

5. Fifth plea in law, alleging that those actions by the defendant constitute a serious violation of the principle of legal certainty and an error in law as well as of the Article 4 of the European Code of Good Administrative Behaviour, when it unexpectedly cancelled its decision to award the subject project to the applicant's consortium on alleged grounds of 'conflict of interest'.

Action brought on 12 June 2012 — Central Bank of Iran v Council

(Case T-262/12)

(2012/C 243/48)

Language of the case: English

Parties

Applicant: Central Bank of Iran (Tehran, Iran) (represented by: M. Lester, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision 2012/35/CFSP of 23 January 2012 ⁽¹⁾ and Council Regulation (EU) No 267/2012 of 23 March 2012 ⁽²⁾, in so far as the measures adopted through such legal acts apply to the applicant;

— 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 manifestly erred in considering that any of the criteria for listing in Council Decision 2012/35/CFSP and Council Regulation (EU) No 267/2012 were fulfilled.
2. Second plea in law, alleging that the defendant failed to give adequate or sufficient reasons for including the applicant in the list of persons and entities to which the restrictive measures apply.
3. Third plea in law, alleging that the defendant failed to safeguard the applicant's rights of defence and to effective judicial review.

4. Fourth plea in law, alleging that the defendant infringed, without justification or proportion, the applicant's fundamental rights, including its rights to protection of its property and reputation.

⁽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 Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1)

Action brought on 12 June 2012 — Schenker v Commission

(Case T-265/12)

(2012/C 243/49)

Language of the case: English

Parties

Applicant: Schenker Ltd (Feltham, United Kingdom) (represented by: F. Montag and B. Kacholdt, lawyers, D. Colgan and T. Morgan, Solicitors)

Defendant: European Commission

Form of order sought

— Annul Article 1(1)(a) of the Decision of the European Commission of 28 March 2012 relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case COMP/39.462-Freight Forwarding);

— Annul in total or, in the alternative, reduce the fine set out in Article 2(1)(a) of the contested decision; and

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

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 Commission infringed the applicant's rights of defence, the principles of a fair trial and sound administration by not terminating its investigation upon receipt of notice that evidence submitted by Cleary Gottlieb Steen & Hamilton LLP on behalf of Deutsche Post AG was tainted by a series of breaches of law.
2. Second plea in law, alleging that the Commission exceeded its competence by adopting the contested decision although it was barred from doing so under Council Regulation No 141/1962 ⁽¹⁾.

3. Third plea in law, alleging that the Commission breached Article 101(1) TFEU and Articles 4 and 7 of Council Regulation No 1/2003^(?) by holding that the appreciable effect on interstate trade criterion was fulfilled.
4. Fourth plea in law, alleging that the Commission breached Articles 101(1) and 296 TFEU, Article 41 of the Charter of Fundamental Rights of the European Union, Articles 4, 7 and 23(2) of Council Regulation No 1/2003 and the principles of personal liability and sound administration in holding the applicant liable for the conduct of BAX Global Ltd. (UK) and by fining solely the applicant for that conduct although BAX Global Ltd. (UK) had been a subsidiary belonging to another undertaking headed by The Brink's Company during the entire period of the conduct defined in Article 1(1)(a) of the contested decision.
5. Fifth plea in law, alleging that the Commission breached Articles 23 and 27 of Council Regulation No 1/2003, the applicant's rights of defence, the 2006 Fining Guidelines⁽³⁾, the principle that the punishment must fit the offence as well as the principles of sound administration, *nulla poena sine culpa* and proportionality and it committed a manifest error of assessment in determining the amount of the fine on the basis of turnover exceeding the maximum theoretical amount that could have been generated by the conduct defined in Article 1(1)(a) of the contested decision.
6. Sixth plea in law, alleging that the Commission breached Article 23 of Council Regulation No 1/2003, the Leniency Notice⁽⁴⁾ as well as the principle of equal treatment and committed a manifest error of assessment in determining the applicant's fine reduction rate.
7. Seventh plea in law, alleging that the Commission breached Article 23 of Council Regulation No 1/2003, the principle of equal treatment and committed a manifest error of assessment by refusing to initiate settlement talks under the Settlement Notice⁽⁵⁾.

Action brought on 12 June 2012 — Deutsche Bahn and Others v Commission

(Case T-267/12)

(2012/C 243/50)

Language of the case: English

Parties

Applicants: Deutsche Bahn AG (Berlin, Germany), Schenker AG (Essen, Germany), Schenker China Ltd (Shanghai, China), Schenker International (H.K.) Ltd (Hong Kong, China) (represented by: F. Montag and B. Kacholdt, lawyers, D. Colgan and T. Morgan, Solicitors)

Defendant: European Commission

Form of order sought

- Annul Articles 1(2)(g), 1(3)(a), 1(3)(b) and 1(4)(h) of European Commission's decision of 28 March 2012 relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case COMP/39.462 — Freight Forwarding);
- Annul in total or, in the alternative, reduce fines set out in Articles 2(2)(g), 2(3)(a), 2(3)(b) and 2(4)(h) of the contested decision; and
- Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of their action, the applicants rely on six pleas in law.

1. First plea in law, alleging
 - that the Commission infringed the applicants' rights of defence, principles of a fair trial and sound administration by not terminating its investigation upon receipt of notice that evidence submitted by legal representatives on behalf of a certain company was tainted by a series of breaches of law;
2. Second plea in law, alleging
 - that the Commission exceeded its competence by adopting the contested decision although it was barred from doing so under Regulation No 141/1962⁽¹⁾
3. Third plea in law, alleging
 - that the Commission breached Articles 101(1) and 296 TFEU, Article 41 of the Charter of Fundamental Rights of the European Union, Articles 4, 7 and 23(2) of Regulation No 1/2003 and the principles of personal liability and sound administration in holding Schenker China Ltd liable for the conduct of BAX Global (China) Co. Ltd and by fining solely Schenker China Ltd for that conduct although BAX Global (China) Co. Ltd had been a subsidiary belonging to another undertaking headed by a certain company during most of the period of the conduct defined in Article 1(3)(a) of the contested decision;

⁽¹⁾ Council Regulation No 141 of 26 November 1962 exempting transport from the application of Council Regulation No 17 (OJ, English Special Edition 1959-1962, p. 291).

⁽²⁾ Council Regulation No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

⁽³⁾ Guidelines on the method of setting fines imposed pursuant to Art. 23(2)(a) of Reg. 1/2003 (OJ 2006 C 210, p. 2).

⁽⁴⁾ Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 11).

⁽⁵⁾ Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Art. 7 and Art. 23 of Reg. 1/2003 in cartel cases (OJ 2008 C 167, p. 1).