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Information and Notices

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(2019/C 206/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 11 April 2019 (Requests for a preliminary ruling from the Tribunal Supremo — Spain) — Repsol Butano SA (C-473/17), DISA Gas SAU (C-546/17) v Administración del Estado

(Joined Cases C-473/17 and C-546/17) [1]

(Reference for a preliminary ruling — Energy — Liquefied petroleum gas (LPG) sector — Consumer protection — Requirement of general economic interest — Maximum price of a bottle of gas — Home delivery obligation — Article 106 TFEU — Directives 2003/55/EC, 2009/73/EC and 2006/123/EC — Interpretation of the judgment of 20 April 2010, Federutility and Others (C-265/08, EU:C:2010:205) — Principle of proportionality)

(2019/C 206/02)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Repsol Butano SA (C-473/17), DISA Gas SAU (C-546/17)

Defendant: Administración del Estado

Interveners: Redexis Gas SL, Repsol Butano SA (C-546/17)

Operative part of the judgment

The condition of proportionality laid down in Article 15(3)(c) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as not precluding measures such as those at issue in the main proceedings, which set a maximum price for bottled liquefied petroleum gas and which require certain operators to carry out home delivery of that gas, provided that those measures are maintained only for a limited duration and do not go beyond what is necessary in order to achieve the objective of general economic interest pursued.

[1] OJ C 382, 13.11.2017.
OJ C 412, 4.12.2017.

Judgment of the Court (Third Chamber) of 11 April 2019 (request for a preliminary ruling from the Court of Appeal — Ireland) — Neculai Tarola v Minister for Social Protection

(Case C-483/17) ([1])

(Reference for a preliminary ruling — Citizenship of the Union — Freedom of movement for persons — Directive 2004/38/EC — Right of free movement and residence within the territory of the Member States — Article 7(1)(a) — Employees and self-employed persons — Article 7(3)(c) — Right of residence for more than three months — National of a Member State who has worked in an employed capacity in another Member State for a period of two weeks — Involuntary unemployment — Retention of the status of worker for no less than six months — Entitlement to jobseeker's allowance)

(2019/C 206/03)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Neculai Tarola

Defendant: Minister for Social Protection

Operative part of the judgment

Article 7(1)(a) and (3)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a national of a Member State who, having exercised his right to free movement, acquired, in another Member State, the status of worker within the meaning of Article 7(1)(a) of that directive, on account of the activity he pursued there for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, retains the status of worker for a further period of no less than six months under those provisions, provided that he has registered as a jobseeker with the relevant employment office.

It is for the referring court to determine whether, in accordance with the principle of equal treatment guaranteed in Article 24(1) of Directive 2004/38, that national is, as a result, entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.

([1]) OJ C 347, 16.10.2017.

Judgment of the Court (Third Chamber) of 4 April 2019 (request for a preliminary ruling from the Landgericht Köln — Germany) — Germanwings GmbH v Wolfgang Pauels

(Case C-501/17) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 5(3) — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Scope — Exemption from the obligation to pay compensation — Notion of 'extraordinary circumstances' — Damage to an aircraft tyre caused by a foreign object lying on an airport runway)

(2019/C 206/04)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Appellant: Germanwings GmbH

Respondent: Wolfgang Pauels

Operative part of the judgment

Article 5(3) of 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, read in the light of recital 14 thereof, must be interpreted as meaning that damage to an aircraft tyre caused by a foreign object, such as loose debris, lying on an airport runway falls within the notion of 'extraordinary circumstances' within the meaning of that provision.

However, in order to be released from its obligation to pay passengers compensation under Article 7 of Regulation No 261/2004, an air carrier whose flight has been subject to long delay due to such 'extraordinary circumstances' must prove that it deployed all its resources in terms of staff or equipment and the financial means at its disposal in order to avoid the changing of a tyre damaged by a foreign object, such as loose debris, lying on the airport runway from leading to long delay of the flight in question.

([1]) OJ C 392, 20.11.2017.

Judgment of the Court (Third Chamber) of 4 April 2019 — OZ v European Investment Bank (EIB)

(Case C-558/17 P) ([1])

(Appeal — Civil service — Staff of the European Investment Bank (EIB) — Sexual harassment — Investigation carried out in the context of the 'Dignity at work' programme — Rejection of a complaint alleging harassment — Application for annulment of the decision of the President of the EIB rejecting the complaint — Compensation for damage)

(2019/C 206/05)

Language of the case: English

Parties

Appellant: OZ (represented by: B. Maréchal, avocat)

Other party to the proceedings: European Investment Bank (EIB) (represented by: K. Carr and G. Faedo, acting as Agents, and A. Dal Ferro, avvocato)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 13 July 2017, OZ v EIB (T-607/16, not published, EU:T:2017:495), in so far as it rejected, first, the heads of claim seeking damages set out by OZ in her application based on the liability of the European Investment Bank (EIB) for alleged unlawful acts committed during the investigation procedure, including the failure to respect the appellant's right to a fair hearing, and, second, the head of claim seeking annulment set out in the application;

2. Dismisses the appeal as to the remainder;

3. Annuls the decision of the President of the European Investment Bank of 16 October 2015 to take no further action on the complaint alleging sexual harassment made by OZ;

4. Dismisses the action as to the remainder;

5. Orders the European Investment Bank to bear its own costs and to pay those incurred by OZ relating to the proceedings at first instance and the appeal proceedings.

([1]) OJ C 437, 18.12.2017.

Judgment of the Court (Grand Chamber) of 2 April 2019 (requests for a preliminary ruling from the Raad van State — Netherlands) — Staatssecretaris van Veiligheid en Justitie v H. (C-582/17), R. (C-583/17)

(Joined Cases C-582/17 and C-583/17) ([1])

(Reference for a preliminary ruling — Determination of the Member State responsible for examining an application for international protection — Regulation (EU) No 604/2013 — Article 18(1)(b) to (d) — Article 23(1) — Article 24(1) — Take back procedure — Criteria for determining responsibility — New application lodged in another Member State — Article 20(5) — Ongoing determination process — Withdrawal of the application — Article 27 — Remedies)

(2019/C 206/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Veiligheid en Justitie

Defendants: H. (C-582/17), R. (C-583/17)

Operative part of the judgment

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that a third-country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State:

— is not, in principle, entitled to rely, in an action brought under Article 27(1) of the Regulation in that second Member State against a decision to transfer him or her, on the criterion for determining responsibility set out in Article 9 thereof;

— may, by way of exception, invoke, in such an action, that criterion for determining responsibility, in a situation covered by Article 20(5) of the Regulation, in so far as that third-country national has provided the competent authority of the requesting Member State with information clearly establishing that it should be regarded as the Member State responsible for examining the application pursuant to that criterion for determining responsibility.

([1]) OJ C 424, 11.12.2017.

Judgment of the Court (First Chamber) of 11 April 2019 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — Peter Bosworth, Colin Hurley v Arcadia Petroleum Limited and Others

(Case C-603/17) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Lugano II Convention — Jurisdiction and recognition and enforcement of judgments in civil and commercial matters — Title II, Section 5 (Articles 18 to 21) — Jurisdiction over individual contracts of employment)

(2019/C 206/07)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Peter Bosworth, Colin Hurley

Defendants: Arcadia Petroleum Limited and Others

Operative part of the judgment

The provisions of Section 5 of Title II (Articles 18 to 21) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that a contract between a company and a natural person performing the duties of director of that company does not create a relationship of subordination between them and cannot, therefore, be treated as an 'individual contract of employment', within the meaning of those provisions, where, even if the shareholder(s) of that company have the power to procure the termination of that contract, that person is able to determine or does determine the terms of that contract and has control and autonomy over the day-to-day operation of that company's business and the performance of his own duties.

([1]) OJ C 437, 18.12.2017.

Judgment of the Court (Fourth Chamber) of 3 April 2019 (request for a preliminary ruling from the Sąd Najwyższy — Poland) — Powszechny Zakład Ubezpieczeń na Życie S.A. v Prezes Urzędu Ochrony Konkurencji i Konsumentów

(Case C-617/17) ([1])

(Reference for a preliminary ruling — Competition — Article 82 EC — Abuse of a dominant position — Regulation (EC) No 1/2003 — Article 3(1) — Application of national competition law — Decision of a national competition authority to impose one fine on the basis of national law and another on the basis of EU law — Charter of Fundamental Rights of the European Union — Article 50 — Principle of ne bis in idem — Whether applicable)

(2019/C 206/08)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Powszechny Zakład Ubezpieczeń na Życie S.A.

Defendant: Prezes Urzędu Ochrony Konkurencji i Konsumentów

Interveners: Edward Dętka, Mirosław Krzyszczak, Zakład Projektowania i Programowania Systemów Sterowania Atempol Sp. z o.o. w Piekarach Śląskich, Ommer Polska Sp. z o.o. w Krapkowicach, Glimat Marcinek i S-ka spółka jawna w Gliwicach, Jastrzębskie Zakłady Remontowe Dźwigi Sp. z o.o. w Jastrzębiu Zdroju, Petrofer-Polska Sp. z o.o. w Nowinach, Pietrzak B.B. Beata Pietrzak, Bogdan Pietrzak Spółka jawna w Katowicach, Ewelina Baranowska, Przemysław Nikiel, Tomasz Woźniak, Spółdzielnia Kółek Rolniczych w Bielinach, Lech Marchlewski, Zakład Przetwórstwa Drobiu Marica spółka jawna J.M.E.K. Wróbel sp. jawna w Bielsku Białej, HTS Polska Sp. z o.o., Paco Cases Andrzej Paczkowski, Piotr Paczkowski spółka jawna w Puszczykowie, Bożena Kubalańca, Zbigniew Arczykowski, Przedsiębiorstwo Produkcji Handlu i Usług Unipasz Sp. z o.o. w Radzikowicach, Janusz Walocha, Marek Grzegolec

Operative part of the judgment

The principle of ne bis in idem enshrined in Article 50 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, must be interpreted as not precluding a national competition authority from fining an undertaking in a single decision for an infringement of national competition law and for an infringement of Article 82 EC. In such a situation, the national competition authority must nevertheless ensure that the fines are proportionate to the nature of the infringement.

([1]) OJ C 104, 19.3.2018.

Judgment of the Court (Fifth Chamber) of 11 April 2019 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — proceedings brought by Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-638/17) ([1])

(Reference for a preliminary ruling — Structure and rates of excise duty applied to manufactured tobacco — Directive 2011/64/EU — Article 4(1)(a) — Concept of 'cigars or cigarillos' — Rolls of tobacco with an outer wrapper of natural tobacco which is partially covered by an additional paper layer)

(2019/C 206/09)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Appellant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Other party: 'Skonis ir kvapas' UAB

Operative part of the judgment

Article 4(1)(a) of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco must be interpreted as meaning that tobacco products, such as those at issue in the main proceedings, part of whose outer wrapper of natural tobacco is covered, at the filter, by an additional paper layer, liable to make those products visually similar to cigarettes, fall within the category of cigars or cigarillos, within the meaning of that provision.

([1]) OJ C 52, 12.2.2018.

Judgment of the Court (Fifth Chamber) of 11 April 2019 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — ÖKO-Test Verlag GmbH v Dr. Rudolf Liebe Nachf. GmbH & Co. KG

(Case C-690/17) ([1])

(Reference for a preliminary ruling — Intellectual property — Trade marks — Regulation (EC) No 207/2009 — Article 9(1) — Directive 2008/95/EC — Article 5(1) and (2) — Rights afforded by a trade mark — Individual trade mark consisting of a quality label)

(2019/C 206/10)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: ÖKO-Test Verlag GmbH

Defendant: Dr. Rudolf Liebe Nachf. GmbH & Co. KG

Operative part of the judgment

1. Article 9(1)(a) and (b) of Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark, and Article 5(1)(a) and (b) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that they do not entitle the proprietor of an individual trade mark consisting of a quality label to oppose the affixing, by a third party, of a sign identical with, or similar to, that mark to products that are neither identical with, nor similar to, the goods or services for which that mark is registered.

2. Article 9(1)(c) of Regulation No 207/2009 and Article 5(2) of Directive 2008/95 must be interpreted as meaning that they entitle the proprietor of an individual trade mark with a reputation, consisting of a quality label, to oppose the affixing, by a third party, of a sign identical with, or similar to, that mark to products that are neither identical with, nor similar to, the goods or services for which that mark is registered, provided that it is established that, by that affixing, the third party takes unfair advantage of the distinctive character or the reputation of the mark concerned or causes detriment to that distinctive character or reputation and provided that, in that case, the third party has not established the existence of a 'due cause', within the meaning of those provisions, in support of such affixing.

