résultat du calcul est exprimé avec une exactitude d'au moins une décimale. Si le chiffre de la décimale suivante est supérieur ou égal à 5, le chiffre de la première décimale sera augmenté de 1*' [translated in literal terms as '[t]he result of the calculation shall be expressed correct to at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at [the first] decimal place shall be increased by one'] allow a stated annual percentage rate of charge of 5,95 % to be considered correct?

(1) Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1998 L 101, p. 17).

(2) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 3 November 2017 — Ministerio de Defensa v Ana de Diego Porras

(Case C-619/17)

(2018/C 022/38)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Ministerio de Defensa

Other party: Ana de Diego Porras

Questions referred

1. Must Clause 4 of the Framework Agreement on fixed-term work, contained in the Annex to Directive 1999/70, ([1]) be interpreted as precluding national legislation that does not provide for any compensation for termination of a temporary replacement contract, to replace another worker who has a reserved right to his post, when such termination is due to the reinstatement of the replaced worker, but does provide for compensation when the contract of employment is terminated on other legal grounds?

2. If the answer to Question 1 is in the negative, does Clause 5 of the Framework Agreement cover a measure such as that introduced by the Spanish legislature, consisting of fixing compensation of 12 days' salary for every year of service, to be received by the worker at the end of a temporary contract even if the temporary employment has been limited to a single contract?

3. If the answer to question 2 is in the affirmative, is a legal provision granting fixed-term workers compensation of 12 days' salary for every year of service at the end of the contract, but excluding fixed-term workers from that measure when the contract is a temporary replacement contract to replace a worker who has a reserved right to his post, contrary to Clause 5 of the Framework Agreement?

([1]) 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 Székesfehérvári Törvényszék (Hungary) lodged on 2 November 2017 — Hochtief Solutions AG Magyarországi Fióktelepe v Fővárosi Törvényszék

(Case C-620/17)

(2018/C 022/39)

Language of the case: Hungarian

Referring court

Székesfehérvári Törvényszék

Parties to the main proceedings

Applicant: Hochtief Solutions AG Magyarországi Fióktelepe

Defendant: Fővárosi Törvényszék

Questions referred

1. Are the basic principles and rules of EU law (in particular Article 4(3) TEU, and the requirement for uniform interpretation), as interpreted by the Court of Justice of the European Union, especially in the judgment in *Köbler*, to be interpreted as meaning that the declaration of liability of the court of the Member State ruling at final instance in a judgment which infringes EU law may be based exclusively on national law or on the criteria laid down by national law? If not, are the basic principles and rules of EU law, particularly the three criteria laid down by the Court of Justice of the European Union in *Köbler* for declaring the liability of the 'State' to be interpreted as meaning that whether the conditions for liability of the Member State for infringement of EU law by the courts of that State are met is to be assessed on the basis of national law?

2. Are the basic principles and rules of EU law (in particular Article 4(3) TEU and the requirement for effective judicial protection), particularly the judgements of the Court of Justice of the European Union concerning the liability of the Member State delivered *inter alia* in *Francovich*, *Brasserie du pécheur* and *Köbler*, to be interpreted as meaning that the force of res judicata attaching to judgments which infringe EU law delivered by courts of the Member States ruling at final instance precludes a declaration that the Member State is liable for damages?

3. In the light of Directive 89/665/EEC, as amended by Directive 2007/66/EC ([1]), and of Directive 92/13/EEC, are the review procedure concerning the award of public contracts of a value greater than the Community thresholds and the judicial review of the administrative decision adopted in that procedure relevant for the purposes of EU law? If so, are EU law and the case-law of the Court of Justice of the European Union (*inter alia*, the judgments in *Kühne & Heitz*, *Kapferer*, and especially *Impresa Pizzarotti*) regarding the need to grant review, as an extraordinary appeal, which derives from national law on judicial review of the administrative decision adopted in the aforementioned review procedure concerning the award of public contracts, relevant for the purposes of EU law?

4. Are the Directives on review procedures concerning the award of public contracts (namely, Directive 89/665/EEC, as amended in the meantime by Directive 2007/66/EC, and Directive 92/13/EEC) to be interpreted as meaning that national legislation under which the national courts before which the dispute in the main proceedings is brought may disregard a fact which should be examined in accordance with a judgment of the Court of Justice of the European Union — delivered in a preliminary ruling procedure in connection with a review procedure concerning the award of public contracts — a fact which is also not taken into account by the national courts ruling in proceedings instituted as a result of the review procedure brought against the decision adopted in the main proceedings, is compatible with those directives?

5. Are Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, in particular Article 1(1) and (3) thereof, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular Articles 1 and 2 thereof — particularly in the light of the judgments delivered in *Willy Kempter*, *Pannon GSM* and *VB Pénzügyi Lízing*, and also *Kühne & Heitz*, *Kapferer* and *Impresa Pizzarotti* — to be interpreted as meaning that national legislation, or an application thereof, under which, although a judgment of the Court of Justice of the European Union delivered in a preliminary ruling procedure before judgment in the proceedings at second instance establishes a relevant interpretation of the rules of EU law, the court hearing the case rejects its on the grounds that it is out of time and subsequently the court hearing the application for review does not consider the review admissible, is compatible with the aforementioned Directives and with the requirements of effective judicial protection and with the principles of equivalence and effectiveness?

6. If, under national law, review must be granted in order to re-establish constitutionality by means of a new decision of the Constitutional Court, should review not be granted, in accordance with the principle of equivalence and the principle laid down in the judgment in *Transportes Urbanos*, if it has not been possible to take into account a judgment of the Court of Justice of the European Union in the main proceedings owing to the provisions of national law concerning procedural time limits?

7. Are Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, in particular Article 1(1) and (3) thereof, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular Articles 1 and 2 thereof, in the light of the judgment of the Court of Justice of the European Union in *Willy Kempter*, C-2/06, EU:C:2008:78, according to which an individual does not have to rely specifically on the case-law of the Court of Justice, to be interpreted as meaning that the review procedures concerning the award of public contracts governed by the aforementioned Directives may be initiated only by an action which contains an express description of the infringement concerning the award of public contracts invoked and, furthermore, expressly states the procurement rule which has been infringed — the specific article and paragraph —, that is to say, that in a review procedure concerning the award of public contracts it is only possible to examine the infringements which the applicant has indicated by reference to the procurement provision which has been infringed — the specific article and paragraph —, whereas in any other administrative and civil procedure it is sufficient for the individual to present the facts and the evidence which supports them, and the competent authority or court gives a ruling according to their content?

8. Is the requirement of a sufficiently serious infringement laid down in the judgments in *Köbler* and *Traghetti* to be interpreted as meaning that such infringement does not exist if the court ruling at final instance, in clear contravention of the established case-law, cited with maximum detail, of the Court of Justice of the European Union — which is also supported by various legal opinions — refuses an individual's request for a reference for a preliminary ruling concerning the need to grant a review, on the absurd grounds that EU law — in this case, in particular, Directives 89/665/EEC and 92/13/EEC — do not contain rules governing review, in spite of the fact that, for that purpose, reference has also been made with maximum detail to the relevant case-law of the Court of Justice of the European Union, also including the judgment in *Impresa Pizzarotti*, which specifically states the need for review in relation to the public procurement procedure? In the light of the judgment of the Court of Justice of the European Union in *CILFIT*, 283/81, EU:C:1982:335, with what degree of detail must the national court which does not grant the review justify its decision to depart from the authoritative legal interpretation given by the Court of Justice?

9. Are the principles of effective judicial protection and of equivalence in Article 19 TEU and Article 4(3) TEU, freedom of establishment and freedom to provide services laid down in Article 49 TFEU, and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, and also Directives 89/665/EEC, 92/13/EEC and 2007/66/EC, to be interpreted as meaning that they do not preclude the competent authorities and courts, in manifest disregard of the applicable EU law, from dismissing one after another the appeals brought by the applicant because he has been unable to participate in a public procurement procedure, appeals for which it is necessary to prepare, depending on the circumstances, multiple documents with considerable investment of time and money or to participate at hearings, and, although it is true that it is in theory possible to declare liability for damage caused in the exercise of judicial functions, the relevant legislation prevents the applicant from claiming from the court compensation for harm suffered as a consequence of the unlawful measures?

