

- Require the European Central Bank to grant access to those documents to the applicants, in accordance with the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) ⁽¹⁾; and
- Require the ECB to pay the costs of the application.

Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 263 TFEU, annulment of a decision of the European Central Bank communicated by letters dated 17 September 2010 and 21 October 2010, whereby the European Central Bank refused the applicants' request for access to the following documents pursuant to the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3):

- (i) A note entitled *The impact on government deficit and debt from off-market swaps. The Greek case (SEC/GovC/X/10/88a)*;
- (ii) A second note, entitled *The Titlos transaction and possible existence of similar transactions impacting on the euro area government debt or deficit levels (SEC/GovC/X/10/88b)*.

In support of their action, the applicants submit the following pleas in law:

Firstly, the applicants allege that the European Central Bank misconstrued and/or misapplied Article 4.1(a) of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3), which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank failed to construe article 4.1(a) as requiring consideration of public interest factors in favour of disclosure;
- (ii) The European Central Bank failed to give any sufficient or proper weight to the public interest factors in favour of disclosing the requested documents;
- (iii) The European Central Bank overstated and/or misidentified the public interest against disclosure of the requested documents.

In addition, the applicants allege that the European Central Bank misconstrued and/or misapplied article 4.2 of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3),

which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank ought to have construed an "overriding" public interest as meaning a public interest that is strong enough to outweigh any public interest in maintaining the exemption;
- (ii) The European Central Bank ought to have concluded that there was an overriding public interest, in this sense, in favour of the disclosure of the information requested.

Finally, the applicants allege that the European Central Bank misconstrued and/or misapplied article 4.3 of the decision of the European Central Bank dated 4 March 2004 (ECB/2004/3), which provides for an exception to the general right of access conferred by article 2 of that decision, as:

- (i) The European Central Bank ought to have construed an 'overriding' public interest as meaning a public interest that is strong enough to outweigh any public interest in maintaining the exemption;
- (ii) The European Central Bank ought to have concluded that there was an overriding public interest, in this sense, in favour of the disclosure of the information requested;
- (iii) The European Central Bank overstated and/or misidentified the public interest against disclosure of the requested documents.

⁽¹⁾ Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 17 December 2010 — Zenato v OHIM — Camera di Commercio Industria Artigianato e Agricoltura di Verona (RIPASSA)

(Case T-595/10)

(2011/C 72/36)

Language in which the application was lodged: Italian

Parties

Applicant: Alberto Zenato (Verona, Italy) (represented by: A. Rizzoli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Camera di Commercio Industria Artigianato e Agricoltura di Verona (Verona, Italy)

Form of order sought

The applicant claims that the Court should:

- declare the present action, together with the related annexes, admissible;
- annul the decision of the Board of Appeal in so far as it annuls the contested decision and orders the costs of the appeal proceedings to be shared;
- uphold, in consequence, the decision of the Opposition Division;
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Alberto Zenato.

Community trade mark concerned: Word mark 'RIPASSA' (registration application No 106 955) for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Camera di Commercio Industria Artigianato e Agricoltura di Verona.

Mark or sign cited in opposition: Italian word mark 'VINO DI RIPASSO' (No 528 778) for goods in Class 33.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Contested decision annulled and case remitted to the Opposition Division.

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

Action brought on 29 December 2010 — Eurocool Logistik GmbH v OHIM — Lenger (EUROCOOL)

(Case T-599/10)

(2011/C 72/37)

Language in which the application was lodged: German

Parties

Applicant: Eurocool Logistik GmbH (Linz, Austria) (represented by: G. Secklehner, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Peter Lenger (Weinheim, Germany)

Form of order sought

- Annul in full the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 October 2010 in Case R 451/2010-1 in which the Opposition Division's decision of 27 January 2010 in opposition proceedings No B 751 570 is confirmed, reject the opposition and refer the trade mark back to the Office for Harmonisation in the Internal Market for continuation of the registration proceedings and order the defendant to bear all the costs associated with the present legal dispute, in particular the costs of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Eurocool Logistik GmbH

Community trade mark concerned: Word mark 'EUROCOOL' for services in Classes 39 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Peter Lenger.

Mark or sign cited in opposition: National figurative mark which contains the word element 'EUROCOOL LOGISTICS' for services in Classes 35 and 39, and the company name 'EUROCOOL LOGISTICS' used for specific services in national trade.

Decision of the Opposition Division: Uphold the opposition.

Decision of the Board of Appeal: Dismiss the appeal.

Pleas in law: Infringement of Article 63(2) and Article 75, second sentence, of Regulation (EC) No 207/2009, ⁽¹⁾ since the applicant in the opposition proceedings was not afforded the opportunity to reply to the other party's reasoning for the opposition in the proceedings before the Board of Appeal, and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 because there is no likelihood of confusion of the marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 7 January 2011 — Export Development Bank of Iran v Council

(Case T-4/11)

(2011/C 72/38)

Language of the case: French

Parties

Applicant: Export Development Bank of Iran (represented by: J.-M. Thouvenin, avocat)