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Tenth Chamber) of 11 April 2019 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — PORR Építési Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-691/17) ([1])

(Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Right to deduct value added tax (VAT) paid as input tax — Article 199(1)(a) — Reverse charge procedure — Undue payment of the tax by the recipient of services to the suppliers on the basis of an invoice drawn up incorrectly according to the rules on ordinary taxation — Tax authority's decision holding that the recipient of services has an outstanding tax liability and refusing a claim for deduction — No examination by the tax authority of the possibility of reimbursement of the tax)

(2019/C 206/11)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: PORR Építési Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

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 2010/45/EU of 13 July 2010, and the principles of fiscal neutrality and effectiveness must be interpreted as not precluding a practice of the tax authority whereby, in the absence of any suspicion of tax evasion, that authority refuses an undertaking the right to deduct the value added tax which that undertaking, as the recipient of services, unduly paid to the supplier of those services on the basis of an invoice drawn up by that supplier in accordance with the rules on the ordinary value added tax (VAT) regime, whereas the relevant transaction fell under the reverse charge mechanism, and where the tax authority did not,

— examine, prior to refusing the right to deduct, whether the issuer of that incorrect invoice could reimburse the recipient of the invoice the amount of VAT unduly paid and could correct that invoice under a self-correction procedure, in accordance with the applicable national rules, in order to recover the tax which it unduly paid to the Treasury, or

— itself decide to reimburse the recipient of that invoice the tax which the recipient unduly paid to the issuer of the invoice and that the latter, subsequently, unduly paid to the Treasury.

Those principles require, however, in the situation where the reimbursement by the supplier of services to the recipient of those services of the VAT unduly invoiced would be impossible or excessively difficult, in particular in the case of the insolvency of the supplier, that the recipient of the services must be able to address its application for reimbursement to the tax authorities directly.

(1) OJ C 112, 26.3.2018.

Judgment of the Court (Ninth Chamber) of 4 April 2019 (request for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — proceedings brought by Allianz Vorsorgekasse AG

(Case C-699/17) (1)

(Reference for a preliminary ruling — Public Procurement — Conclusion of accession agreements with an occupational provident fund responsible for managing contributions of occupational solidarity — Conclusion requiring the agreement of employees or their representatives — Directive 2014/24/EU — Articles 49 and 56 TFEU — Principles of equal treatment and of non-discrimination — Obligation of transparency)

(2019/C 206/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Allianz Vorsorgekasse AG

Other parties: Bundestheater-Holding GmbH, Burgtheater GmbH, Wiener Staatsoper GmbH, Volksoper Wien GmbH, ART for ART Theaterservice GmbH, fair-finance Vorsorgekasse AG

Operative part of the judgment

Articles 49 and 56 TFEU, the principles of equal treatment and non-discrimination and the obligation of transparency must be interpreted as meaning that they are applicable to the conclusion of an accession agreement between an employer, a body governed by public law, and a company provident fund, with regard to the management and investment of contributions intended to finance severance payments paid to the employees of that employer, even though the conclusion of such an agreement is not the sole province of the employer, but requires the consent of either the staff or the works council.

(1) OJ C 104, 19.3.2018.

Judgment of the Court (Second Chamber) of 11 April 2019 (requests for a preliminary ruling from the Tribunal Superior de Justicia de Galicia — Spain) — Cobra Servicios Auxiliares SA v José David Sánchez Iglesias (C-29/18), José Ramón Fiuza Asorey (C-30/18), Jesús Valiño Lopez (C-44/18), FOGASA (C-29/18 and C-44/18), Incatema SL,

(Joined Cases C-29/18, C-30/18 and C-44/18) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Concept of 'employment conditions' — Comparability of the situations — Justification — Concept of 'objective grounds' — Compensation in the event of the termination of a permanent employment contract on an objective ground — Lower amount of compensation paid on expiry of a contract for 'a specific task')

(2019/C 206/13)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Cobra Servicios Auxiliares SA

Respondents: José David Sánchez Iglesias (C-29/18), José Ramón Fiuza Asorey (C-30/18), Jesús Valiño Lopez (C-44/18), FOGASA (C-29/18 and C-44/18), Incatema SL

Operative part

Clause 4(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law in accordance with which, in a situation, such as that at issue in the main proceedings, in which the termination of a contract for services between the employer and one of his clients has resulted, first, in the termination of contracts for a specific task made between that employer and some workers and, second, in the collective redundancy, on an objective ground, of permanent workers employed by that employer, the compensation paid for termination of the employment contract to the first of those groups of workers is less than that given to the permanent workers.

([1]) OJ C 142 of 23.4.2018

Judgment of the Court (First Chamber) of 3 April 2019 — CJ v European Centre for Disease Prevention and Control

(Case C-139/18 P) ([1])

(Appeal — Civil service — Member of the contract staff — European Centre for Disease Prevention and Control (ECDC) — Appraisal report — 2011 Appraisal exercise — Application for annulment of the decision closing the appraisal report)

(2019/C 206/14)

Language of the case: English

Parties

Appellant: CJ (represented by: V. Kolias, dikigoros)

Other party to the proceedings: European Centre for Disease Prevention and Control (represented by: J. Mannheim and A. Daume, acting as Agents, and by D. Waelbroeck and A. Duron, avocats)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 13 December 2017, CJ v ECDC (T-602/16, not published, EU:T:2017:893);

2. Annuls the decision of the appeal assessor of the European Centre for Disease Prevention and Control (ECDC) of 21 September 2015 closing CJ's appraisal report for 2011;

3. Orders the European Centre for Disease Prevention and Control to bear its own costs and to pay the costs incurred by CJ relating both to the proceedings at first instance and the appeal.

([1]) OJ C 211, 18.6.2018.

Judgment of the Court (Eighth Chamber) of 10 April 2019 (request for a preliminary ruling from the Sąd Rejonowy w Sopocie Wydział I Cywilny — Poland) — proceedings brought by H. W.

(Case C-214/18) ([1])

(Reference for a preliminary ruling — Directive 2006/112/EC — Value added tax (VAT) — Court enforcement officer — Enforcement — Fees laid down by law — Administrative practice of the competent national authorities considering those fees to be inclusive of VAT — Principles of neutrality and proportionality)

(2019/C 206/15)

Language of the case: Polish

Referring court

Sąd Rejonowy w Sopocie

Parties to the main proceedings

Applicant: H. W.

Other parties: PSM 'K', Aleksandra Treder, court enforcement officer at the Sąd Rejonowy w Sopocie

Operative part of the judgment

The provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2013/43/EU of 22 July 2013, and the principles of neutrality of value added tax (VAT) and proportionality must be interpreted as not precluding an administrative practice of the competent national authorities, such as that at issue in the main proceedings, under which the VAT relating to supplies of services by a court enforcement officer in an enforcement procedure is regarded as included in the fees charged by that officer.

([1]) OJ C 259, 23.7.2018.

Judgment of the Court (Second Chamber) of 11 April 2019 (request for a preliminary ruling from the Conseil d'État — France) — Syndicat des cadres de la sécurité intérieure v Premier ministre, Ministre de l'Intérieur, Ministre de l'Action et des Comptes publics

(Case C-254/18) ([1])

(Reference for a preliminary ruling — Directive 2003/88/EC — Organisation of working time — Protection of the safety and health of workers — Maximum weekly working time — Reference period — Rolling or fixed nature — Derogation — Police officers)

(2019/C 206/16)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Syndicat des cadres de la sécurité intérieure

Defendants: Premier ministre, Ministre de l'Intérieur, Ministre de l'Action et des Comptes publics

Operative part of the judgment

Article 6(b), Article 16(b) and the first paragraph of Article 19 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national legislation which lays down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates, provided that that legislation contains mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods.

([1]) OJ C 211, 18.6.2018.

Judgment of the Court (First Chamber) of 3 April 2019 (request for a preliminary ruling from the Sąd Okręgowy w Poznaniu — Poland) — Aqua Med sp. z o.o. v Irena Skóra

(Case C-266/18) ([1])

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 1(2) — Scope of the directive — Contractual term conferring territorial jurisdiction on the court determined pursuant to the general rules — Article 6(1) — Review of unfairness of the court's own motion — Article 7(1) — Obligations and powers of the national court)

(2019/C 206/17)

Language of the case: Polish

Referring court

Sąd Okręgowy w Poznaniu

Parties to the main proceedings

Applicant: Aqua Med sp. z o.o.

Defendant: Irena Skóra

Operative part of the judgment

1. Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a contractual term, such as that at issue in the main proceedings, which refers to the national law applicable so far as concerns the determination of jurisdiction to hear disputes between the parties to the contract, does not fall outside the scope of that directive.

2. Article 7(1) of Directive 93/13 must be interpreted as not precluding procedural rules, to which a contractual term refers, which allow the seller or supplier to choose, in the event of an action for alleged non-performance of a contract by the consumer, between the court which has jurisdiction in the place where the defendant is domiciled and that which has jurisdiction in the place of performance of the contract, unless the choice of place of performance of the contract gives rise, for the consumer, to procedural conditions which are such as to restrict excessively the right to an effective remedy conferred on him by the European Union legal order, which is a matter for the national court to determine.

([1]) OJ C 249, 16.7.2018.

Judgment of the Court (Sixth Chamber) of 10 April 2019 — The Green Effort Limited v European Union Intellectual Property Office (EUIPO), Fédération internationale de l'automobile (FIA)

(Case C-282/18 P) ([1])

(Appeal — EU trade mark — Appeals procedure — Time limits — Electronic notification — Calculation of time limits)

(2019/C 206/18)

Language of the case: English

Parties

Appellant: The Green Effort Limited (represented by: A. Ziehm, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO) (represented by: A. Folliard-Monguiral, acting as Agent), Fédération internationale de l'automobile (FIA) (represented by: M. Hawkins, Solicitor, T. Dolde and K. Lüder, Rechtsanwälte)

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders The Green Effort Limited to bear its own costs and to pay the costs incurred by the European Union Intellectual Property Office (EUIPO) and by Fédération internationale de l'automobile (FIA).

([1]) OJ C 285, 13.8.2018.

Judgment of the Court (Tenth Chamber) of 11 April 2019 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X BV v Staatssecretaris van Financiën

(Case C-288/18) ([1])

(Reference for a preliminary ruling — Common Customs Tariff — Classification of goods — Combined Nomenclature — Subheadings 85285100 and 85285940 — Flat screen monitors with liquid crystal display capable of displaying signals from automatic data processing systems — Agreement on trade in information technology products)

(2019/C 206/19)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X BV

Defendant: Staatssecretaris van Financiën

Operative part

The Combined Nomenclature, which appears in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that, in order to determine whether flat panel monitors with screens of the liquid crystal display (LCD) technology, designed and manufactured for displaying both data from an automatic data-processing machine and also composite video signals from other sources, must be classified under subheading 85285100 of the Combined Nomenclature or the subheading 85285940 of that nomenclature, it is necessary, when examining all their objective characteristics and properties, to assess both the degree to which they are capable of performing several functions and the standard of performance that they achieve when performing those functions, in order to determine whether their principal function is to be used in an automatic data-processing system. In that context, particular importance should be given to the question whether they are designed to be viewed close up. Whether the person who uses the screen and the person who processes and/or enters data into an automatic data-processing machine are one and the same is not a relevant criterion for the purposes of that assessment.

([1]) OJ C 276, 6.8.2018

Judgment of the Court (Tenth Chamber) of 11 April 2019 (request for a preliminary ruling from the Tribunal da Relação do Porto — Portugal) — Mediterranean Shipping Company (Portugal) — Agentes de Navegação SA v Banco Comercial Português SA, Caixa Geral de Depósitos SA

(Case C-295/18) ([1])

(Reference for a preliminary ruling — Payment services in the internal market — Directive 2007/64/EC — Articles 2 and 58 — Scope — Payment service user — Meaning — Execution of a direct-debit payment order issued by a third party in respect of an account of which that party is not the holder — No authorisation from the holder of the debited account — Unauthorised payment transactions)

(2019/C 206/20)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Applicant: Mediterranean Shipping Company (Portugal) — Agentes de Navegação SA

Defendants: Banco Comercial Português SA, Caixa Geral de Depósitos SA

Operative part of the judgment

1. Article 2(1) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, must be interpreted to the effect that the notion of 'payment services', for the purposes of that provision, includes the execution of direct debits, initiated by the payee, on a payment account of which it is not the holder, where the holder of the account thus debited does not consent to those direct debits.

