

3. Third plea in law, alleging that the contested decision breaches the principle of non-discrimination.
4. Fourth plea in law, alleging that the contested decision is in any event disproportionate.
5. Fifth plea in law, alleging that the contested decision infringes the general principle of good administration.

⁽¹⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Action brought on 4 December 2017 — BTC v Commission

(Case T-786/17)

(2018/C 042/49)

Language of the case: German

Parties

Applicant: BTC GmbH (Bolzano, Italy) (represented by: L. von Lutterotti and A. Frei, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul European Commission Measure Ares (2017) 4799558 of 27 September 2017 concerning the recovery of funds granted and the corresponding Debit Note No 3241712708 of 2 October 2017, together with the notification Ares (2017) 4790311 of 2 October 2017, all of which were notified by email on 4 October 2017 to info@btc-srl.com, as well as all further legal acts (including those which are unknown) which preceded the two mentioned above, which are related thereto or which are designed to ensure their execution;
- in the alternative, declare, in the context of arbitration proceedings on the basis of Article 272 TFEU and Article 5(2) of Grant Agreement No C046311 of 29 June 2007, that the amount which the European Commission requested from the applicant in Debit Note No 3241712708 of 2 October 2017 is not owed, the applicant consequently being entitled to withhold that amount;
- in the further alternative, declare, also in the context of arbitration proceedings on the basis of Article 272 TFEU and Article 5(2) of Grant Agreement No C046311 of 29 June 2007, and only in the event that the applicant might owe an amount to the European Community pursuant to Grant Agreement No C046311 of 29 June 2007, that any sum which may be payable by the applicant is lower than the amount indicated by the European Commission in Debit Note No 3241712708 of 2 October 2017;
- in any event, order the defendant to bear the costs of the proceedings pursuant to Article 134 of the Rules of Procedure, those costs being assessed at EUR 30 000 on the basis of the Italian parameters governing the payment of lawyers' fees, in accordance with Ministerial Decree No 55/2014 of the Italian Justice Ministry, together with a 15 % flat-rate reimbursement of fees under Article 15 of Ministerial Decree No 55/2014 of the Italian Justice Ministry, a 4 % statutory contribution to the lawyers' fund and 22 % VAT, in so far as it is due, subject to a subsequent, more precise assessment, in the course of the proceedings, of the expenditure incurred.

Pleas in law and main arguments

In support of the action, the applicant raises seven pleas in law:

1. First plea in law, alleging that the contested measures are invalid as having been adopted out of time pursuant to the fourth subparagraph of Article 3(1) of Regulation (EC, Euratom) No 2988/95.⁽¹⁾

2. