Pleas in law and main arguments

In support of the appeal, the appellant relies in particular on the following pleas in law:

1. Defects in the assessment of the obligation to repeat the test

   — The judgment under appeal fails to recognise that the repetition of the oral test pursuant to the judgment of the Civil Service Tribunal of 29 September 2010 in Case F-5/08 *Brune* v *Commission* ('the judgment in *Brune*') breaches the principles of equal treatment and of objectivity in marking as well as Article 266 TFEU;

   — the grounds of the judgment include incorrect findings of law and an erroneous, in part contradictory, assessment of the facts, particularly in the light of the requirements of Article 266 TFEU, the principle of non-discrimination and the requirement of uniform assessment criteria.

2. Failure to consider alternative solutions

   — The judgment under appeal rejects alternative solutions put forward pursuant to the judgment in *Brune* which, according to settled case-law, are required in the present case, and does so on grounds that are wrong in law;

   — in assessing alternative solutions, the judgment under appeal, in particular, misinterprets the principles of equal treatment and of objectivity in marking, Article 27 of the Staff Regulations and the notice of competition.

3. In the alternative: erroneous assessment of the procedural defects in the preparation of the new test

   — The statements in the judgment under appeal regarding the correct timing of the invitation [to the test] and the requisite information concerning the composition of the selection board and the relevant law reveal substantial errors in the assessment of the facts and of the respondent's organisational duties;

   — the judgment under appeal fails to assess whether there has been unequal treatment of the appellant, in view of the additional information provided to another candidate in a parallel procedure;

   — as regards the complaint of bias in the selection board, the judgment under appeal confines itself to examining the lack of proof of discrimination against the appellant in the original procedure, without addressing the concern as to bias in the selection board in the context of the new test.

4. Erroneous dismissal of the appellant's third, fourth and fifth heads of claim as inadmissible

   — The judgment under appeal disregards the possibility of making general findings that are not in the nature of a specific obligation of the institutions of the European Union;

   — the judgment under appeal interprets the appellant's claims for the damage suffered to be made good as meaning that no compensation is sought, although that was explicitly clarified at the hearing;

   — the judgment under appeal disregards the obligation arising from Article 266 TFEU to make good — including of [the institution's] own motion, without an express application — the damage suffered.

5. Discriminatory costs decision

The judgment under appeal discriminates against the appellant in comparison with the applicant in Case F-42/11 *Honnefelder* v *Commission*, in so far as the Tribunal failed to assess what was deemed in that case to be a relevant circumstance for the purposes of Article 87(2) of the Rules of Procedure in a manner favourable to the appellant.

Action brought on 21 May 2013 — SACBO v Commission and TEN-T EA

(Case T-270/13)

(2013/C 207/77)

Language of the case: Italian

Parties

Applicant: Società per l'aeroporto civile di Bergamo-Orio al Serio SpA (SACBO SpA) (Grassobbio (BG), Italy) (represented by: M. Muscardini, lawyer, G. Greco, lawyer)

Defendants: Trans-European Transport Network Executive Agency, European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision in so far as it held that certain external costs were ineligible — thereby reducing the co-financing to which the applicant was entitled and seeking the recovery of EUR 158 517,54 — with all the legal consequences thus arising.

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The present appeal is brought against the decision of 18 March 2013 adopted by the Trans-European Transport Network Executive Agency (TEN-T EA), concerning the 'Closure of Action n° 2009-IT-91407-S- "STUDY FOR BERGAMO-ORIO AL SERIO AIRPORT DEVELOPMENT INTERMODALITY" — Commission Decision C(2010) 4456', in so far as it found that the costs related to activities 1, 2.1, 4, 5, 6 and 7, which had already been carried out, were not admissible, as a result, requesting that the amount of EUR 158 517,54 be paid back.

In support of its application, the applicant puts forward five pleas in law.

1. First plea, alleging infringement of Article 13(1) of Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007, together with Articles III.4.2.2 and III.4.2.3 of Commission Decision (2010) 4456 of 24 June 2010

   — It is submitted in this connection that there was a failure to start a 'complaints' procedure, under Article III.4.2.3 of the decision to grant the funding.

2. Second plea, alleging infringement of Article 17(2) and (6) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004, of the second paragraph of Article 296 TFEU and of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, together with infringement of Article II.2.3 of Commission Decision (2010) 4456 of 24 June 2010

   The applicant claims in that regard that:

   — the decision contained contradictory reasoning because, on the one hand, it is claimed there had been an unjustified 'fragmentation of the contracts', while on the other hand, it is claimed that the 'subject-matter of the contracts' was 'connected to such an extent' that those contracts must have formed part of a single awards procedure;

   — there was an erroneous finding as concerns the improper fragmentation of a single contract because it is contradicted by the contents of Commission Decision (2010) 4456 of 24 June 2010;

   — there was an absence of any 'splitting up' of the contracts or of any 'subdivision of the projects';

   — Directive 2004/17/EC was inapplicable to the contracts as they did meet the thresholds therein due to the absence of any cross-border interest.

3. Third plea, alleging infringement of Article I.3.1 of Commission Decision (2010) 4456 of 24 June 2010, of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, of Article 296 of the Treaty on the Functioning of the European Union, and of the principle of protection of legitimate expectations

   The applicant claims, in that regard, that:

   — the decision contained contradictory reasoning as it conflicted with the recognition and approval already granted by TEN-T EA concerning the SAP (Strategic Action Plan) and the ASR (Action Status Report);

   — the activities undertaken by SACBO were in conformity with those activities which were the subject of co-financing.

4. Fourth plea, alleging infringement of Article 40(2)(b),(c) and (d) of Directive 2004/17/EC

   The applicant claims in that regard:

   — that Directive 2004/17/EC is inapplicable to contracts which are the subject of co-financing for the purposes of 'study' and 'research';

   — that it was impossible to carry out an open tendering procedure due to the time limits imposed by the co-financing decision.

5. Fifth plea, alleging infringement of principle of proportionality

   The applicant alleges that the defendant has disregarded the principle of proportionality by having subjected that alleged breach to a much stricter regime than the regime provided for in cases where co-financing is cancelled.

Action brought on 21 May 2013 — Max Mara Fashion Group/OHIM — Mackays Stores (M&Co.)

(Case T-272/13)

(2013/C 207/78)

Language in which the application was lodged: English

Parties

Applicant: Max Mara Fashion Group Srl (Torino, Italy) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mackays Stores Ltd (Renfrew, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision of the Second Board of Appeal of 7 March 2013 in Case R 1199/2012-2;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark containing the word element 'M&Co.' for goods and services in classes 25 and 35 — Community trade mark application No 9 128 679

Proprietor of the mark or sign cited in the opposition proceedings: The applicant