2. Article 58 of Directive 2007/64 must be interpreted to the effect that the notion of 'payment service user', for the purposes of that article, includes the holder of a payment account on which direct debits were executed without its consent.

([1]) OJ C 259, 23.7.2018.

Judgment of the Court (Sixth Chamber) of 11 April 2019 (request for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Gerona — Spain) — ZX v Ryanair DAC

(Case C-464/18) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Determination of the court having jurisdiction to hear an application for compensation in respect of a delayed flight — Article 7(5) — Operations of a branch — Article 26 — Implied prorogation — Requirement that the defendant enter an appearance)

(2019/C 206/21)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Gerona

Parties to the main proceedings

Applicant: ZX

Defendant: Ryanair DAC

Operative part of the judgment

1. Article 7(5) of 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 must be interpreted as meaning that a court of a Member State does not have jurisdiction to hear a dispute concerning a claim for compensation brought under Article 7 of 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, and directed against an airline, established in the territory of another Member State, on the ground that that company has a branch within the territorial jurisdiction of the court seised, without that branch having been involved in the legal relationship between the airline and the passenger concerned.

2. Article 26(1) of Regulation No 1215/2012 must be interpreted as not applying in a case, such as that at issue in the main proceedings, where the defendant has not submitted observations or entered an appearance.

([1]) OJ C 392, 29.10.2018.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 22 February 2019 — Federazione Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl v De Vellis Servizi Globali Srl

(Case C-155/19)

(2019/C 206/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Federazione Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl

Respondent: De Vellis Servizi Globali Srl

Questions referred

1. First question

— On the basis of the characteristics of national sports law, can the *Federazione calcistica italiana* (Italian Football Federation, 'FIGC') be classified as a *body governed by public law* in so far as it was established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character?

— In particular, is the requirement relating to the purpose of the body satisfied in respect of the *Federation*, even in the absence of a formal act establishing a public authority and despite its membership base, on account of its incorporation into a sector (sports) organised in accordance with models of a public-law nature and the fact that it is required to comply with the principles and rules drawn up by the *Comitato olimpico nationale italiano* (Italian National Olympic Committee, 'the CONI') and international sporting bodies, as a result of the recognition, for sporting purposes, of the national public entity?

— Furthermore, can this requirement arise in relation to a sports *federation* such as the *Federazione italiana giuoco calcio*, which has the ability to fund itself, in respect of an activity of no significance in the context of public law, such as that at issue in this case, or must the requirement that the application of the rules on public and open tendering be ensured in any event, where such an entity awards any type of contract to third parties, be regarded as taking precedence?

2. Second question

— On the basis of the legal relationship between the *CONI* and the *FIGC* (*Federazione Italiana Giuoco Calcio*), does the former have a dominant influence over the latter in the light of the legal powers relating to recognition of the undertaking for sporting purposes, approval of annual budgets, supervision of the management and proper functioning of the bodies, and placing the entity into receivership?

— On the other hand, are those powers insufficient to meet the requirement relating to the *dominant public influence* of a *body governed by public law* on account of the significant participation of the presidents and representatives of the sports *federations* in the key bodies of the *Olympic Committee*?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 22 February 2019 — Federazone Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl v De Vellis Servizi Globali Srl

(Case C-156/19)

(2019/C 206/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Federazione Italiana Giuoco Calcio (FIGC), Consorzio Ge.Se.Av. S. c. arl

Respondent: De Vellis Servizi Globali Srl

Questions referred

1. First question

— On the basis of the characteristics of national sports law, can the *Federazione calcistica italiana* (Italian Football Federation, 'FIGC') be classified as a *body governed by public law* in so far as it was established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character?

— In particular, is the requirement relating to the purpose of the body satisfied in respect of the *Federation*, even in the absence of a formal act establishing a public authority and despite its membership base, on account of its incorporation into a sector (sports) organised in accordance with models of a public-law nature and the fact that it is required to comply with the principles and rules drawn up by the *Comitato olimpico nationale italiano* (Italian National Olympic Committee, 'the CONI') and international sporting bodies, as a result of the recognition, for sporting purposes, of the national public entity?

— Furthermore, can this requirement arise in relation to a sports *federation* such as the *Federazione italiana giuoco calcio*, which has the ability to fund itself, in respect of an activity of no significance in the context of public law, such as that at issue in this case, or must the requirement that the application of the rules on public and open tendering be ensured in any event, where such an entity awards any type of contract to third parties, be regarded as taking precedence?

2. Second question

— On the basis of the legal relationship between the *CONI* and the *FIGC* (*Federazione Italiana Giuoco Calcio*), does the former have a dominant influence over the latter in the light of the legal powers relating to recognition of the undertaking for sporting purposes, approval of annual budgets, supervision of the management and proper functioning of the bodies, and placing the entity into receivership?

— On the other hand, are those powers insufficient to meet the requirement relating to the *dominant public influence* of a *body governed by public law* on account of the significant participation of the presidents and representatives of the sports *federations* in the key bodies of the *Olympic Committee*?

Request for a preliminary ruling from the Corte dei Conti — Sezione Giurisdizionale per la Regione Puglia (Italy) lodged on 25 February 2019 — HB v Istituto Nazionale della Previdenza Sociale

(Case C-168/19)

(2019/C 206/24)

Language of the case: Italian

Referring court

Corte dei Conti — Sezione Giurisdizionale per la Regione Puglia

Parties to the main proceedings

Applicant: HB

Defendant: Istituto Nazionale della Previdenza Sociale

Question referred

Must Articles 18 TFEU and 21 TFEU be interpreted as precluding legislation of a Member State which provides for the taxation, in that Member State, of the income of a person resident in another Member State who receives all of his income from the first Member State but who does not hold the nationality of the second Member State, without the benefit of the tax advantages provided by that second Member State?

Request for a preliminary ruling from the Corte dei Conti — Sezione Giurisdizionale Per la Regione Puglia (Italy) lodged on 25 February 2019 — IC v Istituto Nazionale della Previdenza Sociale

(Case C-169/19)

(2019/C 206/25)

Language of the case: Italian

Referring court

Corte dei Conti — Sezione Giurisdizionale Per la Regione Puglia

Parties to the main proceedings

Applicant: IC

Defendant: Istituto Nazionale della Previdenza Sociale

Question referred

Must Articles 18 TFEU and 21 TFEU be interpreted as precluding legislation of a Member State which provides for the taxation, in that Member State, of the income of a person resident in another Member State who receives all of his income from the first Member State but who does not hold the nationality of the second Member State, without the benefit of the tax advantages provided by that second Member State?

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 27 February 2019 — OI v Air Nostrum Lineas Aereas del Mediterraneo SA

(Case C-191/19)

(2019/C 206/26)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant and appellant: OI

Defendant and respondent: Air Nostrum Lineas Aereas del Mediterraneo SA

Questions referred

1. Does the change in reservation of a passenger at check-in, who has a confirmed reservation on a specific flight, to a later flight against his will constitute denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation, ([1]) if the flight on which the passenger had a confirmed reservation is then carried out?

2. If Question 1 is answered in the affirmative: Does Article 5(1)(c)(iii) of the Air Passenger Rights Regulation apply by analogy in the event of denied boarding within the meaning of Article 4(3) of the Air Passenger Rights Regulation?

([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 Landgericht Saarbrücken (Germany) lodged on 5 March 2019 — SM v Sparkasse Saarbrücken

(Case C-209/19)

(2019/C 206/27)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: SM

Defendant: Sparkasse Saarbrücken

Questions referred

1. Is Article 10(2)(p) of Directive 2008/48/EC [1] of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC to be interpreted as meaning that the required information in relation to the 'period during which the right of withdrawal may be exercised' or 'other conditions governing the exercise thereof' must also include the requirements governing the start of the withdrawal period?

2. If the answer to Question 1 is in the affirmative:

   Does Article 10(2)(p) of Directive 2008/48 preclude an interpretation to the effect that withdrawal information is 'clear' and 'concise' if it does not itself cite in full the mandatory information to be provided with regard to the start of the withdrawal period, but in this respect refers to a provision of national law — in the present case, Paragraph 492(2) of the Bürgerliches Gesetzbuch (German Civil Code; 'the BGB') in the version valid up to 12 June 2014 — which in turn refers to further national provisions — in the present case, Article 247, Paragraphs 3 to 13, of the Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Law to the Civil Code; 'the EGBGB') in the version valid up to 12 June 2014 — and the consumer is therefore obliged to read numerous legislative provisions in a variety of legislative texts so as to gain clarity as to what mandatory information must be provided in order for the withdrawal period to start to run in the case of his loan agreement?

3. If Question 2 is answered in the negative (and there are no concerns in principle against a reference to provisions of national law):

   Does Article 10(2)(p) of Directive 2008/48 preclude an interpretation to the effect that withdrawal information is 'clear' and 'concise' if the reference to a provision of national law — in the present case, Paragraph 492(2) of the BGB in the version valid from 30 July 2010 up to 12 June 2014 — and the further reference — in the present case, to Article 247, Paragraphs 3 to 13, of the EGBGB in the version valid from 4 August 2011 up to 12 June 2014 — necessarily mean that the consumer has to carry out a process of legal inference beyond simply reading the provisions — for instance, as to whether the loan was granted to him under conditions customary for contracts secured by mortgage and the interim financing thereof or whether linked agreements exist — so that he can gain clarity as to what mandatory information must be provided in order for the period of withdrawal to start to run in the case of his loan agreement?

[1] OJ 2008 L 133, p. 66.

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 11 March 2019 — WQ v Land Berlin

(Case C-216/19)

(2019/C 206/28)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: WQ

Defendant: Land Berlin

Questions referred

1. Does the owner of eligible hectares have those hectares at his disposal within the meaning of the first sentence of Article 24(2) of Regulation (EU) No 1307/2013 ([1]) if no third party has a right of use in respect of the eligible hectares, and, in particular, no right of use derived from the owner, or is the area at the disposal of a third party or at no one's disposal if a third party is actually using that area for agricultural purposes without any right of use?

2. Is the phrase 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation (EC) No 1782/2003' ([2]) in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that the area must in 2008 have satisfied the conditions laid down in Titles III and IVA of Regulation No 1782/2003 for a right to payments under the single payment scheme or the single area payment scheme?

3. If the answer to Question 2 is in the negative: Is the phrase 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation No 1782/2003' in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that, in order for an area that is afforested in accordance with Article 31 of Regulation No 1257/1999 ([3]) to be classified as eligible hectares within the meaning of Article 32(2)(b)(ii) of Regulation No 1307/2013, it is necessary that a set-aside entitlement or other payment entitlement within the meaning of Article 44(1) or Article 54(1) of Regulation No 1782/2003 has been granted in respect of that area?

4. If the answer to Question 3 is in the negative: Is the phrase 'any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Titles III and IVA of Regulation No 1782/2003' in Article 32(2)(b) of Regulation No 1307/2013 to be interpreted as meaning that, in order for an area that is afforested in accordance with Article 31 of Regulation (EC) No 1257/1999 to be classified as eligible hectares within the meaning of Article 32(2)(b)(ii) of Regulation No 1307/2013, it is necessary that in 2008 the farmer made an application under Article 22(1) and/or Article 34(1) of Regulation No 1782/2003 and satisfied the other conditions for a direct payment under Titles III or IVA?

([1]) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

([2]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

([3]) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 11 March 2019 — Parsec Fondazione Parco delle Scienze e della Cultura v Ministero delle Infrastrutture e dei Trasporti, Autorità nazionale anticorruzione (ANAC)

(Case C-219/19)

(2019/C 206/29)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Parsec Fondazione Parco delle Scienze e della Cultura

Defendants: Ministero delle Infrastrutture e dei Trasporti, Autorità nazionale anticorruzione (ANAC)

Question referred

Does recital 14 in conjunction with Articles 19(1) and 80(2) of Directive 2014/24/EU ([1]) preclude a legal provision such as Article 46 of Legislative Decree No 50 of 18 April 2016, by which Italy transposed Directives 2014/23/EU, ([2]) 2014/24/EU and 2014/25/EU ([3]) into national law, which permits only economic operators created in the legal forms indicated in that provision to take part in tendering procedures for the award of 'architectural and engineering services', which has the effect of excluding from participation in such procedures economic operators that perform such services using a different legal form?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

([2]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).

([3]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

Request for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 20 March 2019 — EZ v Federal Republic of Germany

(Case C-238/19)

(2019/C 206/30)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: EZ

Defendant: Federal Republic of Germany

Questions referred

1. Is Article 9(2)(e) of Directive 2011/95/EU [1] to be interpreted as meaning that a 'refusal to perform military service in a conflict' does not require the person concerned to have refused to perform military service in a formalised refusal procedure, where the law of the country of origin does not provide for a right to refuse to perform military service?

