

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* M. J. Dairies EOOD (Sofia, Bulgaria)

### **Details of the proceedings before EUIPO**

*Applicant of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* EU figurative mark containing the word element 'BBQLOUMI' — Application for registration No 13 069 034

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 16/03/2017 in Case R 497/2016-4

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

### **Plea in law**

- Infringement of Article 8(1)(b) of Regulation No 207/2009.

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## **Action brought on 31 May 2017 — Cargolux Airlines v Commission**

**(Case T-334/17)**

(2017/C 239/70)

*Language of the case: English*

### **Parties**

*Applicant:* Cargolux Airlines International SA (Sandweiler, Luxembourg) (represented by: G. Goeteyn, Solicitor, E. Aliende Rodríguez, lawyer, and C. Rawnsley, Barrister)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- in the event that the Court upholds the First, Second, Third or Fourth pleas, annul in their entirety Articles 1(1) to 1(4) of Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (AT.39258 — Airfreight), insofar as they relate to Cargolux;
- in the event that the Court upholds the Fifth plea,
  - annul Article 1(1) in its entirety, or if Article 1(1) is not annulled in its entirety, annul Article 1(1): (i) insofar as it relates to Security Surcharge and commissioning; (ii) insofar as it relates to the period 22 January 2001 to end of 2002; and (iii) insofar as it makes any finding of involvement in cartel conduct as that term is normally understood prior to 10 June 2005 at the earliest;
  - annul Article 1(2) in its entirety, or if Article 1(2) is not annulled in its entirety, annul Article 1(2): (i) insofar as it relates to Security surcharge and commissioning; (ii) insofar as it makes any finding of involvement in cartel conduct as that term is normally understood prior to 10 June 2005 at the earliest;
- annul Articles 1(3) and 1(4) in their entirety.

- in the event that the Court upholds the Sixth plea, to annul Articles 1(2) and 1(3) of the contested decision insofar as they purport to find Cargolux to have participated in any infringement relating to inbound routes (i.e. from third country airports to airports inside the EU or in Iceland and Norway);
- cancel the fine imposed on Cargolux in Article 3 and, if the Court does not cancel the fine in its entirety, substantially reduce it pursuant to its unlimited jurisdiction;
- make the necessary consequential orders in respect of Article 4 insofar as it concerns Cargolux;
- order the Commission to pay Cargolux' costs.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging a manifest error of assessment in that the Commission acted ultra vires by relying on evidence for routes and during periods over which it had no jurisdiction.
  - The applicant puts forward that the Commission has unduly extended its jurisdiction by relying on evidence pre-dating: (a) 1 May 2004 in relation to EU-third country routes; (b) 19 May 2005 in relation to EEA (non EU Member States)-third country routes; and (c) 1 June 2002 in relation to EU-Switzerland routes, in support of its finding an infringement of Article 101 TFEU and Article 53 EEA Agreement in relation to intra-EEA routes.
2. Second plea in law, alleging a breach of essential procedural requirement, a breach of rights of defence and a manifest error of assessment in that the Commission has breached essential procedural requirements and the applicant's rights of defence by not issuing a new statement of objections prior to re-adoption.
  - The applicant puts forward that the Commission was wrong to conclude that it was not required to issue a new statement of objections prior to its re-adoption of the contested decision, thereby breaching the applicant's right of defence.
3. Third plea in law, alleging an error of law and a manifest error of assessment in that the Commission failed to carry out the necessary assessment of the legal and economic context in order to validly find a by object infringement.
4. Fourth plea in law, alleging a breach of essential procedural requirement, a failure to give reasons, a breach of rights of defence and a manifest error of assessment of law and fact in that the Commission failed to identify with sufficient particularity the scope and parameters of the supposed infringement of Article 101 TFEU and the other relevant provisions.
  - The applicant puts forward that the over-stretching of the concept of single continuous infringement has led to an irremediable blurring of the scope of the infringement, making it impossible to grasp its content.
5. Fifth plea in law, alleging a manifest error of assessment in that the Commission failed to establish a reliable evidential basis for its conclusions or to prove the facts on which it bases its findings to the required legal standard.
  - The applicant puts forward that the contested decision contains errors of fact and mistaken assessments in relation to all three constituent elements (FSC, SSC and commissioning of surcharges) of the alleged single and continuous infringement. According to the applicant, the Commission has also misused the concept of single and continuous infringement as a catch all designed to allow it to present as 'evidence' a disparate collection of facts and contacts, including conduct that is legal or irrelevant.
6. Sixth plea in law, alleging an error of law in that the Commission wrongly asserted jurisdiction over supposed anti-competitive coordination in relation to flights from third country airports to airports inside the EEA and erred in law since such activities are outside the territorial scope of Article 101 TFEU and Article 53 of the EEA Agreement.

7. Seventh plea in law, in relation to the request for review of the fine pursuant to the unlimited jurisdiction of the Court, alleging a manifest error of assessment and a breach of the principle of proportionality.
  - The applicant puts forward that the Commission incorrectly determined the value of sales by wrongly taking into account inbound flights and grossly overstated the overall gravity of the alleged infringement. In relation to the applicant, the Commission wrongly assessed the gravity and duration of the alleged infringement and mistakenly rejected mitigating factors.

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**Action brought on 30 May 2017 — Help — Hilfe zur Selbsthilfe v Commission**

**(Case T-335/17)**

(2017/C 239/71)

*Language of the case: German*

**Parties**

*Applicant:* Help — Hilfe zur Selbsthilfe e.V. (Bonn, Germany) (represented by: V. Jungkind and P. Cramer, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the defendant's decision of 21 March 2017 (Ares(2017)1515573) by which a partial amount of the funding for the assistance project Food Security Promotion for very food insecure farming households in Zimbabwe (ECHO/ZWE/BUD/2009/02002) totalling EUR 643 627,72 was to be recovered as well as the payment request based thereupon of 7 April 2017 (No 3241705513) by which the defendant demanded the payment of the first instalment totalling EUR 321 813,86; and
- order the defendant to pay the cost of the proceedings.

**Pleas in law and main arguments**

In support of the action, the applicant relies on three pleas in law:

1. First plea in law: The approach complained about by the defendant is not an infringement of substantive law

- The applicant's action, of which the defendant complains, in the award of two contracts for the delivery of agricultural goods did not infringe binding substantive law requirements for the organisation of calls to tender in the field of humanitarian projects. In particular, it was in conformity with the mandatory procurement principles under Article 184(1) of the Implementing Rules relating to the EU Financial Regulation 2009 and Article 2(3) of the Rules and Procedures in Annex IV to the Framework Partnership Agreement on the EU's cooperation with Non-Governmental Organisations in the field of humanitarian assistance of 2008.
  - The action complained of moreover does not infringe the documentation requirement under Article 23(4) of the general rules laid down in Annex III to the Framework Partnership Agreement.

2. Second plea in law: No other grounds for the recovery

- There are also no other grounds for a recovery of the financial assistance. In particular, the undertaking chosen by the applicant delivered the ordered goods on time, in full and of appropriate quality. The applicant moreover carried out the assistance project successfully, which was confirmed by, in total, four independent reviews by third parties.
  - There was no criminal conduct on the part of the applicant's staff. The Staatsanwaltschaft Bonn (Public Prosecutor's Office, Bonn, Germany) did not initiate a criminal investigation as a criminal offence was not suspected.