2. Second plea in law, alleging incorrect application of Article 107(1) TFEU as regards the notion of private investor — not State aid

   — The applicant claims that all the injections of capital were compatible with the market economy investor principle and thus did not distort or was likely to distort competition to the extent that it affects trade between Member States. The Commission has made an incorrect assessment as regards the measure's compatibility with the market economy investor principle in that the Commission, inter alia, incorrectly and arbitrarily regarded the extent of the expected yield by focussing only on one yearly yield. In the applicant's submission, the true expected yield was a combination of the yearly yield and the expected increase in value.

3. Third plea in law, alleging failure to have regard to the existing aid programme relating to the guarantees

   — The Commission did not take account of the fact that at least two of the guarantees provided were included in an existing aid scheme.

4. Fourth plea in law, alleging incorrect assessment of the facts and failure to state reasons

   — If, despite everything, the measures in question were to be regarded as constituting State aid, the amounts which are to be recovered are incorrectly calculated. Firstly, the Commission has, on the basis of weak, incomplete and extremely brief reasons, arbitrarily established that the scope of the recovery covers the entire invested capital sum. Secondly, the Commission has, on the basis of incomplete reasons, arbitrarily fixed the amount of the aid elements relating to the guarantees at an unreasonable and unrealistic level. The applicant claims that the lacunae and arbitrariness in the Commission's reasons makes it almost impossible for the applicant adequately to counter the Commission's allegations.

5. Fifth plea in law, alleging incorrect application of the rules on the reference rate

   — The Commission has applied, in the calculation of the aid elements relating to the guarantees, its notice on review of the method for setting the reference and discount rates [1] with retroactive effect. That unfair retroactive application has meant that the aid elements relating to the guarantees to be recovered were fixed higher than they would have been had the correct document, which, in the submission of the applicant, is Notice 97/C 273/03 Commission on the method for setting the reference and discount rates [2] which was in force at the time when the guarantees were issued, formed the basis of the calculation.

6. Sixth plea in law, alleging that the applicant had legitimate expectations as regards the aid

   — The applicant had, on the basis of the facts set out above under the first, second and third pleas in law, legitimate expectations that the Regional Government's measures did not constitute unlawful State aid. The applicant none the less raised the question with the Regional Government, which confirmed that the measures were covered by notified aid schemes.

7. Seventh plea in law, alleging that the Commission's decision endangers legal certainty and restricts the system of property ownership under Article 345 TFEU

   — The Commission has totally ignored concurrent investments carried out by the municipality of Mariehamn which makes it impossible for the applicant to treat the shareholders identically in a recovery situation in accordance with binding provisions of Finnish company law. The Commission's oversight thus distorts the economic end result for those involved in a way which means that the decision infringes Article 345 TFEU, under which the Treaties are in no way to prejudice the rules in Member States governing the system of property ownership.

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[1] OJ 2008 C 14, p. 6.
[2] OJ 1997 C 273, p. 3.

Action brought on 21 May 2012 — Indesit Company v OHIM — ILVE (quadrio)

(Case T-214/12)

(2012/C 227/39)

Language in which the application was lodged: Italian

Parties

Applicant: Indesit Company SpA (Fabriano, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal: ILVE-Industria Lavorazione Veneta Elettrodomestici SpA (Campodarsego, Italy)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of OHIM of 14 March 2012 in Case R 2219/2010-1 and declare Community trade mark No 7 313 158, which will use the word 'quadrio' in special writing to mark refrigerators, legally capable of being registered

Pleas in law and main arguments

Applicant for a Community trade mark: Indesit Company SpA

Community trade mark concerned: Figurative mark 'quadrio' for goods in Class 11 — Application No 7 313 158

Proprietor of the mark or sign cited in the opposition proceedings: ILVE-Industria Lavorazione Veneta Elettrodomestici SpA

Mark or sign cited in opposition: Word mark 'QUADRA' for goods in Class 11

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) and (5) of Regulation No 207/2009

Action brought on 28 May 2012 — Saobraćajni institut CIP v Commission

(Case T-219/12)

(2012/C 227/40)

Language of the case: English

Parties

Applicant: Saobraćajni institut CIP d.o.o. (Belgrade, Serbia) (represented by: A. Lojpur, lawyer)

Defendant: European Commission

Form of order sought

— Annul a call for tender published on 27 March 2012, concerning preparation of technical documentation for the rail modernization project 'Doubling and upgrading of existing railway corridor Xb, section Novi Sad (excluding the junction)–Subotica–Hungarian border' in accordance with EU interoperability standards, AGC, AGTC and the SEECP Agreement (OJ 2012/S 60-096517), excluding the applicant from participating in it;

— Award damages for the alleged pecuniary loss;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that there was no legal ground for *a priori* exclusion of the applicant in participating in a call for tender in question since there was no conflict of interest;

2. Second plea in law, alleging

   — that the applicant's exclusion from tender is contrary to IPA Regulation ([1]);

3. Third plea in law, alleging

   — that the conditions for awarding the contract were unlawful.

([1]) Council Regulation (EC) No 1085/2006 of 17.7.2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, p. 82)

Action brought on 24 May 2012 — National Trust for Scotland v OHIM — Comhairle na Eilean Siar (ST KILDA)

(Case T-222/12)

(2012/C 227/41)

Language in which the application was lodged: English

Parties

Applicant: National Trust for Scotland (Edinburgh, United Kingdom) (represented by: J. MacKenzie, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Comhairle na Eilean Siar (Isle of Lewis, United Kingdom)

Form of order sought

— that the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) dated 26 March 2012, in case R 310/2011-4, should be annulled in its entirety and that the application be refused;

— that OHIM and any intervening parties in this Appeal shall bear their own costs and pay the Applicant's costs of these proceedings and those of the Appeal procedure before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark ST KILDA for goods and services in classes 9, 16, 35, 39, 41 and 43 — Community trade mark application No 8 283 871