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

   By the reference to 'refusal to perform military service in a conflict', does Article 9(2)(e) of Directive 2011/95/EU also protect persons who, after the deferment of military service has expired, do not make themselves available to the military administration of the State of origin and evade compulsory conscription by fleeing?

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

   Is Article 9(2)(e) of Directive 2011/95/EU to be interpreted as meaning that, for a conscript who does not know what his future field of military operation will be, the performance of military service would, directly or indirectly, include 'crimes or acts falling within the grounds for exclusion as set out in Article 12(2)' solely because the armed forces of his State of origin repeatedly and systematically commit such crimes or acts using conscripts?

4. Is Article 9(3) of Directive 2011/95/EU to be interpreted as meaning that, in accordance with Article 2(d), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in Article 9(1) and (2) of Directive 2011/95/EU or the absence of protection against such acts, even in the event of persecution under Article 9(2)(e) of Directive 2011/95/EU?

5. In the event that Question 4 is to be answered in the affirmative, is the connection, within the meaning of Article 9(3) in conjunction with Article 2(d) of Directive 2011/95/EU, between persecution by virtue of prosecution or punishment for refusal to perform military service and the reason for persecution already established in the case where prosecution or punishment is triggered by refusal?

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[1] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from Tribunalul București (Romania) lodged on 20 March 2019 — CHEP Equipment Pooling NV v Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Serviciul Soluționare Contestații, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

(Case C-242/19)

(2019/C 206/31)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Applicant: CHEP Equipment Pooling NV

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Serviciul Soluționare Contestații, Agenția Națională de Administrare Fiscală — Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Nerezidenți

Questions referred

1. Does the transport of pallets from one Member State to another Member State, for the purposes of their subsequent rental in the latter Member State to a taxable person established and registered for VAT purposes in Romania, constitute a non-transfer in accordance with Article 17(2) of Directive [2006/112/EC]? ([1])

2. Irrespective of the answer to the first question, is the taxable person under Article 9(1) of Directive 2006/112/EC, who is not established in the Member State of refund but in the territory of another Member State, considered a taxable person under Article 2(1) of Directive 2008/9/EC, ([2]) even where that person is registered for VAT purposes or would be required to be registered for VAT purposes in the Member State of refund?

3. In the light of the provisions of Directive 2008/9/EC, does the condition of not being registered for VAT purposes in the Member State of refund constitute a further condition to those laid down in Article 3 of Directive 2008/9/EC in order that a taxable person established in another Member State and not established in the Member State of refund may be entitled to a refund in a case such as the present?

4. Must Article 3 of Directive 2008/9/EC be interpreted as precluding a practice of a national administration of refusing to refund VAT on grounds of failure to satisfy a condition laid down exclusively in national law?

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

([2]) Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23).

Request for a preliminary ruling from the Tribunalul București (Romania) lodged on 25 March 2019 — JE v KF

(Case C-249/19)

(2019/C 206/32)

Language of the case: Romanian

Referring court

Tribunalul București

Parties to the main proceedings

Appellant: JE

Rrespondent: KF

Question referred

On a proper construction of Article 10 of Regulation No 1259/2010, ([1]) under which '[w]here the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum shall apply', is the expression 'the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce' to be interpreted in a strict, literal manner, that it is to say only in respect of a situation where the foreign law applicable makes no provision for any form of divorce, or (b) more broadly, as also including a situation where the foreign law applicable permits divorce, but does so in extremely limited circumstances, involving an obligatory legal separation procedure prior to divorce, in respect of which the law of the forum contains no equivalent procedural provisions?

([1]) Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ 2010 L 343, p. 10).

Request for a preliminary ruling from the Tribunal da Relação de Guimarães (Portugal) lodged on 26 March 2019 — MH, NI v OJ, Novo Banco SA

(Case C-253/19)

(2019/C 206/33)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Guimarães

Parties to the main proceedings

Applicants at first instance and appellants on appeal: MH, NI

Defendants at first instance and respondents on appeal: OJ, Novo Banco SA

Question referred

Under Regulation (EU) 2015/848 ([1]) of the European Parliament and of the Council, do the courts of a Member State have jurisdiction to open main insolvency proceedings in respect of a citizen whose sole immovable asset is located in that State, while he, along with his family unit, is habitually resident in another Member State where he is in paid employment?

([1]) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 192).

Reference for a preliminary ruling from the High Court (Ireland) made on 26 March 2019 — Friends of the Irish Environment Limited v An Bord Pleanála

(Case C-254/19)

(2019/C 206/34)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Friends of the Irish Environment Limited

Defendant: An Bord Pleanála

Questions referred

1) Does a decision to extend the duration of a development consent constitute the agreement of a project such as to trigger Article 6(3) of Council Directive 92/43/EEC ([1]) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter 'the Habitats Directive')?

2) Is the answer to Question (1) above affected by any of the following considerations?

   a) The development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive in that the legislation incorrectly equated an appropriate assessment for the purposes of the Habitats Directive with an environmental impact assessment for the purposes of the EIA Directive (Directive 2011/92/EU ([2])).

   b) The development consent as originally granted does not record whether the consent application was dealt with under Stage 1 or Stage 2 of Article 6(3) of the Habitats Directive, and does not contain 'complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the site concerned' as required under Case C-404/09, Commission v. Spain ([3]).

c) The original period of the development consent has expired, and as a consequence the development consent has ceased to have effect in respect of the entire development. No development works can be carried out pursuant to the development consent pending its possible extension.

d) No development works were ever carried out pursuant to the development consent.

3) In the event that the answer to Question (1) is 'yes', what considerations are the competent authority required to have regard to in carrying out a Stage 1 screening exercise pursuant to Article 6(3) of the Habitats Directive? For example, is the competent authority required to have regard to any or all of the following considerations: (i) whether there are any changes to the proposed works and use; (ii) whether there has been any change in the environmental background, e.g. in terms of the designation of European Sites subsequent to the date of the decision to grant development consent; (iii) whether there have been any relevant changes in scientific knowledge, e.g., more up-to-date surveys in respect of qualifying interests of European Sites? Alternatively, is the competent authority required to assess the environmental impacts of the entire development?

4) Is there any distinction to be drawn between (i) a development consent which imposes a time-limit on the period of an activity (operational phase), and (ii) a development consent which only imposes a time-limit on the period during which construction works may take place (construction phase) but, provided that the construction works are completed within that time-limit, does not impose any time-limit on the activity or operation?

5) To what extent, if any, is the obligation of a national court to interpret legislation insofar as possible in accordance with the provisions of the Habitats Directive and the Aarhus Convention subject to a requirement that the parties to the litigation have expressly raised those interpretive issues? More specifically, if national law provides two decision-making processes, only one of which ensures compliance with the Habitats Directive, is the national court obliged to interpret national legislation to the effect that only the compliant decision-making process can be invoked, notwithstanding that this precise interpretation has not been expressly pleaded by the parties in the case before it?

6) If the answer to Question (2)(a) above is to the effect that it is relevant to consider whether the development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive, is the national court required to disapply a rule of domestic procedural law which precludes an objector from questioning the validity of an earlier (expired) development consent in the context of a subsequent application for development consent? Is such a rule of domestic procedural law inconsistent with the remedial obligation as recently restated in Case C-348/15, Stadt Wiener ([4])?

([1]) OJ 1992, L 206, p. 7.

([2]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012, L 26, p. 1).

([3]) EU:C:2011:768.

([4]) EU:C:2016:882.

Reference for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 26 March 2019 — Secretary of State for the Home Department v O A

(Case C-255/19)

(2019/C 206/35)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: O A

Questions referred

1. Is 'protection of the country of nationality' within the meaning of Article 11(l)(e) and Article 2(e) of the Qualification Directive ([1]) to be understood as state protection?

2. In deciding the issue of whether there is a well-founded fear of being persecuted within the meaning of Article 2(e) of the QD and the issue of whether there is protection available against such persecution, pursuant to Article 7 QD, is the 'protection test' or 'protection inquiry' to be applied to both issues and, if so, is it governed by the same criteria in each case?

3. Leaving to one side the applicability of protection by non-State actors under Article 7(l)(b), and assuming the answer to question (1) above is yes, is the effectiveness or availability of protection to be assessed solely by reference to the protective acts/functions of state actors or can regard be had to the protective acts/functions performed by private (civil society) actors such as families and/or clans?

4. Are (as is assumed in questions (2) and (3)) the criteria governing the 'protection inquiry' that has to be conducted when considering cessation in the context of Article 11(l)(e), the same as those to be applied in the Article 7 context?

([1]) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004, L 304, p. 12).

Action brought on 26 March 2019 — European Commission v Ireland

(Case C-257/19)

(2019/C 206/36)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. L. Kalėda, N. Yerrell, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that by failing to provide for an investigative body which is independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it, Ireland has failed to fulfil its obligations under Article 8(1) of Directive 2009/18/EC ([1]) of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council;

— order Ireland to pay the costs.

Pleas in law and main arguments

According to Article 8(1) of Directive 2009/18/EC, Member States must ensure that safety investigations into very serious marine casualties are conducted under the responsibility of an impartial permanent investigative body. In order to carry out a safety investigation in an unbiased manner, Article 8(1) requires the investigative body to be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

The Commission considers that this requirement is not satisfied by the Marine Casualty Investigation Board set up by Ireland, on the grounds that two of its five members also have general regulatory and enforcement responsibilities in relation to the maritime safety of vessels flying the Irish flag and safety inspections in Irish waters.

([1]) OJ 2009, L 131, p. 114.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 28 March 2019 — T Systems Magyarország Zrt. and Others v Közbeszerzési Hatóság Közbeszerzési Döntőbizottság and Others

(Case C-263/19)

(2019/C 206/37)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicants: T Systems Magyarország Zrt., BKK Budapesti Közlekedési Központ Zrt., Közbeszerzési Hatóság Közbeszerzési Döntőbizottság

Defendants: Közbeszerzési Hatóság Közbeszerzési Döntőbizottság, BKK Budapesti Közlekedési Központ Zrt., T Systems Magyarország Zrt

Intervener: Közbeszerzési Hatóság Elnöke

Questions referred

1. Do Articles 41(1) and 47 of the Charter of Fundamental Rights of the European Union, as well as recitals 10, 29, 107, 109 and 111 and Articles 1(2) and 72 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, ([1]) preclude a national rule or a practice in relation to the interpretation and application of that rule which, taking into account the contractual legal relationship between the contracting parties, stipulates that an infringement for an unlawful failure to hold a public tender, allegedly violating the rules concerning the modification of contracts, and a failure to comply with the provisions governing the modification of contracts, is committed not only by the contracting entity, but also by the successful tenderer which concluded the contract with it, on the basis that the unlawful modification of the contracts requires joint action by the parties?

2. In the event that the first question is answered in the negative, taking into account the provisions of Articles 41(1) and 47 of the Charter of Fundamental Rights of the European Union and recitals 10, 29, 107, 109 and 111 and Articles 1(2) and 72 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, do recitals 19, 20 and 21 of 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, ([2]) and Article 2(2) of 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, ([3]) 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, ([4]) preclude a national rule or a practice in relation to the interpretation and application of that rule which allows a penalty (fine) — other than a reduction in the duration of the contract — for unlawful failure to hold a public tendering procedure and for failure to comply with the rules on the modification of contracts to be imposed also on the successful tenderer which concluded the contract with the contracting entity?

3. If the first two questions are answered in the negative, the referring court asks the Court of Justice of the European Union to also provide it with guidance as to whether, in order to determine the amount of the penalty (fine), it is sufficient that there is a contractual legal relationship between the parties, without it being necessary to examine the action and the contribution of the parties which led to the modification of the contract.

([1]) OJ 2014 L 94, p. 65.
([2]) OJ 2007 L 335, p. 31.
([3]) OJ 1989 L 395, p. 33.
([4]) OJ 1992 L 76, p. 14.

Reference for a preliminary ruling from the High Court (Ireland) made on 29 March 2019 — Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Ltd, Minister for Jobs Enterprise and Innovation, Ireland, Attorney General

(Case C-265/19)

(2019/C 206/38)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Recorded Artists Actors Performers Ltd

Defendants: Phonographic Performance (Ireland) Ltd, Minister for Jobs Enterprise and Innovation, Ireland, Attorney General

Questions referred

1. Is the obligation on a national court to interpret the Directive 2006/115 ([1]) on rental right and lending right and on certain rights related to copyright in the field of intellectual property ('the Directive') in the light of the purpose and objective of the Rome Convention ([2]) and/or the WPPT ([3]) confined to concepts which are expressly referenced in the Directive, or does it, alternatively, extend to concepts which are only to be found in the two international agreements? In particular, to what extent must Article 8 of the Directive be interpreted in light of the requirement for 'national treatment' under Article 4 of the WPPT?

