

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the applicant's rights of defence

— The applicant submits in this context that the Council infringed the applicant's right to effective legal protection and, in particular, the obligation to state reasons by failing to supply sufficient grounds for the renewed inclusion of the applicant in the lists of persons, bodies and entities subject to restrictive measures in accordance with Articles 19 and 20 of Decision 2010/413/CFSP⁽³⁾ and with Article 16 of Regulation (EU) No 961/2010.⁽⁴⁾

— Furthermore the Council failed, in spite of the applicant's request, to review its decision to renew the applicant's inclusion in the sanctions lists.

— In addition the Council infringed the applicant's right to be heard by not giving the applicant the opportunity to comment beforehand on its renewed inclusion in the sanctions lists and thereby to trigger a review by the Council.

2. Second plea in law, alleging the absence of any legal basis for the contested regulation

In the applicant's view, the contested implementing regulation has no legal basis as Regulation No 961/2010 was annulled by the General Court by its judgment of 7 December 2011 in Case T-562/10 in so far as it concerns the applicant; despite the fact that the effects of Regulation No 961/2010 were maintained for a period of two months, that regulation cannot, with regard to the applicant, constitute an effective legal basis for the adoption of an implementing regulation.

3. Third plea in law, alleging infringement of Article 266 TFEU

The applicant further submits that the Council did not adopt any measures to give effect to the judgment of the General Court of 7 December 2011 in Case T-562/10; instead it renewed the applicant's inclusion in the sanctions lists, contrary to the Court's judgment.

4. Fourth plea in law, alleging the absence of any basis for the applicant's inclusion in the sanctions lists

The applicant submits, moreover, that the reasons given by the Council for the inclusion of the applicant in the sanctions lists are largely inapplicable and do not justify the applicant's inclusion in the sanctions lists.

5. Fifth plea in law, alleging infringement of the applicant's fundamental right to respect for property

The applicant's renewed inclusion in the sanctions lists represents unjustified interference with its fundamental right to property as the applicant cannot, given the Council's inadequate reasoning, understand on what grounds it has been included in the sanctions lists. The applicant's renewed inclusion in the sanctions lists is in addition based on a manifestly erroneous assessment by the Council of the applicant's situation and of its activities and is, moreover, disproportionate.

⁽¹⁾ Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22).

⁽²⁾ Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2012 L 19, p. 1).

⁽³⁾ 2010/413/CFSP: Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

⁽⁴⁾ Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

Action brought on 27 March 2012 — Investigación y Desarrollo en Soluciones y Servicios IT v Commission

(Case T-134/12)

(2012/C 157/16)

Language of the case: Spanish

Parties

Applicant: Investigación y Desarrollo en Soluciones y Servicios IT, SA (Alicante, Spain) (represented by: M. Jiménez Perona, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission Ref. Ares (2012) 39854 of 19 January 2012 in so far as it provides for the reimbursement of the debit notes corresponding to audit 09-INFS-001/041;

— order the Commission to compensate the harm suffered by the applicant as a result of the Commission's unlawful conduct at issue in the amount of EUR 732 788.

Pleas in law and main arguments

The applicant in these proceedings has entered into a number of contracts with the Commission in relation to R&D, all regulated on the basis of Commission Decision C(2003) 3834 of 23 October 2003, which provides for a core contract of the type FP 5 or FP 6 and for the general conditions FP 5 and FP 6.

In relation to those contracts, and on the basis of the results of an investigation carried out by OLAF and an audit performed by the Commission, the Commission adopted a decision revoking subsidies.

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

1. First plea in law, alleging an infringement of the rights of the defence, as a result of the means of execution of the said audit.
2. Second plea in law, alleging an infringement of the principle of legal certainty, by denying the applicant the applicable legal framework throughout the procedure.
3. Third plea in law, alleging a failure on the part of the Commission to comply with its duty to state reasons.
4. Fourth plea in law, alleging an infringement of the principle of the presumption of innocence, as a result of the tone adopted by DG INFSO in its audit report.
5. Fifth plea in law, alleging a failure to have regard for the right to good administration, as a result of failure on the part of the auditors to comply with their duty of impartiality and equality.
6. Sixth plea in law, infringement of the principle of legitimate expectations, particularly with regard to the lack of accreditation of the external auditors and the origin of the audit process itself.
7. Seventh plea in law, infringement of the principle of proportionality.
8. Eighth plea in law, alleging an infringement of the right to privacy.

Action brought on 19 March 2012 — FunFactory v OHIM (three-dimensional mark in the shape of a vibrator)

(Case T-137/12)

(2012/C 157/17)

Language of the case: German

Parties

Applicant: FunFactory GmbH (Bremen, Germany) (represented by K.-D. Franzen, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The applicant claims that the Court should:

- annul the contested decision (R 1436/2011-4) of the Fourth Board of Appeal of OHIM of 19 January 2012;
- order OHIM to pay the costs of the proceedings, including those incurred in the proceedings before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: three-dimensional mark in the shape of a vibrator (application No 9 390 691) for goods in Class 10

Decision of the Examiner: refusal to register

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: incorrect interpretation and application of Article 7(1)(b) of Regulation No 207/2009, since the mark applied for is distinctive and is not descriptive of the goods in respect of which registration is sought. Infringement of the duty to state reasons laid down in Article 73(1) of Regulation No 207/2009 and of the right to be heard.

Action brought on 26 March 2012 — Geipel v OHIM — Reeh (BEST BODY NUTRITION)

(Case T-138/12)

(2012/C 157/18)

Language in which the application was lodged: German

Parties

Applicant: Yves Geipel (Auerbach, Germany) (represented by: J. Sachs, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Jörg Reeh (Buxtehude, Germany)

Form of order sought

- Annul the contested decision of the First Board of Appeal of OHIM of 12 January 2012 and reject the opposition of 24 July 2009;