

Action brought on 8 December 2016 — BP v FRA**(Case T-888/16)**

(2017/C 053/45)

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

Applicant: BP (Vienna, Austria) (represented by: E. Lazar, lawyer)

Defendant: European Union Agency for Fundamental Rights (FRA)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the authority empowered to conclude contracts of employment (AHCC) of 21 April 2016 not to renew the applicant's employment contract;
- order the defendant to compensate the applicant for the material and non-material damage suffered as a result of unlawful non-renewal decision on the one side and unlawful execution of the Judgment in case T-658/13 P⁽¹⁾, on the other side: EUR 63 246 for loss of earnings; EUR 26 630 to compensate the applicant for loss of pension rights for 19 months, or, such capital sum as the Court may fix ex aequo et bono; EUR 1 200 to reimburse legal costs paid by the applicant in pre-litigation phase, starting with the date of the draft decision of 29 January 2016 until the date of the defendant's decision of 21 April 2016; EUR 60 000 for loss of chance to be awarded an indefinite contract, or, such sum as the Court may fix ex aequo et bono; EUR 50 000 for the non-material damage caused to the applicant as a result of alleged errors, irregularities and harm made by the defendant during the procedure for execution of the Judgment in case T-658/13P;
- Order the defendant to compensate the material and non-material damage suffered by the applicant due to the defendant's failure to adopt lawful rules for appraisal, reclassification and renewal and related harm resulted from absence of such lawful rules, on the one side, and the delay in finalising the applicant's staff reports and related harm resulted from the absence of such reports finalised in due time, on the other side;
- declare that the defendant's Guidelines applicable to appraisal and reclassification procedure and Rules on renewal procedure are unlawful insofar as these rules were adopted following an unlawful procedure by an author lacking appropriate competence;
- exercise its full jurisdiction to ensure the effectiveness of its decision;
- order the defendant to pay default interest at the key rate of European Central Bank plus two percentage points on the amount eventually awarded or any other award of interest payment which the Court thinks just and appropriate; and
- order the defendant to pay the entire costs, even in the case the appeal is rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the right of defence:

- breach of right to be heard, failure of FRA's appointing authority to hold a fair and effective hearing, and breach of Article 41 (2) (a) of the Fundamental Rights Charter;

- breach of the second component of the right of defence (right to access the file), refusal to grant access to the personal file and to the documents used for the negative decision of 27.02.2012, breach of Articles 25 and 26 of the Staff Regulation, and breach of Article 41 (2) (b) of the Charter.
2. Second plea in law, alleging violation of essential procedural requirements.
 3. Third plea in law, alleging misuse of powers and conflict of interest, breach of interest of the service, manifest error of assessment and wrong application of the principle of retroactivity.
 4. Fourth plea in law, alleging breach of the obligation to comply honestly and in a good faith with the Judgement T-658/13 P.

(¹) Judgment of 3 June 2015, BP v FRA, T-658/13 P, EU:T:2015:356

**Action brought on 19 December 2016 — Apple Sales International and Apple Operations Europe v
Commission**

(Case T-892/16)

(2017/C 053/46)

Language of the case: English

Parties

Applicants: Apple Sales International (Cork, Ireland) and Apple Operations Europe (Cork, Ireland) (represented by: A. von Bonin and E. van der Stok, lawyers, D. Beard QC, A. Bates, L. Osepciu and J. Bourke, Barristers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the decision of the European Commission of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple;
- alternatively, annul the decision in part; and
- order the Commission to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its interpretation of Irish law.
 - The applicants consider that as non-resident Irish companies, they were only liable to Irish corporation tax under Section 25 of the Taxes Consolidation Act 1997 on 'chargeable profits' attributable to activities performed by their Irish branches. The Opinions properly reflected the branches' 'chargeable profits' and did not therefore confer an advantage. The Commission also erred by finding that profit allocation under Section 25 must be under the 'arm's length principle' (the 'ALP').
2. Second plea in law, alleging that the ALP does not operate as the test for State aid in tax assessments under Article 107 TFEU.