2. Does a Member State have discretion to prescribe criteria for determining which performers qualify as 'relevant performers' under Article 8 of the Directive? In particular, can a Member State restrict the right to share in equitable remuneration to circumstances where either (i) the performance takes place in a European Economic Area ('EEA') country, or (ii) the performers are domiciles or residents of an EEA country?

3. What discretion does a Member State enjoy in responding to a reservation entered by another Contracting Party under article 15(3) of the WPPT? In particular, is the Member State required to mirror precisely the terms of the reservation entered by the other Contracting Party? Is a Contracting Party required not to apply the 30-day rule in Article 5 of the Rome Convention to the extent that it may result in a producer from the reserving party receiving remuneration under Article 15(1) but not the performers of the same recording receiving remuneration? Alternatively, is the responding party entitled to provide rights to the nationals of the reserving party on a more generous basis than the reserving party has done, i.e. can the responding party provide rights which are not reciprocated by the reserving party?

4. Is it permissible in any circumstances to confine the right to equitable remuneration to the producers of a sound recording, i.e. to deny the right to the performers whose performances have been fixed in that sound recording?

([1]) OJ 2006, L 376, p. 28.

([2]) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

([3]) WIPO Performances and Phonograms Treaty 1996.

Request for a preliminary ruling from the Supremo Tribunal de Justiça (Portugal) lodged on 2 April 2019 — Sportingbet PLC, Internet Opportunity Entertainment Ltd v Santa Casa da Misericórdia de Lisboa, Sporting Club de Braga, Sporting Club de Braga — Futebol, SAD

(Case C-275/19)

(2019/C 206/39)

Language of the case: Portuguese

Referring court

Supremo Tribunal de Justiça

Parties to the main proceedings

Appellants: Sportingbet PLC, Internet Opportunity Entertainment Ltd

Respondents: Santa Casa da Misericórdia de Lisboa, Sporting Club de Braga, Sporting Club de Braga — Futebol, SAD

Questions referred

1. Given that the Portuguese State did not inform the European Commission of the technical regulations contained in Decree-Law No 442/89 of 2 December 1989, should those provisions – more specifically Article 3 (using the wording shown) and Article 9 mentioned below – be unenforceable, and can individuals rely on that lack of enforceability?

2. Given that the Portuguese State did not inform the European Commission of the technical regulations contained in Decree-Law No 282/2003 of 8 November 2003, should those provisions – more specifically Article 2 and Article 3 mentioned below – be unenforceable as against service providers in Portugal?

Action brought on 1 April 2019 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-276/19)

(2019/C 206/40)

Language of the case: English

Parties

Applicant: European Commission (represented by: A. X. P. Lewis, J. Jokubauskaitė, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that by introducing new simplification measures that extend the zero-rating and the exception to the normal requirement of keeping Value Added Tax records provided for by the original Terminal Markets Order 1973 without applying to the Commission with a view to seek the Council's authorisation, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 395 (2) of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax ('VAT Directive');

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

Pleas in law and main arguments

On 28 December 1977, the United Kingdom notified special measures including the Value Added Tax (Terminal Markets) Order 1973 that permits commodity futures to be traded on certain markets in the United Kingdom free of VAT and of the recording requirements of VAT subject to certain conditions.

The Value Added Tax (Terminal Markets) Order 1973 was amended several times to add to its scope a number of commodities markets that were not listed in the original notification.

The Commission claims that the amendments made to the Value Added Tax (Terminal Markets) Order 1973 enlarge the scope of the original derogation that the United Kingdom had notified in 1977. They should consequently have been notified to the Commission pursuant to Article 395 (1) of the VAT Directive but they were not.

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

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 3 April 2019 — YT and Others v Ministero dell'Istruzione, dell'Università e della Ricerca, Ufficio Scolastico Regionale per la Campania

(Case C-282/19)

(2019/C 206/41)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicants: YT and Others

Defendants: Ministero dell'Istruzione, dell'Università e della Ricerca, Ufficio Scolastico Regionale per la Campania

Questions referred

1. Does the different treatment accorded only to Catholic religious education teachers, such as the applicants, constitute discrimination on grounds of religion, within the meaning of Article 21 of the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC, ([1]) or does the fact that the certificate attesting to their suitability issued to these workers can be revoked constitute an adequate reason why only Catholic religious education teachers, such as the applicants, are treated differently from other teachers and are not covered by any measure precluding such treatment, as required under Clause 5 of the framework agreement on fixed-term work concluded on 18 March 1999 and annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?; ([2])

2. If direct discrimination is taken to have occurred, within the meaning of Article 2(2)(a) of Directive 2000/78/EC, on grounds of religion (Article 1), and the Charter of Fundamental Rights of the European Union, the Court is requested to consider what instruments are available to the referring court to eliminate the effects of such discrimination, bearing in mind that all teachers other than Catholic religious education teachers are now covered by the special recruitment plan laid down in Law No 107/15, being granted tenure and consequently given employment contracts of indefinite duration. Should this court therefore impose an employment relationship of indefinite duration with the defendant public authorities?;

3. Must Clause 5 of the framework agreement laid down in Directive 1999/70/EC be interpreted as precluding a national legal provision, such as the provision at issue, under which the rules of ordinary law governing employment relationships and intended to penalise the misuse of successive fixed-term employment contracts by the automatic conversion of a fixed-term contract into a contract of indefinite duration where the employment relationship continues for more than a certain period of time, do not apply to the schools sector — specifically to Catholic religious education teachers — and therefore permit successive fixed-term employment contracts for an indefinite period of time? In particular, can the requirement to obtain the approval of the diocesan ordinary constitute an objective reason within the meaning of Clause 5(1)(a) of the framework agreement, or, instead, should such treatment be regarded as discrimination prohibited under Article 21 of the Charter of Fundamental Rights of the European Union?;

4. If the answer to question 3 is in the affirmative, do Article 21 of the Charter of Fundamental Rights of the European Union, Clause 4 of the framework agreement laid down in Directive 1999/70/EC and/or Article 1 of Directive 2000/78/EC permit the disapplication of provisions that preclude the automatic conversion of a fixed-term employment contract into an employment contract of indefinite duration where the employment relationship continues for more than a certain period of time?

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

([2]) OJ 1999 L 175, p. 43.

Request for a preliminary ruling from the Tribunal d'instance d'Aulnay-Sous-Bois (France) lodged on 5 April 2019 — JE, KF v XL Airways SA

(Case C-286/19)

(2019/C 206/42)

Language of the case: French

Referring court

Tribunal d'instance d'Aulnay-Sous-Bois

Parties to the main proceedings

Applicants: JE, KF

Defendant: XL Airways SA

Questions referred

1. Whether both limbs of Article 3(2)(a) apply in the case of a delayed flight:

   (a) Having regard to the fact that as the result of a case-law construct (judgment of 19 November 2009, *Sturgeon*, C-402/07 and C-432/07, EU:C:2009:716) the right to compensation that Article 7 of Regulation (EC) No 261/2004 of 11 February 2004 ([1]) establishes for denied boarding or cancellation was extended to include delayed flights, does the express condition that passengers must present themselves for check-in laid down in Article 3(2)(a) of Regulation (EC) No 261/2004 of 11 February 2004, which applies only in the case of denied boarding, apply in the context of compensation claimed by a passenger who has not been denied boarding but whose flight has been delayed?

(b) If the answer to question 1(a) is in the affirmative, having regard to the objectives of the time limit laid down by Article 3(2)(a) of Regulation (EC) No 261/2004 of 11 February 2004 ('not later than 45 minutes before the published departure time') that relate to overbooked flights and security objectives, must that time limit be interpreted, in that case, as being 'not later than 45 minutes before the new departure time of the delayed flight published on the airport information boards or communicated to passengers'?

2. The burden of proving 'presentation at check-in'

If the answer to question 1(a) is in the affirmative, that is to say, if Article 3(2)(a) of Regulation (EC) No 261/2004 of 11 February 2004 does apply to compensation applied for by a passenger whose flight has been delayed:

(a) Are the conditions established in Article 3(2)(a) preconditions that the consumer must prove have been satisfied in order for the regulation to apply, or grounds for exonerating the airline by allowing it to produce the passenger list in order to show that the consumer did not present him or herself for check-in "as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time" to which Article 3(2)(a) of Regulation (EC) No 261/2004 of 11 February 2004 refers, in the light of technological developments that now allow boarding cards to be issued electronically, the absence of any time stamp on paper boarding cards, the correlative absence of any obligation for passengers to present themselves physically at a check-in counter and the fact that the airlines alone hold all the information about passenger check-in until check-in operations are closed?

(b) Do the principle of effectiveness, the objectives of Regulation (EC) No 261/2004 of 11 February 2004 and the high level of protection of passengers and consumers in general guaranteed by Regulation (EC) No 261/2004 of 11 February 2004 or other provisions of Community law preclude placing exclusively on passengers alone the burden of proving that they presented themselves for check-in 'as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time' to which Article 3(2)(a) of Regulation (EC) No 261/2004 of 11 February 2004 refers, in the light of technological developments that now allow boarding cards to be issued electronically, the absence of any time stamp on paper boarding cards, the correlative absence of any obligation for passengers to present themselves physically at a check-in counter and the fact that the airlines alone hold all the information about passenger check-in until check-in operations are closed?

([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 Finanzgericht des Saarlandes (Germany) lodged on 9 April 2019 — QM v Finanzamt Saarbrücken

(Case C-288/19)

(2019/C 206/43)

Language of the case: German

Referring court

Finanzgericht des Saarlandes

Parties to the main proceedings

Applicant: QM

Defendant: Finanzamt Saarbrücken

Question referred

Is Article 56(2) of the VAT Directive ([1]) to be interpreted as meaning that 'hiring of a means of transport to a non-taxable person' should also be understood as referring to the provision of a vehicle (company car) forming part of the assets of the business of a taxable person to his staff, if the employee does not provide consideration for it that does not consist in (part of) the work performed by him, and thus does not make any payment, does not use any of his cash remuneration for it, and also does not choose between various benefits offered by the taxable person under an agreement between the parties according to which the entitlement to use the company car is contingent on the forgoing of other benefits?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) as amended by Council Directive 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11).

GENERAL COURT

Judgment of the General Court of 11 April 2019 — Adapta Color v EUIPO — Coatings Foreign IP (Rustproof System ADAPTA)

(Case T-226/17) ([1])

(EU trade mark — Invalidity proceedings — European Union word mark Rustproof system ADAPTA — Partial declaration of invalidity by the Board of Appeal — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2007/1001) — No distinctive character acquired by use — Article 7(3) of Regulation No 207/2009 (now Article 7(3) of Regulation 2017/1001) — Infringement of the right to be heard — Obligation to state reasons — Article 75 of Regulation No 207/2009 (now Article 94 of Regulation 2017/1001) — Evidence submitted for the first time before the Court)

(2019/C 206/44)

Language of the case: English

Parties

Applicant: Adapta Color, SL (Peñiscola, Spain) (represented by: G. Macías Bonilla, G. Marín Raigal and E. Armero Lavie, lawyers)

Defendant: European Union Intellectual Property Office (represented by: E. Markakis, A. Söder and D. Walicka, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Coatings Foreign IP Co. LLC (Wilmington, Delaware, United States) (represented by: A. Rajendra, Solicitor, and by S. Malynicz QC)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 6 February 2017 (Case R 2408/2015-5), relating to invalidity proceedings between Coatings Foreign IP and Adapta Color.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Adapta Color, SL to pay the costs.*

([1]) OJ C 202, 26.6.2017.

Order of the General Court of 8 April 2019 — Electroquimica Onubense v ECHA

(Case T-481/18) ([1])

(REACH — Representation by a lawyer who is not a third party — Manifest inadmissibility)

(2019/C 206/45)

Language of the case: Spanish

Parties

Applicant: Electroquimica Onubense (Palos de la Frontera, Spain) (represented by D.González Blanco, lawyer)

Defendant: European Chemicals Agency (ECHA) (represented by J.-P Trnka, C.-M. Bergerat and M. Heikkila, acting as Agents, and C. García Molyneux, lawyer)

Re:

Action brought against ECHA Decision SME D(2018)2931-DC of 31 May 2018, finding that the applicant does not fulfil the requirements for the fee reduction provided for in respect of small enterprises and imposing an administrative charge on it.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Electroquimica Onubense, SL is ordered to pay the costs.*

([1]) OJ C 352, 1.10.2018.