10. Are principles laid down in the judgments in *Köbler*, *Traghetti* and *Saint Giorgio* to be interpreted as meaning that compensation cannot be paid for damage caused by the fact that, in infringement of the established case-law of the Court of Justice, the court of the Member State ruling at final instance has not granted the review requested within the proper time by the individual, in which he would have been able to claim compensation for the costs incurred?

([1]) Both Directives were amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007, p. 31).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 3 November 2017 — Gyula Kiss v CIB Bank Zrt., Emil Kiss, Gyuláné Kiss

(Case C-621/17)

(2018/C 022/40)

Language of the case: Hungarian

Referring court

Kúria (Hungary)

Parties to the main proceedings

Applicant: Gyula Kiss

Defendants: CIB Bank Zrt., Emil Kiss, Gyuláné Kiss

Questions referred

(1) Must the requirement that contracts be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts ('the Directive'), be interpreted as meaning that, in a loan contract concluded with a consumer, that requirement is satisfied by a contractual term not individually negotiated that specifies the exact amount of the charges, commissions and other costs (collectively 'charges') to be borne by the consumer, their method of calculation and the time when they have to be paid but does not, however, stipulate in return what specific services are covered by those charges, or must that requirement instead be interpreted as meaning that the contract also has to indicate what those specific services are? In the latter case, is it sufficient that the content of the service provided may be inferred from the description of the charge?

(2) Must Article 3(1) of the Directive be interpreted as meaning that the contractual term used in the instant case in relation to charges, when it cannot be unequivocally determined, on the basis of the contract, what specific services are provided in return for those charges, causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Reference for a preliminary ruling from the Investigatory Powers Tribunal — London (United Kingdom) made on 31 October 2017 — Privacy International v Secretary of State for Foreign and Commonwealth Affairs and Others

(Case C-623/17)

(2018/C 022/41)

Language of the case: English

Referring court

Investigatory Powers Tribunal — London

Parties to the main proceedings

Applicant: Privacy International

Defendants: Secretary of State for Foreign and Commonwealth Affairs, Secretary of State for the Home Department, Government Communications Headquarters, Security Service Srl, Secret Intelligence Service

Questions referred

In circumstances where:

a) the SIAs' ([1]) capabilities to use BCD ([2]) supplied to them are essential to the protection of the national security of the United Kingdom, including in the fields of counter-terrorism, counter-espionage and counter-nuclear proliferation;

b) a fundamental feature of the SIA's use of the BCD is to discover previously unknown threats to national security by means of non-targeted bulk techniques which are reliant upon the aggregation of the BCD in one place. Its principal utility lies in swift target identification and development, as well as providing a basis for action in the face of imminent threat;

c) the provider of an electronic communications network is not thereafter required to retain the BCD (beyond the period of their ordinary business requirements), which is retained by the State (the SIAs) alone;

d) the national court has found (subject to certain reserved issues) that the safeguards surrounding the use of BCD by the SIAs are consistent with the requirements of the ECHR ([3]); and

e) the national court has found that the imposition of the requirements specified in § § 119-125 of the judgment of the Grand Chamber in joined cases C-203/15 and C-698/15, *Tele2 Sverige AB v Post-och telestyrelsen* and *Secretary of State for the Home Department v Watson and Others* […] ('the Watson Requirements'), if applicable, would frustrate the measures taken to safeguard national security by the SIAs, and thereby put the national security of the United Kingdom at risk;

1. Having regard to Article 4 TEU and Article 1(3) of Directive 2002/58/EC ([4]) on privacy and electronic communications (the 'e-Privacy Directive'), does a requirement in a direction by a Secretary of State to a provider of an electronic communications network that it must provide bulk communications data to the Security and Intelligence Agencies (SIAs) of a Member State fall within the scope of Union law and of the e-Privacy Directive?

2. If the answer to Question (1) is 'yes', do any of the Watson Requirements, or any other requirements in addition to those imposed by the ECHR, apply to such a direction by a Secretary of State? And, if so, how and to what extent do those requirements apply, taking into account the essential necessity of the SIAs to use bulk acquisition and automated processing techniques to protect national security and the extent to which such capabilities, if otherwise compliant with the ECHR, may be critically impeded by the imposition of such requirements?

([1]) Security and Intelligence Agencies.
([2]) Bulk Communications Data.
([3]) European Convention on Human Rights and Fundamental Freedoms.
([4]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002, L 201, p. 37).

Request for a preliminary ruling from the Općinski sud u Rijeci– Stalna služba u Rabu lodged on 9 November 2017 — Anica Milivojević v Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen

(Case C-630/17)

(2018/C 022/42)

Language of the case: Croatian

Referring court

Općinski sud u Rijeci– Stalna služba u Rabu

Parties to the main proceedings

Applicant: Anica Milivojević

Defendant: Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen

Questions referred

(1) Must Articles 56 and 63 of the Treaty on the Functioning of the European Union be interpreted as precluding the provisions of the Zakon o ništetnosti ugovora o kreditu s međunarodnim obilježjima sklopljenih u Republici HrvatskOJ S neovlaštenim vjerovnikom (Law on the nullity of loan contracts with international features concluded in the Republic of Croatia with an unauthorised creditor; Narodne novine [*Official Gazette*] No 72/2017), in particular the provisions of Article 10 of that Law, which provides for the nullity of loan contracts and other legal acts that are consequential upon the loan contract concluded between a debtor (within the meaning of Articles 1 and 2, first indent, of the said Law) and an unauthorised creditor (within the meaning of Article 2, second indent, of the same Law) or are based on that contract, even if they were concluded before the entry into force of that Law, that nullity taking effect from the moment the contract was entered into, with the result that each of the contracting parties is obliged to return to the other party everything received by it on the basis of the void contract and, when that is impossible or when the nature of the action taken is incompatible with restoration, adequate pecuniary compensation must be paid, based on the prices in force when the judicial decision is delivered?

(2) Must Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), in particular Articles 4(1) and 25, be interpreted as precluding provisions of Article 8(1) and (2) of the Zakon o ništetnosti ugovora o kreditu s međunarodnim obilježjima sklopljenih u Republici HrvatskOJ S neovlaštenim vjerovnikom, in which it is laid down that, in disputes relating to loan contracts with international features within the meaning of that Law, the debtor may sue an unauthorised creditor before the courts of the State in which the latter has its registered office or, irrespective of where the unauthorised creditor has its registered office, before the courts of the place where the debtor resides or has his registered office, whereas an unauthorised creditor, within the meaning of that Law, may commence proceedings against the debtor only in the courts of the State in which the latter resides or has his registered office?

(3) Is it a consumer contract within the meaning of Article 17(1) of Regulation No 1215/2012 and of the legal *acquis* of the Union if the recipient of the loan is a natural person who has concluded a loan contract in order to invest in holiday apartments with the aim of carrying on the business of offering tourists private board and lodging?

(4) Must Article 24(1) of Regulation No 1215/2012 be interpreted as meaning that jurisdiction is enjoyed by the courts of the Republic of Croatia to hear and determine proceedings seeking a declaration of nullity of a loan contract and of the corresponding memoranda of guarantee, together with cancellation of the registration of a mortgage in the Land Registry, when, in order to guarantee performance of the obligations under the loan contract, that mortgage was secured upon immovable property of the debtor situated within the Republic of Croatia?

Action brought on 5 December 2017 — European Commission v Ireland

(Case C-678/17)

(2018/C 022/43)

Language of the case: English

Parties

Applicant: European Commission (represented by: P.J. Loewenthal, A. Bouchagiar, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to take, within the prescribed period, all the measures necessary to recover from Apple Sales International and Apple Operations Europe the State aid declared illegal and incompatible with the internal market by Article 1 of Commission decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C)(ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple […] ([1]), Ireland has failed to fulfil its obligations under Articles 2 and 3 of that decision as well as under Article 108(2) TFEU;

— order Ireland to pay the costs.

Pleas in law and main arguments

According to the decision of the European Commission of 30 August 2016 in case SA.38373, Ireland should have recovered within four months the unlawful and incompatible State aid granted to Apple Sales International ('ASI') and Apple Operations Europe ('AOE'). The aid resulted from two tax rulings issued by Ireland in favour of ASI and AOE on 29 January 1991 and 23 May 2007, which enabled those companies to determine their corporation tax liability in Ireland on a yearly basis until 2014.

