

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).

4. Fourth plea in law, alleging

- that the Commission breached Articles 23 and 27 of Regulation No 1/2003, the applicants' rights of defence, the 2006 Fining Guidelines⁽²⁾, 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 fines on the basis of turnover exceeding the maximum theoretical amount that could have been generated by the conduct defined in Articles 1(2)(g), 1(3)(a), 1(3)(b) and 1(4)(h) of the contested decision;

5. Fifth plea in law, alleging

- that the Commission breached Article 23 of Regulation No 1/2003, the Leniency Notice⁽³⁾, as well as the principle of equal treatment and committed a manifest error of assessment in determining the applicants' fine reduction rates;

6. Sixth plea in law, alleging

- that the Commission breached Article 23 of 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⁽⁴⁾.

(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) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2)

(³) Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 11)

(⁴) Commission Notice on the conduct of settlement procedures in view of the adoption of decisions pursuant to Articles 7 and 23 of Regulation No 1/2003 in cartel cases (OJ 2008 C 167, p. 1)

Action brought on 18 June 2012 — Suwaid v Conseil**(Case T-268/12)**

(2012/C 243/51)

*Language of the case: English***Parties**

Applicant: Joseph Suwaid (Damascus, Syria) (represented by: L. Defalque and T. Bontinck, lawyers)

Defendant: Council of the European Union

Form of order sought

- Annul paragraph 7, of Section A, of Annex I to Council implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 87, p. 103);

- Annul paragraph 7, of Section A, of Annex I to Council implementing Regulation (EU) No 266/2012 of 23 March 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 87, p. 45);

- Failing that, declare the contested decision and regulation inapplicable to the applicant and order the removal of his name and personal data from the list of persons subject to EU sanctions;

- Order the defendant to pay all the costs and in particular all charges, fees and disbursements incurred by the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

- infringement of fundamental rights and procedural guarantees and violation of Article 21(2) of Council Decision 2011/782/CFSP and of Article 32(2) of Council Regulation No 36/2012 since the contested measures were not notified to the applicant and neither was he sent any evidence or serious indications to justify his inclusion in the list of persons subject to sanctions;

2. Second plea in law, alleging

- a manifest error of assessment since the applicant is not involved in the Syrian regime's policy;

3. Third plea in law, alleging

- infringement of the rights of defence, the principle of a fair trial, and the principle of effective judicial protection, in so far as the Council has not responded to the applicant's request, and has therefore not explained why the applicant's name was added to the sanctions' lists, neither produced the evidence justifying his inclusion in these lists, nor offered him the opportunity of being heard orally, before and after, the disputed restrictive measures had been adopted;

4. Fourth plea in law, alleging

- infringement of the duty to state reasons, in so far as the Council merely used an affirmative and vague wording in the contested decision and regulation, without providing detailed justification, when adopting the restrictive measures against the applicant;

5. Fifth plea in law, alleging

- that the Council is at fault in deliberately failing to mention in the contested acts fundamental rights and principles granted under EU law in the European Union. In this connection the applicant further stresses that the Council has adopted the contested acts on the basis of Article 215 TFUE, which provides no 'democratic safeguards'.