

- infringement of Rule 6(4) of implementing Regulation (EC) 2868/95 in conjunction with decision No EX-05-5 of the President of OHIM,
- infringement of Article 42 of Regulation No 207/2009.

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**Action brought on 14 May 2012 — Germany v Commission**

**(Case T-198/12)**

(2012/C 200/39)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: T. Henze and A. Wiedmann)

*Defendant:* European Commission

**Form of order sought**

- Annul Commission Decision C(2012) 1348 final of 1 March 2012 on the national provisions notified by the Government of the Federal Republic of Germany maintaining the limit values for lead, barium, arsenic, antimony, mercury and nitrosamines and nitrosable substances in toys beyond the date of application of Directive 2009/48/EC on the safety of toys, notified on 2 March 2012,

- in so far as the national provisions notified for maintenance of the limit values for antimony, arsenic and mercury are not approved (Article 1(1)); and

- in so far as the national provisions notified for maintenance of the limit values for lead and barium are approved only until 21 July 2013 (Article 1(2) and (3));

- order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. Infringement of the Treaties under the second paragraph of Article 263 (third alternative), in conjunction with Article 114 TFEU, in that the time limitation of the approval granted in respect of lead and barium is unlawful

The applicant submits that, in so far as the Commission's approval of the national provisions notified for maintenance of the limit values for lead and barium was limited in time until 21 July 2013 only, the contested decision infringes the Treaties within the meaning of the third alternative in the

second paragraph of Article 263 TFEU in that the time limitation effectively circumvents the system of time-limits and deemed approval under Article 114 TFEU.

2. Infringement of essential procedural requirements under the second paragraph of Article 263 TFEU (second alternative) on account of the infringement of the obligation to state reasons, in accordance with the second paragraph of Article 296 TFEU, for the time limitation of the approval granted in respect of lead and barium

The applicant submits that the Commission infringed the obligation to state reasons under the second paragraph of Article 296 TFEU, and thus an essential procedural requirement within the meaning of the second alternative in the second paragraph of Article 263 TFEU, in so far as the Commission's approval of the national provisions sought for maintenance of the limit values for lead and barium was limited in time until 21 July 2013 only.

3. Misuse of powers under the second paragraph of Article 263 TFEU (fourth alternative) as a result of the time limitation of the approval granted in respect of lead and barium
4. Infringement of the Treaties under the second paragraph of Article 263 TFEU (third alternative) on account of the disregard of the assessment criterion under Article 114(4) and (6) TFEU as regards antimony, arsenic and mercury

The applicant submits that, in so far as the Commission took the view that the Federal Government had failed to establish that Directive 2009/48/EC<sup>(1)</sup> no longer offers an appropriate level of protection or is harmful to health, there has been an infringement of the Treaties under the third alternative in the second paragraph of Article 263 TFEU, in that the Commission disregarded the criterion provided for under Article 114(4) and (6) TFEU for assessment as to whether and to what extent the maintenance of national provisions beyond the adoption of a harmonisation measure should be approved on the grounds of major needs referred to in Article 36 TFEU.

The applicant takes the view that — in accordance with the judgment of the Court in Case C-3/00 *Denmark v Commission* [[2003] ECR I-2643] — the test is whether the applicant Member State has proved that those national provisions ensure a level of health protection which is higher than the Community harmonisation measure and that those provisions do not go beyond what is necessary to attain that objective.

5. Infringement of the Treaties under the second paragraph of Article 263 TFEU (third alternative) on account of the erroneous application in fact and in law of Article 114(4) and (6) TFEU as regards antimony, arsenic and mercury

The applicant submits that, in so far as the Commission took the view that the Federal Government had failed to establish that the national provisions ensure a level of health protection which is higher than Directive 2009/48/EC, the contested decision also infringes Article 114(4) and (6) TFEU and thus the Treaties within the meaning of the third alternative in the second paragraph of Article 263 TFEU, in that the national provisions setting limit values for arsenic, antimony and mercury in connection with toys actually ensure a level of protection for children's health which is higher than Directive 2009/48/EC, do not go beyond what is necessary to attain that objective and, moreover, the Federal Government has proved this to the requisite legal standard within the meaning of the case-law of the Court of Justice.

<sup>(1)</sup> Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1).

**Action brought on 23 May 2012 — Elitaliana v Eulex Kosovo and Starlite Aviation Operations**

(Case T-213/12)

(2012/C 200/40)

*Language of the case: Italian*

**Parties**

*Applicant:* Elitaliana SpA (Rome, Italy) (represented by: R. Colagrande, lawyer)

*Defendants:* Eulex Kosovo — European Union Rule of Law Mission (Pristina, Republic of Kosovo) and Starlite Aviation Operations (Dublin, Ireland)

**Form of order sought**

The applicant claims that the Court should:

- Annul the measures adopted by Eulex — the content and date of which are unknown to the applicant — which resulted in the award of the contract in tendering procedure 'EuropeAid/131516/D/SER/XK — Helicopter Support to the EULEX Mission in Kosovo (PROC/272/11)' to the company Starlite Aviation Operations, communicated by Eulex by letter of 29 March 2012 (received on that date by e-mail), and all previous and subsequent measures, whether related or subordinate, in particular, if appropriate, Note 2012-DAS-0392 of 17 April 2012, by which Eulex refused to grant the applicant access to the tendering documents requested on 2 April 2012;
- Order Eulex to pay to the applicant compensation for the loss suffered (in a specific form or commensurate amount) as set out at paragraphs 37 et seq. [of the application];
- Order Eulex to pay the costs.

**Pleas in law and main arguments**

The present action is brought principally against the measures adopted by Eulex which resulted in the award of the contract in tendering procedure 'EuropeAid/131516/D/SER/XK — Helicopter Support to the EULEX Mission in Kosovo (PROC/272/11)' to the company Starlite Aviation Operations and all previous and subsequent measures, whether related or subordinate. The applicant claims compensation for the resulting loss.

The applicant relies on a single plea in law in support of its claim, alleging infringement and/or misapplication of the Notice published on 18 October 2011, with reference to Articles 46 et seq. of Directive 18/2004/EC; <sup>(1)</sup> infringement of the general principles of transparency, proportionality and equal treatment, laid down in the 'Practical Guide to contract procedures for EU external actions' (Prag), to which the tendering procedure was subject; and infringement of the general principle that effective competition should be guaranteed with regard to the standards to be laid down for the service to be procured.

It is submitted in that regard that the contract was awarded to a tenderer that did not possess the technical requirements stipulated in the Notice.

<sup>(1)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

**Order of the General Court of 10 May 2012 — Germany v Commission**

(Case T-571/08 RENV) <sup>(1)</sup>

(2012/C 200/41)

*Language of the case: German*

The President of the Second Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 55, 7.3.2009.

**Order of the General Court of 22 May 2012 — Timab Industries and CFPR v Commission**

(Case T-211/11) <sup>(1)</sup>

(2012/C 200/42)

*Language of the case: French*

The President of the Sixth Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 179, 18.6.2011.