Ireland did not recover the State aid within four months following the notification of the Commission's decision, as it was obliged to do. Furthermore, Ireland has still not taken all the measures necessary to implement the Commission's decision.

([1]) OJ 2017, L 187, p. 1.

GENERAL COURT

Judgment of the General Court of 30 November 2017 — Red Bull v EUIPO — Optimum Mark (Combination of the colours blue and silver)

(Joined Cases T-101/15 and T-102/15) ([1])

(EU trade mark — Invalidity proceedings — EU trade mark consisting of a combination of the colours blue and silver — Absolute ground for refusal — Graphic representation that is sufficiently clear and precise — Need for a systematic arrangement associating the colours in a predetermined and uniform way — Legitimate expectations — Article 4 and Article 7(1)(a) of Regulation (EC) No 207/2009 (now Article 4 and Article 7(1)(a) of Regulation (EU) 2017/1001))

(2018/C 022/44)

Language of the case: English

Parties

Applicant: Red Bull GmbH (Fuschl am See, Austria) (represented by: A. Renck, lawyer)

Defendant: European Union Intellectual Property Office (represented by: A. Folliard-Monguiral, acting as Agent)

Intervener in support of the applicant: Marques (Leicester, United Kingdom) (represented by: initially R. Mallinson and F. Delord, Solicitors, and subsequently R. Mallinson, Solicitor)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Optimum Mark sp. z o.o. (Warsaw, Poland) (represented by: R. Skubisz, M. Mazurek, J. Dudzik and E. Jaroszyńska-Kozłowska, lawyers)

Re:

Two actions brought against two decisions of the First Board of Appeal of EUIPO of 2 December 2014 (Case R 2037/2013-1 and Case R 2036/2013-1, respectively), relating to invalidity proceedings between Optimum Mark and Red Bull.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Red Bull GmbH to pay the costs, including those incurred by the European Union Intellectual Property Office (EUIPO) and by Optimum Mark sp. z o.o.;*

3. *Orders Marques to bear its own costs.*

([1]) OJ C 138, 27.4.2015.

Judgment of the General Court of 28 November 2017 — adp Gauselmann v EUIPO (Juwel)

(Case T-31/16) ([1])

(European Union trade mark — Application for EU word mark Juwel — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 (now Article 7(1)(b) of Regulation (EU) 2017/1001))

(2018/C 022/45)

Language of the case: German

Parties

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

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

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 16 November 2015 (Case R 2571/2014-1) concerning an application for registration of word mark Juwel as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders adp Gauselmann GmbH to pay the costs.*

(1) OJ C 106, 21.3.2016.

Judgment of the General Court of 28 November 2017 — Polskie Zdroje v EUIPO (perlage)

(Case T-239/16) (1)

(European Union trade mark — Application for EU word mark perlage — Absolute ground for refusal — Descriptive — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — No distinctive character acquired by use — Article 7(3) of Regulation (EC) No 207/2009 (now Article 7(3) of Regulation (EU) 2017/1001))

(2018/C 022/46)

Language of the case: Polish

Parties

Applicant: Polskie Zdroje sp. z o.o. sp.k. (Warsaw, Poland) (represented by: T. Gawrylczyk, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 March 2016 (Case R 1129/2015-5) concerning an application for registration of word sign perlage as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Polskie Zdroje sp. z o.o. sp.k. to pay the costs.*

(1) OJ C 243, 4.7.2016.

Judgment of the General Court of 28 November 2017 — Steel Invest & Finance (Luxembourg) v Commission

(Case T-254/16) ([1])

(State aid — Iron and steel industry — Aid granted by Belgium in favour of several undertakings in the iron and steel industry — Decision declaring the aid incompatible with the internal market and ordering its recovery — Obligation to state reasons — Concept of State aid — Advantage — Private investor test)

(2018/C 022/47)

Language of the case: French

Parties

Applicant: Steel Invest & Finance (Luxembourg) SA (Strassen, Luxembourg) (represented by: E. van den Broucke, lawyer)

Defendant: European Commission (represented by: initially, É. Gippini Fournier and K. Herrmann, and, subsequently, É. Gippini Fournier, V. Bottka and G. Luengo, acting as Agents)

Re:

Application pursuant to Article 263 TFEU and seeking partial annulment of Commission Decision (EU) 2016/2041 of 20 January 2016 on State aid SA.33926 2013/C (ex 2013/NN, 2011/CP) granted by Belgium to Duferco (OJ 2016 L 314, p. 22).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Steel Invest & Finance (Luxembourg) SA to bear its own costs;*

3. *Orders the European Commission to bear its own costs.*

([1]) OJ C 251, 11.7.2016.

Judgment of the General Court of 30 November 2017 — FTI Touristik v EUIPO — Prantner and Giersch (FI)

(Case T-475/16) ([1])

(European Union trade mark — Opposition proceedings — Application for EU figurative mark FI — Prior EU figurative mark fly.de — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

(2018/C 022/48)

Language of the case: German

Parties

Applicant: FTI Touristik GmbH (Munich, Germany) (represented by: A. Parr, lawyer)

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

Other parties to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Harald Prantner (Hamburg, Germany) and Daniel Giersch (Monaco, Monaco) (represented by: S. Eble and Y.-A. Wolff, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 16 June 2016 (Case R 480/2015-5) concerning opposition proceedings between FTI Touristik and Messrs Prantner and Giersch.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders FTI Touristik GmbH to pay the costs.*

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 29 November 2017 — Bilde v Parliament

(Case T-633/16) ([1])

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums wrongfully paid — Power of the Secretary — General — Electa una via — Rights of the defence — Burden of proof — Obligation to state reasons — Legitimate expectations — Political rights — Equal treatment — Misuse of power — Independence of the Members — Error of fact — Proportionality)

(2018/C 022/49)

Language of the case: French

Parties

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

Defendant: European Parliament (represented by: G. Corstens and S. Seyr, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Bauer, R. Meyer and A. Jensen, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision of the Secretary-General of the Parliament of 23 June 2016 concerning the recovery of a sum of EUR 40 320 wrongfully paid as parliamentary assistance allowance, of the notification and measures implementing that decision contained in the letters of the Director-General for Finance of the Parliament of 30 June and July 2016 and the debit note of 29 June 2016 relating thereto and application on the basis of Article 268 TFEU seeking compensation of the loss which the applicant allegedly suffered due, in particular, to that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Dominique Bilde to bear her own costs and to pay those incurred by the European Parliament;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 29 November 2017 — Montel v Parliament

(Case T-634/16) ([1])

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Parliamentary assistance allowance — Recovery of sums wrongfully paid — Power of the Secretary-General — Electa una via — Rights of the defence — Burden of proof — Obligation to state reasons — Legitimate expectations — Political rights — Equal treatment — Misuse of power — Independence of the Members — Error of fact — Proportionality)

(2018/C 022/50)

Language of the case: French

Parties

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

Defendant: European Parliament (represented by: G. Corstens and S. Seyr, acting as Agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Bauer, R. Meyer and A. Jensen, acting as Agents)

Re:

Application on the basis of Article 263 TFEU seeking the annulment of the decision of the Secretary-General of the Parliament of 24 June 2016 concerning the recovery of a sum of EUR 77 276,42 wrongfully paid as parliamentary assistance allowance, of the notification and measures implementing that decision contained in the letters of the Director-General for Finance of the Parliament of 5 and 6 July 2016 and the debit note of 4 July 2016 relating thereto and application on the basis of Article 268 TFEU seeking compensation of the loss which the applicant allegedly suffered due, in particular, to that decision.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Secretary-General of the Parliament of 24 June 2016 concerning the recovery from Ms Sophie Montel of a sum of EUR 77 276,42 wrongfully paid as parliamentary assistance allowance and the debit note of 4 July 2016 relating thereto insofar as they concern sums paid between February and April 2015;*

2. *Dismisses the remainder of the action;*

3. *Orders Ms Montel, the European Parliament and the Council of the European Union each to bear their own costs.*

([1]) OJ C 383, 17.10.2016.