Order of the President of the General Court of 2 April 2019 — Lantmännen and Lantmännen Agroetanol v Commission

(Case T-79/19 R)

(Application for interim measures — Competition — Settlement procedure — Access to documents — No urgency)

(2019/C 206/46)

Language of the case: English

Parties

Applicants: Lantmännen ek för (Stockholm, Sweden), Lantmännen Agroetanol AB (Norrköping, Sweden) (represented by: S. Perván Lindeborg, A. Johansson, lawyers, and R. Bachour, Solicitor)

Defendant: European Commission (represented by: F. Jimeno Fernández, G. Conte and C. Urraca Caviedes, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the European Commission C(2019) 743 final of 28 January 2019 on an objection to disclosure submitted by Lantmännen ek för and Lantmännen Agroetanol AB pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the functioning and terms of reference of the hearing officer in certain competition proceedings (Case AT.40054 — Ethanol Benchmarks).

Operative part of the order

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

2. *The order of 14 February 2019, Lantmännen and Lantmännen Agroetanol v Commission (T-79/19 R), is cancelled.*

3. *The costs are reserved.*

Action brought on 18 February 2019 — Magnan v Commission

(Case T-99/19)

(2019/C 206/47)

Language of the case: French

Parties

Applicant: Nathaniel Magnan (Aix-en-Provence, France) (represented by: J. Fayolle, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the present action admissible in respect of the European Commission's failure to act and establish the non-contractual liability of the Commission on the basis of Article 340 TFEU;

— declare the present action for annulment of the European Commission's implicit decision to refuse to act, in a letter dated 20 December 2018, admissible;

— as regards the substance, first,

— give a ruling stating that Article 55(a) of the Loi sur l'Assurance-maladie (LAMal) (Law on medical insurance) infringes:

— Article 2 (non-discrimination), Article 7 (right to equal treatment) and Article 13 (standstill obligation) of the Agreement on the Free Movement of Persons between Switzerland and the European Union (AFMP);

— Article 55 of Directive 2005/36/EC on the recognition of professional qualifications;

— find that the horizontal directive of the Canton of Geneva relating to 'Recruitment procedure within public law institutions and subsidised entities' infringes the Agreement on the Free Movement of Persons between Switzerland and the European Union (AFMP) and that all the other Swiss federal laws on national preference infringe the AFMP;

— find that, in return, there are no discriminatory measures by the Member States vis-à-vis doctors who are Swiss nationals;

— find that the European Commission, which must ensure the application of the Treaties, wrongfully failed to act, thereby infringing the principle of legitimate expectations and the principle of certainty of the acquired rights of Dr Nathaniel Magnan;

— find that there is a causal link between the European Commission's wrongful failure to act and the harm suffered by Dr Nathaniel Magnan;

— find that the European Commission failed to act;

— order the European Commission to pay the sum of EUR 1141 198.10 euros (one million one hundred and forty-thousand one hundred and ninety-eight euros and ten cents; exchange rate of 7 January 2019 at 11:39 UTC) corresponding to CHF 1 281 444 (one million two hundred and eighty-one thousand four hundred and forty-four Swiss francs) to Dr Nathaniel Magnan, in respect of damage already suffered since 2013 on the basis of the non-contractual liability of the Commission on the basis of Article 340 TFEU;

— order the European Commission, on the basis of Article 340 TFEU, for failure to act, to pay the sum of EUR 500 (five hundred euros) per working day to Dr Nathaniel Magnan as a result of the continuous, permanent and current financial damage, corresponding to daily financial damage until the Swiss Confederation complies with the AFMP, or the withdrawal of one of the parties from the agreement;

— secondly,

— find that the European Commission's letter of reply dated 20 December 2018 constitutes a decision to refuse;

— annul the implied decision of the European Commission to refuse to act against the Swiss Confederation for infringement of the Treaties and not to pay compensation for the damage suffered.

Pleas in law and main arguments

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

1. First plea in law, alleging Switzerland's failure to comply with the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ 2002 L 114, p. 6) and Directive No 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22). The applicant submits that the Swiss Confederation, in July 2013, adopted a provision restricting doctors from setting up in overstaffed areas covered by compulsory Swiss medical insurance, which constitutes indirect discrimination on grounds of nationality, in so far as that restriction does not relate to doctors with 3 years' experience in Swiss university hospitals.

2. Second plea in law, alleging that there are no discriminatory measures on the part of the European Union vis-à-vis doctors who are Swiss nationals, in the name of the principle of reciprocity in international law, which the General Court should find, in the submission of the applicant.

3. Third plea in law, alleging the Commission's wrongful failure to act, in so far as it was obliged to act because it is the guarantor of the Treaties under Article 17(1) TEU and of the fundamental rights of European Union citizens. In that regard, the applicant relies on the principles of legitimate expectations towards institutions and legal certainty of acquired rights.

4. Fourth plea in law, alleging that the Commission's failure to deal with the applicant's request to act urgently constitutes, as fact, an implied refusal and therefore a decision adversely affecting him.

5. Fifth plea in law, alleging that the Commission is non-contractually liable on the basis of Article 340 TFEU for failure to act.

Action brought on 15 March 2019 — Breyer v Commission

(Case T-158/19)

(2019/C 206/48)

Language of the case: German

Parties

Applicant: Patrick Breyer (Kiel, Germany) (represented by: J. Breyer, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 17 January 2019 bearing the reference Ares(2018)6073379; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. Misapplication of the first indent of Article 4(2) of Regulation (EC) No 1049/2001 ([1]) (protection of commercial interests)

   — In the first plea in law the applicant argues that the disclosure of documents concerning the approval and execution of the iBorderCtrl research project would not negatively impact the protection of the commercial interests of the consortium's members. The subject matter of the 'Intelligent Portable Border Control System' project is research into new technologies for immigration control, such as the introduction of 'automated lie detection' and the calculation of a risk value.

   — Further, the applicant claims that there is an overriding public interest in the disclosure of the documents at issue.

2. Second plea in law: misapplication of Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001(processing of applications)

   — In the second plea in law the applicant maintains that the Commission processed only the application for access to documents on the execution of the iBorderCtrl research project. However, the application for access to documents relating to the project's approval was not processed.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 22 March 2019 — Vincenti v EUIPO

(Case T-174/19)

(2019/C 206/49)

Language of the case: German

Parties

Applicant: Guillaume Vincenti (Alicante, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the appointing authority of EUIPO, sent by letter of 6 June 2018, not to promote the applicant to the next grade (AST 8) in the 2014 promotion exercise, the 2015 promotion exercise, the 2016 promotion exercise and the 2017 promotion exercise; and

— order EUIPO to pay the costs.

Pleas in law and main arguments

The action is based on the following pleas in law.

1. Infringement of Article 45 of the Staff Regulations of Officials of the European Union, manifest errors of assessment and incorrect implementation of, or failure to comply with, the judgment of 14 November 2017, *Vincenti* v *EUIPO* (T-586/16, EU:T:2017:803)

In the context of the first plea, the applicant claims that the appointing authority of the defendant infringed Article 45 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), made manifest errors of assessment and failed to implement, or incorrectly implemented, the judgment of 14 November 2017, *Vincenti* v *EUIPO* (T-586/16, EU:T:2017:803), in so far as that authority did not treat the applicant as though it had, at the material times, allowed him to take part in the individual reporting procedures, but instead carried out an overall assessment when the contested decisions were adopted on 6 June 2018. The refusal to promote the applicant should, in accordance with that judgment, not have been based on circumstances which, at the time when the appointing authority would have been required to make a decision, were not yet known to the Office.

The applicant further submits that the overall refusal to promote him for four consecutive years by reference to the same conduct is unlawful because it constitutes a similarly severe penalty to that of Article 9(1)(e) and (f) of Annex IX to the Staff Regulations and therefore ultimately constitutes a sustained and punitive refusal to promote him which circumvents the rights of the defence to which he is entitled in disciplinary proceedings, as well as 'double jeopardy'.

The applicant also claims that the contested decisions of the Office unlawfully discriminated against him on account of his long-term illness, since the defendant did not positively count the time of his illness as time in which he had improved the conduct for which he was reproached, which constitutes a manifest error of assessment and a misapplication of Article 45 of the Staff Regulations and the judgment of 14 November 2017, *Vincenti* v *EUIPO* (T-586/16, EU:T:2017:803).

2. Infringement of the applicant's right to be heard under Article 41(2)(a) of the Charter of Fundamental Rights of the European Union and of the applicant's procedural rights under Article 5 of Commission Decision C(2013) 8968 final of 16 December 2013 laying down general provisions for implementing Article 45 of the Staff Regulations, in particular under Article 5(5) and (7) of that decision

In the context of the second plea, the applicant claims that the defendant infringed the applicant's fundamental right to be heard before the adoption of a decision adversely affecting him, after the applicant was not given the opportunity to make his views known beforehand. This is not disputed by the defendant.

The defendant therefore also directly infringed the applicant's procedural rights under Article 5 of Commission Decision C(2013) 8968 final of 16 December 2013 laying down general provisions for implementing Article 45 of the Staff Regulations, in particular under Article 5(5) and (7) of that decision, which, moreover, reflect the considerable importance of the fundamental right to be heard that was infringed and confirm that the applicant also had the right to be heard in the present case before the adoption of the contested decisions.

Action brought on 27 March 2019 — Dickmanns v EUIPO

(Case T-181/19)

(2019/C 206/50)

Language of the case: German

Parties

Applicant: Sigrid Dickmanns (Gran Alacant, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: European Union Intellectual Property Office

Form of order sought

The applicant claims that the Court should:

— annul EUIPO's decisions notified by letter of 4 June 2018 refusing the applicant's applications made by letter of 25 January 2018 seeking:

i. removal of the termination clause in Article 5 of the applicant's contract, reclassification of her contract as a contract of indefinite duration under Article 2(f) of the Conditions of Employment of Other Servants of the European Communities ('CEOS') and, to the extent necessary for the above, the withdrawal of the decision of 14 December 2017; and

ii. a second renewal of her contract under Article 2(f) CEOS beyond 30 June 2018 (or, as the end date of the contract was pushed back on account of the applicant's ill health, beyond 30 September 2018) or, as a minimum, however, inclusion of the applicant in the procedure for a second renewal of the contracts of temporary agents under Article 2(f) CEOS whose contracts end in 2018 in accordance with the 'Guidelines for the renewal of temporary agent contracts' of 28 January 2016 ('the Guidelines');

— order EUIPO to pay to the applicant compensation of a reasonable amount, at the Court's discretion, in respect of the non-pecuniary and non-material loss caused to the applicant by EUIPO's decision referred to above; and

— order EUIPO to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. Manifest error of assessment, failure to exercise the defendant's discretion, infringement of the principles of non-discrimination and equal treatment, infringement of the principle of non-arbitrariness

2. Unlawfulness of the termination clause due to infringement of the Guidelines, the principle of sound administration, the principles of non-discrimination and equal treatment and the principle that the ending of the contract of a temporary agent requires a justifying ground (a 'iusta causa') and infringement of Article 30 of the Charter of Fundamental Rights of the European Union, Directive 1999/70/EC, ([1]) the Framework Agreement (in particular Articles 1(b) and 5.1 thereof) and Article 4 of ILO Convention No 158 concerning Termination of Employment at the Initiative of the Employer

3. Infringement of the Guidelines, which also constitutes a significant procedural defect, infringement of the principles of non-discrimination and equal treatment, of the principle of sound administration and sound financial management, of the right of every person to be heard, before any individual measure which would affect him or her adversely is taken (Article 41(2)(a) of the Charter of Fundamental Rights of the European Union), of the defendant's duty to have regard for the welfare of its staff and of the duty to take into account the legitimate interests of the applicant, manifest error of assessment in its balancing of the applicant's interests with those of the service and infringement of the principle of non-arbitrariness

4. As a result of the infringement of the second and third sentences of the first paragraph of Article 8 CEOS and of the prohibition on repeated fixed-term employment, the applicant's contract remains valid for an unlimited period of time without a termination clause

5. Unlawful retention of a termination clause in the context of the Reinstatement Protocol and infringement of legitimate expectations, the applicant's legitimate interests and the defendant's duty to have regard for the welfare of its staff when exercising the clause at issue

6. Infringement of the applicant's legitimate expectations, of the defendant's duty to have regard for the applicant's welfare and failure to take into account the legitimate interests of the applicant as a result of the refusal to renew the contract and manifest error of assessment in the assessment of the interests of the service

([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).

