

1. First plea in law, alleging an error of law in the interpretation and application of the defendant's instrument governing reclassifications, namely decision 2016-016 of the Management Board, in so far as, according to the defendant, that decision subjects reclassification, at each grade, to a condition of average minimum seniority in the grade that the staff member to be reclassified must satisfy and which, in the applicant's case, for AD 9, was four years. The applicant relies on the fact that he obtained a very high number of reclassification points and that his grade and AD 10 were the only AD grades to which that condition of seniority was applied.
2. Second plea in law, put forward in the alternative, claiming that the abovementioned decision is unlawful on the ground that it is incompatible with a number of principles and rules of law governing public service employment, in particular those regarding reclassification based on merit.
3. Third plea in law, put forward in the further alternative, alleging failure to observe the principle of equal treatment and the principle that officials are entitled to reasonable career prospects, and a manifest error of assessment in so far as, for all AD grades except that of the applicant and AD 10, reclassifications occurred despite the fact that the average minimum seniority condition was not satisfied.

Action brought on 2 August 2022 –Sweden v Commission

(Case T-485/22)

(2022/C 380/24)

Language of the case: Swedish

Parties

Applicant: Kingdom of Sweden (represented by: H. Shev och F.-L. Göransson, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul European Commission Implementing Decision (EU) 2022/908 of 8 June 2022 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), (1) in so far as the decision entails for Sweden a flat-rate correction of five percent, corresponding to a sum of EUR 13 856 996,64 in respect of aid paid to Sweden for the 2017, 2018 and 2019 claim years, and,
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission, according to the applicant, has not complied with its duty to state reasons since the Commission's reasoning when it made the decision or the deficiencies that are alleged against Sweden are not clear. There is therefore insufficient information to determine whether the contested decision is well founded.
2. Second plea in law, alleging that the Commission has infringed Article 52 of Regulation 1306/2013 (2) and Articles 28-29 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (3) owing to the Commission having erred in its assessment when it found that there were systemic deficiencies in the implementation of cross-checks, which affects the quality of LPIS updates, which is considered to constitute a weakness in the key controls. That is the case because, (1), the quality of the update of the LPIS can only be assessed in relation to the land parcel database as a whole, (2), the Commission's choice of land parcels for investigation was too limited to be able to demonstrate a systemic deficiency, and, (3), the Commission's finding as to the number of deficient land parcels and the error rate — which was apparently the basis for the Commission's assessment that there is a systemic deficiency in the LPIS update — is not correct.

3. Third plea in law, alleging that the Commission has infringed Article 52(2) of Regulation 1306/2013 and the Guidelines on the calculation of the financial corrections in the framework of the conformity and financial clearance of accounts procedures (C(2015)3675 of 8 June 2015). It is clear from those guidelines and the principle of proportionality, which is also expressed in Article 52(2) of Regulation 1306/2013, that the flat-rate correction imposed is not justified or proportionate. Neither the extent of the alleged infringement, with regard to its nature and scope, nor the financial damage that the infringement might have caused the European Union can justify a flat-rate correction of 5 % calculated on the basis of all the pastureland that was subject to image updating over the 2016-2018 period, corresponding to the sum of EUR 13 856 996,64. The flat-rate correction at issue in the contested decision is therefore not compatible with the aforementioned provisions or the principle of proportionality.

⁽¹⁾ OJ 2022 L 157, p. 15.

⁽²⁾ 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).

⁽³⁾ OJ 2014 L 227, p. 69.

Action brought on 8 August 2022 — Zitro International v EUIPO — e-gaming (Smiley wearing a top hat)

(Case T-491/22)

(2022/C 380/25)

Language in which the application was lodged: English

Parties

Applicant: Zitro International Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union figurative mark (Representation of a smiley wearing a top hat) — Application for registration No 17 884 680

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 May 2022 in Case R 2005/2021-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and whoever opposes the action in this case 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.