Judgment of the General Court of 30 November 2017 — Koton Mağazacilik Tekstil Sanayi ve Ticaret v EUIPO — Nadal Esteban (STYLO & KOTON)

(Case T-687/16) ([1])

(EU trade mark — Invalidity proceedings — EU figurative mark STYLO & KOTON — Absolute ground for refusal — Article 52(1)(b) of (EC) Regulation No 207/2009 (now Article 59(1)(b) of (EU) Regulation 2017/1001) — No bad faith)

(2018/C 022/51)

Language of the case: English

Parties

Applicant: Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ (Istanbul, Turkey) (represented by: J. Güell Serra and E. Stoyanov Edissonov, lawyers)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Joaquín Nadal Esteban (Alcobendas, Spain) (represented by: J. Donoso Romero, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 14 June 2016 (Case R 1779/2015-2), relating to invalidity proceedings between Koton Mağazacilik Tekstil Sanayi ve Ticaret and Mr Nadal Esteban.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ to pay the costs.*

(1) OJ C 410, 7.11.2016.

Judgment of the General Court of 30 November 2017 — Hanso Holding v EUIPO (REAL)

(Case T-798/16) (1)

(EU trade mark — Application for the EU figurative mark REAL — Absolute grounds for refusal — Descriptive character — No distinctive character — No distinctive character acquired through use — Article 7(1)(b) and (c) and (3) of Regulation (EC) No 207/2009 [now Article 7(1)(b) and (c) and (3) of Regulation (EU) 2017/1001])

(2018/C 022/52)

Language of the case: English

Parties

Applicant: Hanso Holding AS (Tromsø, Norway) (represented by: M. Wirtz, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 2 September 2016 (Case R 2405/2015-2), relating to the application for registration of the figurative sign REAL as a European Union trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hanso Holding AS to pay the costs.*

(1) OJ C 6, 9.1.2017.

Judgment of the General Court of 30 November 2017 — Toontrack Music v EUIPO (SUPERIOR DRUMMER)

(Case T-895/16) ([1])

(European Union trade mark — Application for EU word mark SUPERIOR DRUMMER — Absolute ground for refusal — Descriptive — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (now Article 7(1)(b) and (c) of Regulation (EU) 2017/1001))

(2018/C 022/53)

Language of the case: Swedish

Parties

Applicant: Toontrack Music AB (Umeå, Sweden) (represented by: L.-E. Ström, lawyer)

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

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 3 October 2016 (Case R 2438/2015-5) concerning the registration of the word mark SUPERIOR DRUMMER as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Toontrack Music AB to pay the costs.*

([1]) OJ C 46, 13.2.2017.

Judgment of the General Court of 28 November 2017 — Laboratorios Ern v EUIPO — Sharma (NRIM Life Sciences)

(Case T-909/16) ([1])

(EU trade mark — Opposition proceedings — Application for EU word mark NRIM Life Sciences — Earlier national word mark RYM — Relative ground for refusal — No likelihood of confusion — Article 8 (1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/2001))

(2018/C 022/54)

Language of the case: English

Parties

Applicant: Laboratorios Ern, SA (Barcelona, Spain) (represented by: S. Correa Rodríguez, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Anil K. Sharma (Hillingdon, United Kingdom)

Re:

Action for annulment of the decision of the Fifth Board of Appeal of EUIPO of 26 September 2016 (Case R 2376/2015-5), concerning opposition proceedings between Laboratorios Ern and Mr Sharma.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 53, 20.2.2017.

Judgment of the General Court of 30 November 2017 — Mackevision Medien Design v EUIPO (TO CREATE REALITY)

(Case T-50/17) (1)

(EU trade mark — Application for EU word mark TO CREATE REALITY — Trade mark consisting in an advertising slogan — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 [now Article 7(1)(b) of Regulation (EU) 2017/1001])

(2018/C 022/55)

Language of the case: German

Parties

Applicant: Mackevision Medien Design GmbH Stuttgart (Stuttgart, Germany) (represented by: E. Stolz, U. Stelzenmüller and J. Weiser, lawyers)

Defendant: European Union Intellectual Property Office (represented by: A. Graul and S. Hanne, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 20 December 2016 (Case R 995/2016-5) concerning an application for registration of the word sign TO CREATE REALITY as an EU trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mackevision Medien Design GmbH Stuttgart to pay the costs.*

(1) OJ C 104, 3.4.2017.

Order of the General Court of 22 November 2017 — Digital Rights Ireland v Commission

(Case T-670/16) (1)

(Action for annulment — Area of freedom, justice and security — Protection of natural persons with regard to the processing of personal data — Transfer of personal data to the United States — Not-for-profit company incorporated under Irish law — No protection of personal data for legal persons — Controller — Action in the name of members and supporters — Action in the public interest — Inadmissible)

(2018/C 022/56)

Language of the case: English

Parties

Applicant: Digital Rights Ireland Ltd (Bennettsbridge, Ireland) (represented by: E. McGarr, Solicitor)

Defendant: European Commission (represented by: H. Kranenborg and D. Nardi, acting as Agents)

Re:

Application based on Article 263 TFEU and seeking annulment of Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield (OJ 2016 L 207, p. 1).

Operative part of the order

1. *The action is inadmissible.*

2. *There is no longer any need to adjudicate on the applications to intervene of the Czech Republic, the Federal Republic of Germany, Ireland, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Kingdom of the Netherlands, the French Republic, Business Software Alliance (BSA), Microsoft Corporation, La Quadrature du Net, French Data Network, Fédération des Fournisseurs d'Accès à Internet Associatifs and the Union fédérale des consommateurs — Que choisir (UFC — Que choisir).*

3. *Digital Rights Ireland Ltd shall pay the costs, with the exception of those relating to the applications to intervene.*

4. *The Czech Republic, the Federal Republic of Germany, Ireland, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Kingdom of the Netherlands, the French Republic, BSA, Microsoft Corporation, La Quadrature du Net, French Data Network, Fédération des Fournisseurs d'Accès à Internet Associatifs and UFC — Que choisir shall bear their own respective costs relating to the applications to intervene.*

([1]) OJ C 410, 7.11.2016.

Order of the President of the General Court of 23 November 2017 — Nexans France and Nexans v Commission

(Case T-423/17 R)

(Interim relief — Competition — Power cables — Rejection of the request for confidential treatment of certain information contained in a decision establishing an infringement of Article 101 TFEU — Application for interim measures — Lack of urgency)

(2018/C 022/57)

Language of the case: English

Parties

Applicants: Nexans France (Courbevoie, France), Nexans (Courbevoie) (represented by: G. Forwood, A. Rogers, A. Oh and M. Powell, lawyers)

Defendant: European Commission (represented by: H. van Vliet, G. Meessen and I. Zaloguin, acting as Agents)

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking, first, a suspension of operation of Commission Decision C(2017) 3051 final of 2 May 2017 relating to a request for confidential treatment (Case COMP/AT.39610 — Power Cables) in so far as that request is refused in respect of the material seized from the applicants and another economic operator and, second, an order requiring the Commission to refrain from publishing a version of its Decision C(2014) 2139 final of 2 April 2014 (Case COMP/AT.39610 — Power Cables), which contains that material.

Operative part of the order

1. *The application for interim measures is rejected.*

2. *The order of 12 July 2017, Nexans France and Nexans v Commission (T-423/17 R) is set aside.*

3. *The costs are reserved.*

Action brought on 7 August 2017 — Ruiz Jayo and Others v SRB

(Case T-526/17)

(2018/C 022/58)

Language of the case: Spanish

Parties

Applicants: María Concepción Ruiz Jayo (Madrid, Spain) and 3499 other applicants (represented by: S. Rodríguez Bajón, F. Cremades García and M. Ruiz Núñez, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Declare this action for annulment admissible and well founded;

— Pursuant to Article 277 TFEU, declare Regulation (EU) No 806/2014 inapplicable or, in the alternative, declare Articles 21, 22(2)(a) and 24 inapplicable, as well as Articles 18 and 23 thereof;

— Annul the contested SRB Decision;

— Order SRB to pay compensation to the applicants in respect of harm caused to them by the implementation of rules contrary to EU law;

— In the alternative, order SRB to pay compensation to the applicants, as shareholders and creditors, based on the consideration that the Banco Popular's valuation presented by the applicants is the final valuation under Regulation No 806/2014 in order to determine whether shareholders and creditors would have received better treatment had the institution under resolution initiated ordinary insolvency proceedings;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The present action concerns the Decision of the Single Resolution Board of 7 June 2017 (SRB/EES/2017/08) allowing the resolution of the Banco Popular Español, S.A.

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 5 October 2017 — García Gómez and Others v SRB

(Case T-693/17)

(2018/C 022/59)

Language of the case: Spanish

Parties

Applicants: Abel García Gómez and Others (Torrevieja, Spain) and 2 199 other applicants (represented by: J. Cremades García, S. Rodríguez Bajón and M. F. Ruiz Núñez, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the General Court should:

— Declare this action for annulment admissible and well founded;

— Pursuant to Article 277 TFEU, declare Regulation (EU) No 806/2014 inapplicable or, in the alternative, declare Articles 21, 22(2)(a) and 24 inapplicable, as well as Articles 18 and 23 thereof;

— Annul the contested SRB Decision;

— Order SRB to pay compensation to the applicants in respect of harm caused to them by the implementation of rules contrary to EU law;

— In the alternative, order SRB to pay compensation to the applicants, as shareholders and creditors, based on the consideration that the Banco Popular's valuation presented by the applicants is the final valuation under Regulation No 806/2014 in order to determine whether shareholders and creditors would have received better treatment had the institution under resolution initiated ordinary insolvency proceedings;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The present action concerns the Decision of the Single Resolution Board of 7 June 2017 (SRB/EES/2017/08) allowing the resolution of the Banco Popular Español, S.A.

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 23 October 2017 — DuPont de Nemours and Others v Commission

(Case T-719/17)

(2018/C 022/60)

Language of the case: English

Parties

Applicants: DuPont de Nemours (Deutschland) GmbH (Neu-Isenburg, Germany) and 12 others (represented by: D. Waelbroeck, I. Antypas and A. Accarain, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Regulation (EU) 2017/1496 of 23 August 2017 concerning the non-renewal of approval of the active substance Flupyrsulfuron-Methyl ('FPS'), and the withdrawal of marketing authorisations for plant protection products containing that substance ([1]);

— order the defendant to pay all costs and expenses.

Pleas in law and main arguments

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

1. First plea in law: violation of the PPP Regulation (1107/ 2009) ([2]), the Renewal Regulation (1141/ 2010) ([3]), the CLP Regulation (1272/ 2008) ([4]) and the Animal Testing Directive (2010/ 63) ([5]):

   — the applicants submit that the Contested Regulation was adopted in violation of the Renewal Regulation (1141/ 2010) and Renewal Guidance (SANC0/10387/2010 rev. 8) insofar as the EFSA re-evaluated the hazard profile of FPS despite there being no change in the state of scientific knowledge and in the applicable legal framework;

   — the applicants submit that the Contested Regulation was adopted in violation of the CLP Regulation (1272/2008) and the Commission Guidance on Groundwater Metabolites (SANC0/221/2000 rev.10) insofar as the EFSA relied on its own hazard classification proposal for FPS to presume the toxicity of three groundwater metabolites;

   — the applicants submit that the Contested Regulation was adopted in violation of the EU rules on animal testing contained in the PPP Regulation (1107/2009) and the Animal Testing Directive (2010/63) insofar as the EFSA identified a data gap for additional genotoxicity studies without giving proper consideration to the overall weight of evidence and despite there being no demonstrated necessity to perform any further testing.

2. Second plea in law: reliance on new and unestablished guidance in violation of the principle of legal certainty, the rights of the defence and several provisions of EU law:

   — The applicants submit that the Contested Regulation was adopted in violation of the principle of legal certainty, the renewal applicant's rights of the defense as well as several provisions of EU law in that the EFSA performed the genotoxicity assessment for two FPS metabolites on the basis of a new and unapproved scientific opinion currently under review, which led the EFSA to identify an artificial data gap in the renewal dossier, which they were subsequently given no opportunity to address.

3. Third plea in law: Failure to conduct a complete risk assessment in violation of the rights of the defence and several provisions of EU law:

   — The applicants submit that the Contested Regulation was adopted in violation of the renewal applicant's rights of the defence and several provisions of EU law in that the Commission relied exclusively on the conclusions drawn by the EFSA to decide to ban FPS, without taking into account all available scientific information evidencing the safety of FPS, and in particular the additional studies spontaneously performed by the renewal applicant to address the alleged data gap and concerns identified by the EFSA, as well as the assessment of the Rapporteur Member State and the other Member States' comments during the renewal review.

4. Fourth plea in law: violation of the principle of proportionality:

   — The applicants submit that the Contested Regulation is plainly disproportionate to the overall safety profile of FPS and that the Commission could have addressed the alleged concerns underlying the Contested Regulation through less restrictive measures not entailing a ban on the use of FPS, e.g. through the use of the Confirmatory Data Procedure provided for in Article 6(f) of the PPP Regulation (1107/2009) or through risk mitigating measures decided at national level by the EU Member States.

5. Fifth plea in law: Violation of the principle of non-discrimination:

   — The applicants submit that the Commission infringed the principle of non-discrimination in that the alleged concerns underlying the Contested Regulation have consistently been handled through less restrictive measures in the Commission's past decisional practice. However, the Commission has so far never relied on such concerns to justify an outright ban on the use of a substance.

6. Sixth plea in law: Violation of good administration principles and DuPont's legitimate expectations:

— The applicants submit that the Commission failed to properly handle the review process for FPS, which caused DuPont to invest considerable resources into the preparation of scientific dossiers that eventually proved entirely useless as the Commission unexpectedly revised its stance in relation to certain concerns. In addition, the applicants submit that the Contested Regulation undermines the competition policy objectives underlying the divestment of FPS, which the Commission itself imposed on Dow/DuPont to avoid the creation of a dominant position in the EEA market for cereal herbicides. This mishandling of the review process for FPS amounts to a violation of the Commission's duty of care, good administration principles and DuPont's legitimate expectations.

([1]) Commission Implementing Regulation (EU) 2017/1496 of 23 August 2017 concerning the non-renewal of approval of the active substance DPX KE 459 (flupyrsulfuron-methyl), in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ 2017 L 218, p. 7)

([2]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)

([3]) Commission Regulation (EU) No 1141/2010 of 7 December 2010 laying down the procedure for the renewal of the inclusion of a second group of active substances in Annex I to Council Directive 91/414/EEC and establishing the list of those substances (OJ 2010 L 322, p. 10)

([4]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1)

([5]) Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes (OJ 2010 L 276, p. 33)

Action brought on 26 October 2017 — PP and Others v EEAS

(Case T-727/17)

(2018/C 022/61)

Language of the case: French

Parties

Applicants: PP, PQ and UQ (represented by: N. de Montigny, lawyer)

Defendant: European External Action Service

Form of order sought

— Declare and rule,

— the applicants' calculation sheets of 3 February, 6 February and 20 March 2017 which were sent to them by email by EEAS Human Resources and, insofar as necessary, the salary slips by which payment of the education allowance for their children was granted;

— and, finally, insofar as necessary, the decision of the Appointing Authority in the form of an email of 15 December 2016 informing them:

— that the application for reimbursement of the education expenses above the ceiling for type B education allowance in respect of the 2016/2017 academic year was accepted, and

— that each amount above the ceiling could not in any event exceed EUR 9 704,16;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, raising a plea of illegality inasmuch as the decision taken by the defendant to cap the amount of the reimbursement of education expenses over the statutory ceiling, disputed in the present case, and the note of 15 April 2016 on which that was based and the Guidelines infringe the Staff Regulations of Officials of the European Union and Annex X thereof.

2. Second plea in law, alleging that the individual decision is unlawful on the following grounds:

   — infringement of the principles of precaution, legitimate expectations, legal certainty and sound administration and of their 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 weigh up the interests and lack of observance of the principle of proportionality of the measure adopted.

Action brought on 24 October 2017 — Marinvest and Porting v Commission

(Case T-728/17)

(2018/C 022/62)

Language of the case: Italian

Parties

Applicants: Marinvest d.o.o. (Izola-Isola, Slovenia) and Porting d.o.o. (Izola-Isola) (represented by: G. Cecovini Amigoni and L. Daniele, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul European Commission Decision of 27.07.2017, C (2017) 5049 final (State Aid SA.45220 (2016/FC) — Slovenia — Alleged aid in favour of Komunala Izola d.o.o.) notified to Marinvest and Porting on 16 August 2017;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

This action is brought against European Commission Decision of 27.07.2017, C (2017) 5049 final (State Aid SA.45220 (2016/FC) — Slovenia — Alleged aid in favour of Komunala Izola d.o.o.) notified to Marinvest and Porting on 16 August 2017.

1. First plea in law, alleging infringement of the right to be heard resulting from the use, in the contested decision, of entirely new evidence not mentioned by the Commission in its letter of invitation to submit comments, infringement of the fundamental right to good administration provided for in Article 41 of the Charter, infringement of the general principle of the right to be heard, and infringement of Article 24(2) of Regulation 2015/1589

   — As a departure from the original wording of Article 20(2) of Regulation No 659/1999, Article 24(2) of Regulation 2015/1589 recognises the right of the interested parties (which have lodged a complaint) to submit comments as early as during the preliminary investigation phase. Article 24(2) constitutes a special application of the fundamental right to good administration, provided for in Article 41 of the Charter, and of the general principle of the right to be heard.

— In the present case, the rights of Marinvest and Porting guaranteed by Article 24(2) have been severely infringed. It is true that, by its letter of 14 February 2017, the Commission invited the complainants to submit their comments, and that Marinvest and Porting expressed their opinion on the preliminary assessment contained in that letter. However, the Commission then based the final contested decision entirely on evidence that had not even been mentioned in the letter of 14 February 2017 and on which the complainants were not able to adopt a position.

2. Second plea in law, alleging infringement of the right to be heard resulting from denial of access to the file and denial of the opportunity to be heard before the final decision was adopted, infringement of the fundamental right to good administration provided for in Article 41 of the Charter, infringement of the general principle of the right to be heard, infringement of Article 24(2) of Regulation 2015/1589, and existence in the present case of a failure to state reasons

— The complainants had asked to access the documentation sent to the Commission by the Slovenian authorities and to meet the Commission's services in order to provide any clarifications necessary, particularly with regard to the impact that the measures complained of would have on competition and on trade between Member States. The Commission adopted the contested decision without first sending the documents requested and without convening a meeting with the complainants. By acting in this way, the Commission breached Article 24(2) of Regulation 2015/1589, interpreted in accordance with Article 41 of the Charter and with the general principle of the right to be heard.

— The ability of the complainants to submit comments on the Commission's preliminary assessment, in accordance with Article 24(2), necessarily implies the right to access the file and to request a meeting with the Commission. Since they are closely linked, those prerogatives actually represent corollaries of the same fundamental right. There was no justification, in the present case, for the denial of such rights.

3. Third plea in law, alleging misinterpretation of the notion of State aid with regard to the requirement of adverse effect on cross-border trade, infringement of Article 107(1) TFEU, infringement of the Commission Notice on the notion of State aid, infringement of the general principle of the protection of legitimate expectations, and existence in the present case of a failure to state reasons

— According to the case-law of the Court of Justice and to the Commission Notice on the notion of State aid, the relatively modest size of the beneficiary undertaking does not preclude *a priori* the possibility that trade between Member States may be harmed. A public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States if such services could be provided by undertakings from other Member States (also through the right of establishment) and that possibility is not merely hypothetical.

— The Commission has entirely overlooked the fact that Marinvest and Porting are 100 % controlled by an undertaking established in Italy, Altan Prefabbricati. The latter undertaking has invested heavily in the construction of the Marina d'Isola, which is now managed, under the right of establishment as provided for in Article 49 TFEU, through its subsidiaries.

4. Fourth plea in law, alleging misinterpretation of the notion of State aid with regard to the requirement for competition to have been distorted and cross-border trade to be affected, incorrect assessment of the facts and distortion of the facts, and existence in the present case of a failure to state reasons

— In the contested decision, the Commission ruled out any adverse effect on trade between Member States, focusing essentially on the consideration that the services offered by Komunala Izola's marina would not be appropriate for attracting potential clients for the services offered by the applicants.

— The Commission's assessment of the facts is wrong. Next to Marinvest and Porting's marina is another marina, managed by an undertaking receiving aid (Komunala Izola), which, with a potential offering of mooring for 505 boats, provides similar services which are promoted, also in the Italian language, to all potential customers via a website.

Action brought on 30 October 2017 — Escribà Serra and Others v SRB

(Case T-731/17)

(2018/C 022/63)

Language of the case: Spanish

Parties

Applicants: Juan Escribà Serra (Girona, Spain) and eight other applicants (represented by: R. Vallina Hoset and A. Lois Perreau de Pinninck, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the General Court should:

— Declare that the Single Resolution Board has incurred non-contractual liability and order it to repair the harm suffered by the applicants as a result of both its actions and its omissions which resulted in the applicants losing in full their investments in surbordinated bonds of the Banco Popular Español, S.A.;

— Order the Board to pay EUR 1 726 504 to the applicants as compensation for the harm suffered ('the amount due'), broken down as follows:

  — Ramón Romaguera Amat: EUR 1 071 602,94;

  — Cerámica Puigdemont: EUR 260 437,16;

  — Maria Dolors Guell Parnau: EUR 52 524,35;

  — Enrique Escribà Nadal: EUR 70 838,57;

  — Joan Escribà Serra and Maria Dolors Nadal Casaponsa: EUR 151 796,93;

  — Laia Escribà Nadal and Maria Dolors Nadal Casaponsa: EUR 25 299,49;

  — José Sabater Comas and M[a] Inmaculada Urgellés Bosch: EUR 94 004,56;

— Increase the amount due with compensatory interest as of 7 June 2017 until delivery of the judgment disposing of the present case;

— Increase the amount due with corresponding default interest as of the date of delivery of judgment until its payment in full, at the rate set by the European Central Bank (ECB) for main refinancing operations, increased by two percentage points.

— Order the SRB to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17 *Vallina Fonseca* v *SRB*.

Action brought on 3 November 2017 — ViaSat v Commission

(Case T-734/17)

(2018/C 022/64)

Language of the case: English

Parties

Applicant: ViaSat, Inc. (Carlsbad, California, United States) (represented by: J. Ruiz Calzado, L. Marco Perpiñà, and S. Semey, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's implied negative decision of 24 August 2017, resulting from the failure by the European Commission, under Article 8(3) of Regulation No 1049/2001, to reply within the prescribed time-limit to the applicant's confirmatory application for access to documents of 10 July 2017 in relation to the access to documents request registered on 2 May 2017 under No 2017/2592, insofar as concerns information produced or exchanged in the context of a call for applications for pan-European systems providing mobile satellite services;

— order the Commission to pay the costs, including those of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached its duty to state reasons under Article 296(2) TFEU.

2. Second plea in law, alleging that the Commission failed to perform a concrete and individual examination of the requested documents.

Action brought on 3 November 2017 — STIF-IDF v Commission

(Case T-738/17)

(2018/C 022/65)

Language of the case: French

Parties

Applicant: Syndicat Transport Île-de-France (STIF-IDF) (Paris, France) (represented by: B. Le Bret and C. Rydzynski, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul the contested decision to the extent that, in Article 3, it classifies 'the C2 contributions awarded by STIF under CT2' as an 'unlawfully implemented aid scheme' but compatible with the internal market;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 107(1) TFEU vitiating the contested decision in the present case, namely Commission Decision (EU) 2017/1470 of 2 February 2017 on State aid schemes SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus transport undertakings in the Île-de-France Region (OJ 2017 L 209, p. 24). Such an infringement was committed by the Commission in so far as it classified the C2 contribution of CT2 as State aid, considering that the measure conferred an economic advantage on its beneficiaries.

   The applicant considers moreover that the Commission, in its analysis, commits several errors of law and assessment when it concluded that the fourth criterion of the Altmark case-law was not fulfilled in the present case.