Action brought on 4 April 2019 — Ceramica Flaminia v EUIPO — Ceramica Cielo (goclean)

(Case T-192/19)

(2019/C 206/51)

Language in which the application was lodged: Italian

Parties

Applicant: Ceramica Flaminia SpA (Civita Castellana, Italy) (represented by: A. Improda and R. Arista, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ceramica Cielo SpA (Fabrica di Roma, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: EU figurative mark goclean — EU trade mark No 13 270 046

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 January 2019 in Case R 991/2018-2

Form of order sought

The applicant claims that the Court should:

— annul and alter the contested decision;

— and, consequently,

— recognise the validity of EU trade mark No 13270046 'goclean', registered on 9 February 2013, in respect of all or some of the goods in Class 11 (Flushing tanks for toilets; Toilet bowls; Water distribution installations);

— order EUIPO and/or the applicant Ceramica Cielo S.p.A. to pay Ceramica Flaminia S.p.A.'s costs relating to the present proceedings as well as the two previous stages before the Cancellation Division and the Board of Appeal.

Pleas in law

— Infringement and misapplication of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Interpretation of distinctive character within the meaning of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Unfounded classification of the mark as a slogan;

— Infringement and misapplication of Article 95(1) in conjunction with Article 59 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement and misapplication of Article 7(3) and Article 59(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 4 April 2019 — Achema and Achema Gas Trade v Commission

(Case T-193/19)

(2019/C 206/52)

Language of the case: English

Parties

Applicants: Achema AB (Jonava, Lithuania) and Achema Gas Trade UAB (Jonava) (represented by: J. Ruiz Calzado, J. Wileur, and N. Solárová, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission decision C(2018) 7141 final, adopted by the European Commission on 31 October 2018 in State aid case SA.44678 (2018/N) — Lithuania — Modification of aid for LNG Terminal in Lithuania;

— order the Commission and any interveners in support of the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law, to the effect that the Commission failed to initiate a formal investigation procedure, thereby depriving the applicants and other interested third parties of the procedural rights of Article 108(2) TFEU.

— The applicants argue that all the evidence in this case indicates that the Commission should have had doubts about the compatibility of the State aid with the internal market and therefore should have opened a formal investigation. The evidence ranges from the length of the preliminary investigation, other circumstances under which the contested decision was adopted and the flaws reflected in the content of the decision, which is insufficiently reasoned and vitiated by serious errors of assessment. Moreover, it is alleged that the Commission ignored very relevant aspects that should have been considered before concluding that it had enough information to declare the aid compatible with the internal market.

— In particular, the applicants argue that: (i) the assessment of the need for a Service of General Economic Interest (SGEI) and its scope is flawed and insufficient; (ii) the Commission erred in finding that the aid was compliant with the SGEI framework; (iii) the contested decision did not sufficiently assess the latest amendments to the aid and therefore lacks adequate reasoning; (iv) the assessment in the contested decision of the necessity and proportionality of the aid measures is flawed and insufficient; and (v) the contested decision fails to sufficiently assess the significant impact on competition in the supply of gas in Lithuania and trade with other Member States.

Action brought on 3 April 2019 — GEA Group v Commission

(Case T-195/19)

(2019/C 206/53)

Language of the case: English

Parties

Applicant: GEA Group AG (Düsseldorf, Germany) (represented by: I. du Mont, R. van der Hout and C. Wagner, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decision BUDG/DGAl/C/4/PL/Ares(2019) s. 283284 of 24 January 2019; and

— 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, alleging that the contested decision violates Article 266 TFEU as it would have declined to repay the fines paid by the applicant in order to comply with Commission decision C(2016) 3920 of 29 June 2016.

2. Second plea in law, alleging that the contested decision violates Article 266 TFEU as it would have reapplied de facto decision C(2010) 727 (final) of 8 February 2010 or Commission decision C(2016) 3920 of 29 June 2016 which both would have been annulled by the General Court by the judgment of 15 July 2015, GEA Group v Commission, T-189/10, EU:T:2015:504 and by the judgment of 18 October 2018, GEA Group v Commission, T-640/16, EU:T:2018:700 respectively.

Action brought on 4 April 2019 — Wiegand-Glashüttenwerke v Commission

(Case T-197/19)

(2019/C 206/54)

Language of the case: German

Parties

Applicant: Wiegand-Glashüttenwerke GmbH (Steinbach am Wald, Germany) (represented by: F. Wagner and N. Voß, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use (Großbreitenbach and Schleusingen locations) repay more than 20 % of the published network charges and baseload consumers with at least 7 500 annual hours of use (Steinbach am Wald location) repay more than 15 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges for the Steinbach am Wald location; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 4 April 2019 — Glaswerk Ernstthal v Commission

(Case T-199/19)

(2019/C 206/55)

Language of the case: German

Parties

Applicant: Glaswerk Ernstthal GmbH (Lauscha, Germany) (represented by F. Wagner and N. Voß, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the year 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 5 April 2019 — BL and BM v Council and Others

(Case T-204/19)

(2019/C 206/56)

Language of the case: French

Parties

Applicants: BL and BM (represented by: N. de Montigny, lawyer)

Defendants: Council of the European Union, European Commission, European External Action Service and Eulex Kosovo

Form of order sought

The applicants claim that the Court should:

— primarily,

— with regard to the rights derived from the private law contract,

— reclassify their contractual relationship as a contract of employment of indefinite duration;

— find that there has been an infringement by the defendants of their contractual obligations and, in particular, of their obligation to give notice of termination of a contract of indefinite duration;

— consequently, order the defendants to pay the applicants compensation in lieu of notice calculated on the basis of their respective length of service, namely:

— for BL: the sum of EUR 48 424.65;

— for BM: the sum of EUR 31 552.75;

— rule that the dismissal of the applicants is unfair and, consequently, order the defendants to pay them compensation assessed *ex aequo et bono* at:

— EUR 75 000 in respect of the damage suffered by BM;

— EUR 90 000 in respect of the damage suffered by BL;

— find that the defendants did not have the legal end of employment documents prepared and

— order them to pay the applicants the sum of EUR 100 per day of non-payment with effect from the bringing of the present action;

— order them to send to the applicants the end of employment documents

— order the defendants to pay interest on the abovementioned sums, calculated at the Belgian statutory rate;

— with regard to the other rights:

— find that the applicants should have been recruited as temporary agents by one of the three defendants and declare that the three defendants treated the applicants in a discriminatory manner, without objective justification, in respect of their salary, their pension rights and related benefits, and in respect of the guarantee of subsequent employment;

— order the three defendants to compensate each of the applicants for loss of salary, pension, allowances and benefits, caused by the infringements of Community law referred to in this application;

— order them to pay interest on those sums;

— prescribe a period within which the parties are to determine that compensation, having regard to the grade and step in which the applicants ought to have been employed, the average progression of their salaries, the progress of their respective careers, the allowances which they thus ought to have received under those temporary agent contracts, and compare the results obtained with the salary actually received by the applicants;

— in the alternative,

— order the institutions to compensate the applicants, *ex aequo et bono*, for extra-contractual liability resulting from the failure to respect their fundamental rights:

— EUR 105 000 in respect of BM;

— EUR 30 000 in respect of BL;

— order the defendants to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely, in particular, on seven pleas in law in order to have their contracts of employment within the institutions reclassified as contracts of employment of indefinite duration and to obtain compensation for the damage suffered as a result of the decision to not renew their respective contracts, and due to the institutions choosing to apply a status to international contractual staff which does not respect their fundamental rights.

1. First plea in law, alleging an abuse of rights by the defendants in the use of consecutive fixed-term contracts, and alleging infringement by the defendants of the principle of proportionality.

2. Second plea in law, alleging infringement by the defendants of the principles of equal treatment and non-discrimination.

3. Third plea in law, alleging infringement by the defendants of the applicants' right to be heard.

4. Fourth plea in law, alleging legal uncertainty caused to the applicants by the defendants and infringement by the defendants of the right to proper administration.

5. Fifth plea in law, alleging infringement by the defendants of the principle that staff representatives should be consulted.

6. Sixth plea in law, alleging infringement by the defendants of the European Code of Good Administrative Behaviour.

7. Seventh plea in law, alleging infringement by the defendants of the right to freedom of movement for workers.

Furthermore the applicants allege that there is discrimination between workers within the institutions and, in particular, in the light of the rights granted to temporary agents, inter alia, the non-payment of various allowances, contribution to the pension scheme, reimbursement of costs and, potentially, 20 years' service not being taken into account.

Action brought on 5 April 2019 — Egger Beschichtungswerk Marienmünster v Commission

(Case T-206/19)

(2019/C 206/57)

Language of the case: German

Parties

Applicant: Egger Beschichtungswerk Marienmünster GmbH & Co. KG (Marienmünster-Vörden, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 5 April 2019 — Yara Brunsbüttel v Commission

(Case T-207/19)

(2019/C 206/58)

Language of the case: German

Parties

Applicant: Yara Brunsbüttel GmbH (Büttel, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 5 April 2019 — Nolte Holzwerkstoff v Commission

(Case T-208/19)

(2019/C 206/59)

Language of the case: German

Parties

Applicant: Nolte Holzwerkstoff GmbH & Co. KG (Germersheim, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Glatfelter Gernsbach v Commission

(Case T-215/19)

(2019/C 206/60)

Language of the case: German

Parties

Applicant: Glatfelter Gernsbach GmbH (Gernsbach, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the year 2012;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Glatfelter Steinfurt v Commission

(Case T-216/19)

(2019/C 206/61)

Language of the case: German

Parties

Applicant: Glatfelter Steinfurt GmbH (Steinfurt, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Schott v Commission

(Case T-217/19)

(2019/C 206/62)

Language of the case: German

Parties

Applicant: Schott AG (Mainz, Germany) (represented by: N. Voß, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges and baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Evonik Degussa v Commission

(Case T-218/19)

(2019/C 206/63)

Language of the case: German

Parties

Applicant: Evonik Degussa GmbH (Essen, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges and baseload consumers with at least 7 500 annual hours of use repay more than 15 % of published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Julius Schulte Trebsen v Commission

(Case T-219/19)

(2019/C 206/64)

Language of the case: German

Parties

Applicant: Julius Schulte Trebsen GmbH & Co. KG (Trebsen, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the year 2012;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. [1]

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

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[1] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Mitsubishi Polyester Film v Commission

(Case T-220/19)

(2019/C 206/65)

Language of the case: German

Parties

Applicant: Mitsubishi Polyester Film GmbH (Wiesbaden, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

   In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

   It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of the protection of legitimate expectations

   In the second plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

Action brought on 8 April 2019 — Nippon Gases Deutschland v Commission

(Case T-221/19)

(2019/C 206/66)

Language of the case: German

Parties

Applicant: Nippon Gases Deutschland GmbH (Düsseldorf, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges and baseload consumers with at least 7 500 annual hours of use repay more than 15 % of published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Sappi Alfeld v Commission

(Case T-222/19)

(2019/C 206/67)

Language of the case: German

Parties

Applicant: Sappi Alfeld GmbH (Alfeld, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

   In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

   It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

   In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

   In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

   In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 8 April 2019 — Clariant Produkte (Deutschland) v Commission

(Case T-223/19)

(2019/C 206/68)

Language of the case: German

Parties

Applicant: Clariant Produkte (Deutschland) GmbH (Frankfurt am Main, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

(1) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 9 April 2019 — Metsä Tissue v Commission

(Case T-224/19)

(2019/C 206/69)

Language of the case: German

Parties

Applicant: Metsä Tissue GmbH (Kreuzau, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges and baseload consumers with more than 7 500 annual hours of use repay more than 15 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 9 April 2019 — Linde Gas v Commission

(Case T-225/19)

(2019/C 206/70)

Language of the case: German

Parties

Applicant: Linde Gas Produktionsgesellschaft mbH & Co. KG (Pullach, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of published network charges and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 9 April 2019 — Radici Chimica Deutschland v Commission

(Case T-226/19)

(2019/C 206/71)

Language of the case: German

Parties

Applicant: Radici Chimica Deutschland GmbH (Elsteraue, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

   In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

   It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of the protection of legitimate expectations

   In the second plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

Action brought on 9 April 2019 — Ronal v Commission

(Case T-227/19)

(2019/C 206/72)

Language of the case: German

Parties

Applicant: Ronal GmbH (Forst, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

   In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

   It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

   In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC.. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 9 April 2019 — Hüttenwerke Krupp Mannesmann v Commission

(Case T-228/19)

(2019/C 206/73)

Language of the case: German

Parties

Applicant: Hüttenwerke Krupp Mannesmann GmbH (Duisburg, Germany) (represented by: M. Kachel and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

   In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

   In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

   It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of the protection of legitimate expectations

   In the second plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

Action brought on 8 April 2019 — AlzChem Trostberg v Commission

(Case T-229/19)

(2019/C 206/74)

Language of the case: German

Parties

Applicant: AlzChem Trostberg GmbH (Trostberg, Germany) (represented by: F. Wagner and N. Voß, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

(1) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 9 April 2019 — Evonik Functional Solutions v Commission

(Case T-230/19)

(2019/C 206/75)

Language of the case: German

Parties

Applicant: Evonik Functional Solutions GmbH (Essen, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;

— in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges;

— in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28. Mai 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders the repayment of more than 20 % of the published network charges; and

— order the defendant to pay the costs, including lawyers' fees and travel expenses.

