

Pleas in law and main arguments

The European Community, represented by the European Commission, entered into three contracts with the defendant in the context of Community framework programmes for research and development. Those contracts were more specifically:

- ‘COP 493 — Invite’, which specifically concerned the carrying out of a project under the title ‘telematics for internal navigation’ and was to be implemented within 24 months as from 30 December 1994. The defendant was a member and the co-ordinator of the relevant group.
- ‘TR 1006 — Ausias’, which specifically concerned the carrying out of a project under the title ‘Advanced telematic systems for integrated transport in conurbations’ and was to be implemented within 23 months as from 30 December 1995. The defendant was a member of the relevant group.
- ‘V 2043 — Artis’, which concerned the carrying out of a project under the title ‘Advanced telematic systems for road transport in Spain’ and was to be implemented within 12 months as from 1 January 1992. The defendant was a member of the relevant group.

In all those cases it was provided that the Commission would make a financial contribution to the relevant project under the terms laid down in each agreement. In respect of each agreement the Commission paid to the defendant advances on its financial contribution.

Following financial checks, the Commission found that the defendant was using only a part of the monies paid over to it for the purposes of the relevant project. Specifically:

- Under the ‘COP 493 — Invite’ contract the Commission paid to the defendant as the group coordinator an advance in the amount of EUR 257 400. The defendant passed on to the other participants only the amount of EUR 79 062,70 and retained the amount of EUR 178 337,30 of which only the amount of EUR 42 000 was used for the actual programme. The Commission has issued a debit note in the amount of EUR 136 037,30 against the defendant.
- Under the ‘TR 1006 — Ausias’ contract the Commission paid to the group in respect of the period during which the defendant was a member of it an advance in the amount of EUR 78 341,91. The Commission discovered that only the amount of EUR 63 229,63 had been used by the defendant for the actual programme and has issued a debit note in the amount of EUR 15 112,28 against the defendant.

- Under the ‘V 2043 — Artis’ contract the defendant, as a member of the relevant association, received from the Commission an advance in the amount of EUR 62 621,86. The Commission adjudged that only the amount of EUR 53 391,09 had been used by the defendant for carrying out the actual programme and has issued a debit note in the amount of EUR 9 320,77 against the defendant.

By its action the Commission seeks repayment of the above-mentioned amounts owed, together with interest thereon, in accordance with the law applicable to each contract, that is to say, in the case of the first contract, Greek law and, in the case of the other two contracts, Spanish law.

Action brought on 25 April 2005 by Grether AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-167/05)

(2005/C 182/70)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 25 April 2005 by Grether AG, established in Binningen (Switzerland), represented by V. von Bomhard, A. Pohlmann and A. Renck, lawyers.

Crisgo (Thailand) Co., Ltd established in Samutsakorn (Thailand) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul in its entirety Decision R250/2002-4 of 14 October 2004 of the Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs);
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for Community trade mark:	Crisgo Co. Ltd.
Community trade mark concerned:	Figurative mark FL FENNEL for goods in class 3 application No 903 922
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Trade mark or sign cited in opposition:	Community word mark FENJAL for goods in class 3
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Dismisses the appeal

Pleas in law: Violation of Articles 73 and 74 of Council Regulation No 40/94. In this context, the applicant alleges that the Board of Appeal based its decision on various new arguments and facts not brought forward or discussed by the parties. The applicant further claims that the contested decision violates Article 8(1)(b) of Regulation No 40/94 by concluding that there was no risk of confusion.

Action brought on 2 May 2005 by Bart Nijs against the Court of Auditors of the European Communities

(Case T-171/05)

(2005/C 182/71)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 May 2005 by Bart Nijs, Bereldange (Luxembourg), represented by Fränk Rollinger, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the decision of the College of Merits of the Court of Auditors awarding the applicant his promotion points for 2003;
2. annul the decision of the appointing authority not to promote the applicant to the grade of reviser in 2004;
3. annul the applicant's staff report for 2003;
4. annul decision No 6/2004 of 26 October 2004 of the Appeal Committee of the Court of Auditors upholding the applicant's staff report for 2003;
5. annul any related and/or later decision;
6. make good the damage suffered by the applicant and order the Court of Auditors to pay the costs of these proceedings.

Pleas in law and main arguments

The applicant in the present case, having also brought the action lodged in Case T-377/04, ⁽¹⁾ contests the decisions of the defendant awarding him promotion points for 2003 and establishing his staff report for that year, and its decision not to promote him in 2004 to the post of reviser in the Dutch translation unit.

In support of his claims he relies on pleas of:

- breach of Article 11a of the Staff Regulations and of the principles of the duty to have regard for the welfare of officials, sound administration and equal treatment,
- irregularities in the appraisal procedure in that it was entrusted to officials whose integrity had been called into question by the pre-litigation procedure,
- failure to respect time limits in the appraisal procedure,
- failure in this case to consider comparative merits in the terms of the Dutch translation unit,
- breach of the principles of legal certainty and the protection of legitimate expectations by the failure to communicate the rules applicable to the 2004 promotion procedure,
- misuse of powers in the case.

⁽¹⁾ Case T-377/04 *Nijs v Court of Auditors* (OJ 2004 C 284, 20.11.2004, p. 26).