2. Second plea in law, alleging a failure to state reasons for the contested decision, relating to the failure to comply with the fourth criterion of the Altmark case-law and of the existence of an economic advantage.

Action brought on 15 November 2017 — TrekStor v EUIPO — Beats Electronics (i.Beat)

(Case T-748/17)

(2018/C 022/66)

Language in which the application was lodged: English

Parties

Applicant: TrekStor Ltd (Hong-Kong, China) (represented by: O. Spieker, M. Alber, A. Schönfleisch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Beats Electronics LLC (Culver City, California, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'i.Beat'– EU trade mark No 5 009 139

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 September 2017 in Joined Cases R 2175/2016-4 and R 2213/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it dismisses the appeal of the Applicant against the decision of the Defendant's Cancellation Division dated September 29th, 2016 and thus upholds the Cancellation Applicant's application for revocation and revokes the Applicant's rights in respect of European Union trade mark No 005009139

— dismiss of Cancellation Applicant's application for revocation;

— order the Cancellation Applicant and EUIPO to pay the costs of the proceedings including the costs necessarily incurred by the Applicant before the Board of the European Union Intellectual Property Office (EUIPO).

Pleas in law

— Infringement of Article 58(1)(a), of Regulation No 2017/1001;

— Infringement of Article 18(1)(a) of Regulation No 2017/1001.

Action brought on 14 November 2017 — TrekStor v EUIPO — Beats Electronics (i.Beat jess)

(Case T-749/17)

(2018/C 022/67)

Language in which the application was lodged: English

Parties

Applicant: TrekStor Ltd (Hong-Kong, China) (represented by: O. Spieker, M. Alber, A. Schönfleisch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Beats Electronics LLC (Culver City, California, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'i.Beat jess'– EU trade mark No 4 728 895

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 12 September 2017 in Case R 2234/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it upholds the Cancellation Applicant's application for revocation and revokes the Applicant's rights in respect of European Union trade mark No 4 728 895;

— dismiss the Cancellation Applicant's application for revocation;

— order EUIPO to bear the costs of the proceedings including the costs necessarily incurred by the Applicant before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).

Pleas in law

— Infringement of Article 58(1)(a) of Regulation No 2017/1001;

— Infringement of Article 18(1)(a) of Regulation No 2017/1001.

Action brought on 10 November 2017 — Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v Commission

(Case T-750/17)

(2018/C 022/68)

Language of the case: English

Parties

Applicant: Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych (Warsaw, Poland) (represented by: P. Hoffman, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 29 August 2017 refusing access to the comments of the European Commission and the detailed opinion of the Republic of Malta, issued in the framework of notification procedure 2016/398/PL concerning an amendment of the Polish Act on games of chance;

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

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 distortion of facts and infringement of Article 296 TFEU

— It is argued that the decision is based on a number of factually incorrect statements, including the claims that the notified measure constituted a reply to the Commission's letter of formal notice and that it was intended to show the steps taken by Poland to remedy a breach that was the subject of that letter, i.e. certain conditions on obtaining licenses for providing gambling services in Poland, even though, in reality, the said conditions were removed by Poland over two years ago, and even though the notified measure had nothing to do with the Commission's letter of formal notice.

2. Second plea in law, alleging infringement of recitals 3, 7 and 9, of Article 5(4) of Directive 2015/1535, ([1]) and of Article 4(2), third indent, of Regulation 1049/2001 ([2])

— It is argued, in the light of the judgment of the Court of Justice in Case C-331/15 P *France* v *Schlyter*, ([3]) that by applying a general presumption and failing to demonstrate that disclosing the requested documents would specifically and actually undermine the infringement proceedings, the Commission infringed the principle of transparency inherent to Directive 2015/1535.

3. Third plea in law, alleging infringement of Article 4(2), third indent, of Regulation 1049/2001 and of Article 296 TFEU

— It is argued that, because of the duration of the infringement proceedings and its alleged failure to carry out any actual activities in their framework in a reasonable period, the Commission cannot base its refusal on the need to protect the purpose of those proceedings.

4. Fourth plea in law, alleging infringement of Article 4(2), third indent, of Regulation 1049/2001 and of Article 296 TFEU and distortion of facts

— It is argued that the requested documents are not covered by any general presumption. The Commission's claim that an 'inextricable link' between the notification procedure and the infringement proceedings exists is factually incorrect and too vague. In any case it cannot prove that the documents are covered by a general presumption, because that depends solely on them forming part of the infringement file. The correct test of whether a document forms part of that file is whether the Commission acquired its possession in the framework of planned or pending infringement proceedings, i.e. whether it produced, received, commissioned, etc., the document in the framework of such proceedings or with a view to commencing them. This test, it is argued, is not satisfied here.

5. Fifth plea in law, alleging infringement of Article 4(2) of Regulation 1049/2001 and of Article 296 TFEU

— The mere fact that the Commission intends to take Malta's detailed opinion into account and utilise it in its dialogue with Poland in the framework of ongoing infringement proceedings cannot justify a refusal to disclose it.

6. Sixth plea in law, alleging infringement of Article 4(2) of Regulation 1049/2001

— It is argued that, given the duration of the infringement proceedings and the content, nature and context of the requested documents, their disclosure cannot in any way undermine the protection of those proceedings, thus rebutting the general presumption of non-disclosure.

7. Seventh plea in law, alleging infringement of Article 4(6) of Regulation 1049/2001 and of Art. 296 TFEU

It is argued that, in any case, the Commission should have disclosed the requested documents in part, i.e. after having removed references to issues concerning online gambling services which are the subject of infringement proceedings.

8. Eighth plea in law, alleging infringement of Article 4(2) of Regulation 1049/2001 and of Article 296 TFEU

It is argued that an overriding public interest in knowing the Commission's reaction to a notified measure that infringes fundamental EU freedoms and rights exists. The Commission, it is argued, failed to explain why it considers this interest less important than the interest in non-disclosure.

(1) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (Text with EEA relevance) (OJ 2015 L 241, p. 1).
(2) Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).
(3) Judgment of 7 September 2017, *France* v *Schlyter* (C-331/15 P, EU: C:2017:639).

Action brought on 13 November 2017 — CMS Hasche Sigle v EUIPO (WORLD LAW GROUP)

(Case T-756/17)

(2018/C 022/69)

Language of the case: English

Parties

Applicant: CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbH (Berlin, Germany) (represented by: P.-C. Thielen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'WORLD LAW GROUP' — Application for registration No 14 667 844

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 29 August 2017 in Case R 329/2017-5

Form of order sought

The applicant claims that the Court should:

— overturn the contested decision regarding the trade mark application No 14 667 844 insofar as the trademark application is rejected;

— order EUIPO to bear its own costs as well as the costs of the applicant.

Pleas in law

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

— Infringement of Article 7(2) Regulation No 207/2009.

Action brought on 17 November 2017 — Perfect Bar v EUIPO (PERFECT BAR)

(Case T-758/17)

(2018/C 022/70)

Language of the case: English

Parties

Applicant: Perfect Bar LLC (San Diego, California, United States) (represented by: F. Miazzetto, J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements'PERFECT BAR' — Application for registration No 15 374 085

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 September 2017 in Case R 2439/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and allow the registration of the mark applied for, this is, the European Union Trademark application no. 015374085 'PERFECT BAR';

— order EUIPO to pay the costs derived from the procedure before the General Court and the EUIPO.

Plea in law

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

Action brought on 17 November 2017 — Perfect Bar/EUIPO (PERFECT Bar)

(Case T-759/17)

(2018/C 022/71)

Language of the case: English

Parties

Applicant: Perfect Bar LLC (San Diego, California, United States) (represented by: F. Miazzetto, J. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU figurative mark containing the word elements'PERFECT Bar' — Application for registration No 15 376 064

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 5 September 2017 in Case R 2440/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and allow the registration of the trade mark applied for, this is, the European Union Trademark application no. 015376064 'PERFECT BAR';

— order EUIPO to pay the costs derived from the procedure before the General Court and the EUIPO.