Pleas in law and main arguments

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

In the first plea in law, it is claimed that the defendant erred in law in its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged vis-à-vis baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. ([1])

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

([1]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

Action brought on 4 April 2019 — HIM v Commission

(Case T-235/19)

(2019/C 206/76)

Language of the case: French

Parties

Applicant: Health Investment Management (HIM) (Brussels, Belgium) (represented by P. Zeegers, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare the present action admissible and well founded; and, accordingly,

— Rule that the applicant is not liable to pay debit notes Nos 3241901815 (EUR 94 445.00) and 3241901886 (EUR 121 517.00) issued on 4 February 2019, and in so far as necessary, declare those debit notes invalid in accordance with Articles 263 and 264 of the Treaty on the Functioning of the European Union;

— Order the European Commission to pay the entirety of the costs and expenses, the amount of which is provisionally fixed at EUR 8 000.

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 failure to disclose the final audit report and the fact that it was impossible for the applicant to put forward its point of view in full knowledge of the facts. The failure to disclose means that the debit notes issued by the Commission are not substantiated.

2. Second plea in law, alleging failure on the part of the auditor and the Commission to comply with the rules determining eligible costs. The applicant disputes the position of the Commission which, by its decision, allegedly added a requirement which was not provided for in the legislation applicable to telework matters in particular. The Commission's conduct was therefore inconsistent with that which it had itself adopted during previous audits involving the applicant.

Action brought on 9 April 2019 — Giant Electric Vehicle Kunshan v Commission

(Case T-242/19)

(2019/C 206/77)

Language of the case: English

Parties

Applicant: Giant Electric Vehicle Kunshan Co. Ltd (Kunshan, China) (represented by: P. De Baere, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 ([1]), in as far as it relates to the applicant; and

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant made a manifest error of assessment in determining that the aluminium raw material purchases of the applicant's group would have been subject to significant state interference and would have not substantially reflected market values pursuant to the first indent of Article 2(7)(c) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 ([2]).

2. Second plea in law, alleging the defendant made a manifest error of assessment in determining that the applicant's group would have been subject to significant distortions carried over from the former non-market economy system pursuant to the third indent of Article 2(7)(c) of Regulation (EU) 2016/1036.

3. Third plea in law, alleging that the defendant violated the chapeau of Article 2(10) as well as Articles 2(10)(d)(i) and (ii) of Regulation (EU) 2016/1036 since it would have failed to carry out a fair comparison by not adjusting normal value for the differences in level of trade between export prices and normal value and by not providing the applicant with the information necessary for the applicant to quantify its adjustment claim.

4. Fourth plea in law, alleging that the defendant infringed Article 3(2), 3(3) and 3(6) of Regulation (EU) 2016/1036 by failing to compare, for the purpose of the undercutting and underselling calculations, the prices of imports with the price of the like product produced by the European Union industry at the same level of trade and at the point where the goods enter into competition with each other.

([1]) Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 108).

([2]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

Action brought on 9 Avril 2019 — Giant Electric Vehicle Kunshan v Commission

(Case T-243/19)

(2019/C 206/78)

Language of the case: English

Parties

Applicant: Giant Electric Vehicle Kunshan Co. Ltd (Kunshan, China) (represented by: P. De Baere, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 ([1]), as far as the applicant is concerned; and

— order the defendant to pay costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant made a manifest error of assessment by finding that a subsidy would have been granted through the applicant's purchase of engines and batteries, and thereby would have violated Articles 1(1) and 3 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 ([2]). This plea consists of four limbs:

   — the defendant would have failed to establish that the Government of China would have entrusted or directed the Chinese engine and batteries suppliers of the applicant;

   — the defendant would have failed to prove that any alleged financial contribution from the Government of China would have conferred a benefit to the applicant;

   — the defendant would have based its conclusions in respect of the applicant on an erroneous application of Article 28 of Regulation (EU) 2016/1037; and

   — the defendant would have failed to prove the link between locally purchased engines and batteries and e-bikes exported to the European Union.

2. Second plea in law, alleging that the defendant made a manifest error in the calculation of the subsidy amount by wrongfully including benefits which would have been unrelated to e-bikes released for free circulation in the European Union.

3. Third plea in law, alleging that the defendant made a manifest error of assessment of the facts by finding that the use of bank acceptance notes would have constituted a financial contribution within the meaning of Article 3(1) of Regulation (EU) 2016/1037.

4. Fourth plea in law, alleging that the defendant failed to establish that the use of bank acceptance notes conferred a benefit to the applicant.

5. Fifth plea in law, alleging that the defendant failed to establish the specificity of the alleged subsidy granted through bank acceptance notes and thereby violated Article 4 of Regulation (EU) 2016/1037.

6. Sixth plea in law, alleging that the defendant made a manifest error of assessment in determining that the applicant would have obtained a benefit through the acquisition of land use rights.

7. Seventh plea in law, alleging that the defendant infringed Article 8(1), 8(2) and 8(5) of Regulation (EU) 2016/1037 by failing to compare, for the purpose of the undercutting and underselling calculations, the prices of imports with the price of the like product produced by the European Union industry at the same level of trade and at the point where the goods enter into competition with each other.

([1]) [1]Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

([2]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

Action brought on 11 April 2019 — Café Camelo v EUIPO — Camel Brand (CAMEL BRAND FOOD PRODUCTS)

(Case T-244/19)

(2019/C 206/79)

Language of the case: English

Parties

Applicant: Café Camelo, SL (Villanueva del Pardillo, Spain) (represented by: M. de Justo Bailey, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Camel Brand Co. Ltd (Zebbug, Malta)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union trade mark — Application for registration No 15 710 692

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 7 February 2019 in Case R 1165/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

— order the defendant (and intervener, if he enters an appearance in proceedings) to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

Action brought on 12 April 2019 — Thunus and Others v EIB

(Case T-247/19)

(2019/C 206/80)

Language of the case: French

Parties

Applicants: Vincent Thunus (Contern, Luxembourg) and 7 other applicants (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Form of order sought

The applicants claim that the General Court should:

— declare that the action is admissible and well-founded, including the plea of illegality which it contains;

— consequently,

  — annul the decision contained in the applicants' payslips for the month of February 2018, a decision fixing the annual adjustment of the basic salary limited to 0.7% for the year 2018, and, therefore, the annulment of the similar decisions contained in the subsequent payslips;

— therefore, order the defendant

  — to pay compensation for material damage (i) for the outstanding salary corresponding to the application of the annual adjustment for 2018, that is, an increase of 1.4% for the period from 1 January 2018 to 31 December 2018; (ii) for the outstanding salary corresponding to the consequences of applying the annual adjustment of 0.7% for 2018 on the amount of the salaries which will be paid from January 2018; (iii) for default interest on outstanding salaries due until full payment of the amounts due, the rate of default interest to be applied having to be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable during the relevant period, plus three percentage points;

— if necessary, should it fail to produce them voluntarily, order the defendant, by way of measures of organisation of procedure, to produce the following documents:

  — the decision of the Board of Directors of the EIB of 18 July 2017 (CA/505/17);

  — the decision of the Management Committee of 30 January 2018 (MC-021-ADM-15-2018);

  — the note from the management of Personnel of 25 January 2018 (CS/PERS-QMS/ACB/2018-0011);

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of the action, the applicants rely, first, as regards the decision of the Board of Directors of 18 July 2017, on two pleas in law and, second, as regards the decision of the Management Committee of 30 January 2018, on three pleas in law, respectively.

In respect of the decision of the Board of Directors of 18 July 2017:

1. First plea in law, alleging infringement of the principle of legal certainty.

2. Second plea in law, alleging infringement of legitimate expectation and acquired rights.

In respect of the decision of the Management Committee of 30 January 2018:

1. First plea in law, alleging infringement of the procedural guarantees of Article 41 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging infringement of the right of consultation with the Board.

3. Third plea in law, alleging infringement of the principle of proportionality.

As regards the claim for compensation, the applicants seek payment of the difference of salary due, that is 1.4% from 1 January 2018 (including the effect of that increase on financial benefits) plus late payment interest.

Action brought on 18 April 2019 — Stada Arzneimittel v EUIPO — Optima Naturals (OptiMar)

(Case T-261/19)

(2019/C 206/81)

Language in which the application was lodged: German

Parties

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

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Optima Naturals Srl (Gallarate, Italy)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for EU trade mark OptiMar — EU trade mark No 15 176 258

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 31 January 2019 in Case R 1348/2018-1

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 (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 17 April 2019 — Jakober v EUIPO (Shape of a cup)

(Case T-262/19)

(2019/C 206/82)

Language of the case: German

Parties

Applicant: Philip Jakober (Stuttgart, Germany) (represented by: J. Klink, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Three-dimensional EU trade mark (Shape of a cup) — Application for registration No 15 963 994

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 February 2019 in Case R 1153/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— amend the contested decision to the effect that the appeal is well founded and EU trade mark application No 15 963 994 may consequently be entered in the Register of the European Union Intellectual Property Office;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) and/or Article 7(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 18 April 2019 — nanoPET Pharma v EUIPO — Miltenyi Biotec (viscover)

(Case T-264/19)

(2019/C 206/83)

Language in which the application was lodged: German

Parties

Applicant: nanoPET Pharma GmbH (Berlin, Germany) (represented by: C. Onken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Miltenyi Biotec GmbH (Bergisch Gladbach, Germany)

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: EU figurative mark 'viscover' — EU trade mark No 9 197 732

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 17 January 2019 in Case R 1288/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 60(2)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 19 April 2019 — Italian Republic v Commission

(Case T-265/19)

(2019/C 206/84)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: R. Guizzi, A. Giordano and G. Palmieri, avvocati dello stato)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should annul, in so far as it is contested in the present action, Commission Implementing Decision No C(2019)869 of 12 February 2019, notified on 13 February 2019, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD).

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, with reference to INVESTIGATION CEB/2017/067/IT, infringement of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), in particular Article 2(2); of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), in particular Article 31(2); and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

   — The applicant also claims in this regard infringement of Article 5(4) of the Treaty on European Union, as amended by the Lisbon Treaty of 12 December 2007, and of the principles of proportionality and of legitimate expectations.

   — Lastly, the applicant alleges misuse of power and infringement of an essential procedural requirement in the form of failure to state adequate reasons.

2. Second plea in law, alleging, with reference to INVESTIGATION FA/2008/067/IT, infringement of Regulation (EC) No 1258/1999 and of Regulation (EC) No 1290/2005, as well as Article 5 of the Treaty on European Union.

   — The Italian Republic, therefore, alleges misuse of power as well as infringement of an essential procedural requirement in the form of failure to state adequate reasons and, lastly, infringement of the principles of proportionality and of legitimate expectations.

Order of the General Court of 17 April 2019 — Bandilla and Others v EIB

(Case T-600/16) ([1])

(2019/C 206/85)

Language of the case: French

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

([1]) OJ C 296, 16.8.2016 (case initially registered before the Civil Service Tribunal of the European Union under number F-30/16 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 15 April 2019 — Boehringer Ingelheim International v Commission

(Case T-191/17) ([1])

(2019/C 206/86)

Language of the case: English

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

([1]) OJ C 178, 6.6.2017.

Order of the General Court of 11 April 2019 — Bruel v Commission

(Case T-202/18) ([1])

(2019/C 206/87)

Language of the case: French

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

([1]) OJ C 166, 14.5.2018.

Order of the General Court of 12 April 2019 — Hankintatukku Arno Latvus v EUIPO — Triaz Group (VIVANIA)

(Case T-4/19) ([1])

(2019/C 206/88)

Language of the case: English

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

([1]) OJ C 72, 25.2.2019.

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