

Pleas in law and main arguments

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

1. First plea in law, alleging that the transmission of the documents in question to the High Court of England and Wales would:

— constitute an error of fact and result in the disclosure of leniency material contained in such documents, which, in violation of Article 4(3) TEU, would undermine the interests of the European Union and interfere with its functioning and independence, in particular by jeopardising the overall effectiveness of the Commission's leniency programme that is so paramount to the Commission's ability to accomplish its task of enforcing Article 101 TFEU;

— violate the general principle of right to be heard and in particular paragraph 26 of the Cooperation Notice ⁽¹⁾ as the Commission failed to seek the consent of the concerned companies to disclose the leniency material contained in such documents;

— violate the Commission's duty to give reasons under Article 296 TFEU as it implicitly rejected the applicants' claims that certain parts of the documents in question constitute leniency material without stating any reasons.

2. Second plea in law, alleging that the decision should be annulled on the grounds that:

— transmitting the confidential information contained in the documents in question to the High Court of England and Wales for the purposes of use in the English proceedings cannot be justified on the basis of Article 4(3) TEU, as disclosure of such information will discourage undertakings in the future from co-operating with the Commission in its investigations and thereby interfere with the Commission's ability to enforce competition law;

— transmitting the confidential information contained in the documents in question to the High Court of England and Wales when that Court has expressly informed the Commission that it intends to disclose such information to third parties that are members of a confidentiality ring breaches paragraph 25 of the Cooperation Notice;

— the protection afforded by the confidentiality ring in this case falls below the standards required by Article 339 TFEU and paragraph 25 of the Cooperation Notice. Disclosure of the confidential information contained in

the documents in question to the High Court of England and Wales would, therefore, breach the Commission's obligations under these principles.

3. Third plea in law, alleging that the decision to transmit such documents to the High Court of England and Wales violates the principle of proportionality as it was neither appropriate nor necessary for the Commission to transmit the confidential version of such documents together with its annexes to the English High Court, even though the annexes are not relevant to the central issues which the English High Court will have to address and the General Court redacted from its judgment in Case T-121/07 all references to the content of these documents.

⁽¹⁾ Commission Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (OJ 2004 C 101, p. 54)

Action brought on 13 April 2012 — Georgias and Others v Council and Commission

(Case T-168/12)

(2012/C 165/55)

Language of the case: English

Parties

Applicants: Aguy Clement Georgias (Harare, Zimbabwe); Trinity Engineering (Private) Ltd (Harare); and Georgiadis Trucking (Private) Ltd (Harare) (represented by: M. Robson and E. Goulder, Solicitors, and H. Mercer, Barrister)

Defendants: European Commission and Council of the European Union

Form of order sought

— Order that the EU and the Commission and/or the Council make good the damage caused, resulting from the application of certain restrictive measures in respect of Zimbabwe, by compensating the applicants on the basis of Articles 268 TFEU and the second paragraph of Article 340 TFEU in the following amounts or any other amounts that the Court shall decide:

(i) 469 520,24 euros (EUR) or equivalent to Trinity;

(ii) 5 627 020 euros (EUR) or equivalent to Georgiadis;

(iii) 374 986,57 euros (EUR) or equivalent to Senator Georgias;

(iv) any sum that the Court deems appropriate to compensate Senator Georgias for the non-pecuniary damage claimed;

(v) interest at the rate of 8 % per annum on the above sums or any other rate that this Court may award;

— Order an inquiry into the level of damage suffered by the applicants, if and to the extent that the Court finds it necessary;

— Order the Commission and/or the Council to pay the costs incurred by the applicants in the present proceedings.

Pleas in law and main arguments

In support of the present action, by which damages against the EU for non-contractual liability are claimed, the applicants rely on two pleas in law.

1. First plea in law, alleging

— following unlawful actions in the adoption of Commission Regulation (EC) 412/2007 of 16 April 2007 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (JO L 101, p. 6):

(i) manifest error of assessment of the facts combined with breaches of the rights of the defence and to an effective judicial remedy;

(ii) misuse of power;

(iii) breach of rights of the defence with regard to the renewals of the asset-freezing measures.

2. Second plea in law, alleging

— that the damage incurred includes:

(i) the loss of specific business opportunities through the extra-territorial application of the asset-freezing measures to all persons concerned doing business in the EU;

(ii) personal stress due to the eventual loss of business in the EU;

(iii) losses arising from the application of the said Regulation to Senator Georgias in May 2007 and upon renewal thereof and leading to pecuniary and non-pecuniary damage in consequence of him being excluded from the EU territory and subjected to asset-freezing.

Action brought on 10 April 2012 — CHEMK and KF v Council

(Case T-169/12)

(2012/C 165/56)

Language of the case: English

Parties

Applicants: Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) (Chelyabinsk, Russia); and Kuznekie ferrosplavy OAO (KF) (Novokuznetsk, Russia) (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 60/2012 of 16 January 2012 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 of the anti-dumping measures applicable to imports of ferro-silicon originating, *inter alia*, in Russia (OJ L 22, p. 1), in so far as it affects the applicants; and

— Order the defendant to pay the cost incurred by the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

— that the Institutions breached Article 11(9) in connection with Article 2(12) of 'the basic Regulation' ⁽¹⁾ by failing to establish the amount of the dumping margin of the applicants. In addition, or in the alternative, the Institutions erred in law and exceeded their margin of discretion in their powers of prospective assessment under Article 11(3) by allowing the findings on lasting nature of changed circumstances to subsume the dumping findings, vitiating the findings on the changed dumping margin in the interim review and extending the scope of analysis of continuation of dumping so as to cover/affect the findings on dumping margin. Lastly, the Institutions infringed the applicants' rights of defence with respect to dumping by failing to disclose their final calculation of dumping to the applicants.