Plea in law

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

Action brought on 20 November 2017 — Meesenburg Großhandel v EUIPO (Triotherm+)

(Case T-760/17)

(2018/C 022/72)

Language of the case: German

Parties

Applicant: Meesenburg Großhandel KG (Flensburg, Germany) (represented by: D. Freiherr von Oldershausen, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the procedure before EUIPO

Mark at issue: EU word mark 'Triotherm+' — Application No 15 186 471

Contested decision: Decision of the First Board of Appeal of EUIPO of 13 September 2017 in Case R 1786/2016-1

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 21 November 2017 — Grammer v EUIPO (Representation of a geometric figure)

(Case T-762/17)

(2018/C 022/73)

Language of the case: German

Parties

Applicant: Grammer AG (Amberg, Germany) (represented by: J. Bühling and D. Graetsch, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the procedure before EUIPO

Mark at issue: EU figurative mark (Representation of a geometric figure) — Application No 15 389 621

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 September 2017 in Case R 2250/2016-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

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

Action brought on 21 November 2017 — Septona v EUIPO — Intersnack Group (welly)

(Case T-763/17)

(2018/C 022/74)

Language in which the application was lodged: English

Parties

Applicant: Septona AVEE (Oinofyta, Greece) (represented by: V. Wellens, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Intersnack Group GmbH & Co. KG (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'welly' — Application for registration No 13 085 519

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 12 July 2017 in Case R 1525/2016-1

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 23 November 2017 — Kiku v CPVO — Sächsisches Landesamt für Umwelt, Landwirtschaft und Geologie (Pinova)

(Case T-765/17)

(2018/C 022/75)

Language in which the application was lodged: German

Parties

Applicant: Kiku GmbH (Girlan, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Sächsisches Landesamt für Umwelt, Landwirtschaft und Geologie (Dresden, Germany)

Details of the proceedings before the CPVO

Proprietor of the contested plant varieties: Other party to the proceedings before the Board of Appeal

Plant variety at issue: Plant variety right for the apple variety 'PINOVA' — Certificate No EU 1298

Procedure before the CPVO: Nullity proceedings

Contested decision: Decision of the Board of Appeal of the CPVO of 16 August 2017 in Case A005/2016

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the CPVO to pay the costs.

Plea in law

— Infringement of Article 20(1)(a), in conjunction with Articles 10 and 116(1), of Regulation No 2100/94.

Action brought on 23 November 2017 — Eglo Leuchten v EUIPO — Di-Ka (Design for lights)

(Case T-766/17)

(2018/C 022/76)

Language in which the application was lodged: German

Parties

Applicant: Eglo Leuchten GmbH (Pill, Austria) (represented by: H. Lauf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Di-Ka Vertriebs GmbH & Co. KG (Arnsberg, Germany)

Details of the proceedings before EUIPO

Proprietor of the contested design: Other party to the proceedings before the Board of Appeal

Design at issue: Community design No 2 435 768-0033

Contested decision: Decision of the Third Board of Appeal of EUIPO of 26 September 2017 in Case R 738/2016-3

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 6(1)(b) and Article 6(2) of Regulation No 6/2002.

Action brought on 23 November 2017 — Eglo Leuchten v EUIPO — Briloner Leuchten (Wall lighting)

(Case T-767/17)

(2018/C 022/77)

Language in which the application was lodged: German

Parties

Applicant: Eglo Leuchten GmbH (Pill, Austria) (represented by: H. Lauf, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Briloner Leuchten GmbH (Brilon, Germany)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Other party to the proceedings before the Board of Appeal

Design at issue: Community design No 2 435 768-0036

Contested decision: Decision of the Third Board of Appeal of EUIPO of 26 September 2017 in Case R 746/2016-3

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 6(1)(b) and Article 6(2) of Regulation No 6/2002.

Action brought on 20 November 2017 — roelliroelli confectionery schweiz v EUIPO — Tanner (ALPRAUSCH)

(Case T-769/17)

(2018/C 022/78)

Language in which the application was lodged: German

Parties

Applicant: roelliroelli confectionery schweiz GmbH (St. Gallen, Switzerland) (represented by: S. Overhage and R. Böhm, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: André Tanner (Schindellegi, Switzerland)

Details of the proceedings before EUIPO

Applicant: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'ALPRAUSCH' No 1 218 671

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 1 August 2017 in Case R 1596/2016-5

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 27 November 2017 — Café del Mar and Others v EUIPO — Guiral Broto (Café del Mar)

(Case T-772/17)

(2018/C 022/79)

Language in which the application was lodged: Spanish

Parties

Applicants: Café del Mar SC (Sant Antoni de Portmany, Spain), José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Antoni de Portmany) (represented by: F. Miazzetto and J. L. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ramón Guiral Broto (Marbella, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'Café del Mar' — European Union trade mark No 2 090 520

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 in Case R 1540/2015-5

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— declare European Union figurative mark No 2 090 520 containing the word elements 'Café del Mar' invalid;

— order the defendant to pay the costs of the present proceedings, and order the proprietor of the trade mark at issue to pay the costs incurred in the proceedings before the Cancellation Division and the Boards of Appeal of EUIPO.

Plea in law

— Infringement of Article 52(1)(b) and Article 53(1)(c) of Regulation No 2017/1001.

Action brought on 27 November 2017 — Café del Mar and Others v EUIPO — Guiral Broto (Café del Mar)

(Case T-773/17)

(2018/C 022/80)

Language in which the application was lodged: Spanish

Parties

Applicants: Café del Mar SC (Sant Antoni de Portmany, Spain), José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Antoni de Portmany) (represented by: F. Miazzetto and J. L. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ramón Guiral Broto (Marbella, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'Café del Mar' — European Union trade mark No 1 054 303

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 in Case R 1542/2015-5

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— declare European Union figurative mark No 1 054 303 containing the word elements 'Café del Mar' invalid;

— order the defendant to pay the costs of the present proceedings, and order the proprietor of the trade mark at issue to pay the costs incurred in the proceedings before the Cancellation Division and the Boards of Appeal of EUIPO.

Plea in law

— Infringement of Article 52(1)(b) and Article 53(1)(c) of Regulation No 2017/1001.

Action brought on 29 November 2017 — Café del Mar and Others v EUIPO — Guiral Broto (C del Mar)

(Case T-774/17)

(2018/C 022/81)

Language in which the application was lodged: Spanish

Parties

Applicants: Café del Mar SC (Sant Antoni de Portmany, Spain) José Les Viamonte (Sant Antoni de Portmany) and Carlos Andrea González (Sant Antoni de Portmany) (represented by: F. Miazzetto and J.L. Gracia Albero, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ramón Guiral Broto (Marbella, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'C del M' — European Union trade mark No 5 889 126

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 4 September 2017 in Case R 1618/2015-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— declare the European Union figurative mark containing the word elements 'C del M' No 5 889 126 invalid;

— order the defendant to bear the costs of the present proceedings and the proprietor of the trade mark at issue to bear the costs of the proceedings before the Cancellation Division and the Boards of Appeal of EUIPO.

Plea in law

— Infringement of Article 52(1)(b) of Regulation No 2017/1001.

Action brought on 23 November 2017 — Pan v EUIPO — Entertainment One UK (TOBBIA)

(Case T-777/17)

(2018/C 022/82)

Language in which the application was lodged: English

Parties

Applicant: Xianhao Pan (Rome, Italy) (represented by: M. Oliva, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Entertainment One UK Ltd (London, United Kingdom)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'TOBBIA' — EU trade mark No 11 775 509

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 September 2017 in Case R 1776/2016-1

Form of order sought

The applicant claims that the Court should:

— annul in its entirety the contested decision.

Pleas in law

— Failure to state reasons, breach of the valuation method of the relationship between the brands as well as a lack of assessment as to the assessment of likelihood of confusion of the marks;

— Infringement of Article 8(b)(1) in relation to Article 53(2) of Regulation No 207/2009.

Order of the General Court of 22 November 2017 — Baradel and Others v FEI

(Case T-509/16) ([1])

(2018/C 022/83)

Language of the case: French

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

([1]) OJ C 274, 21.9.2013 (case initially registered at the European Union Civil Service Tribunal as Case F-72/13 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 17 November 2017 — António Conde & Companhia v Commission

(Case T-244/17) ([1])

(2018/C 022/84)

Language of the case: English

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

([1]) OJ C 231, 17.7.2017.

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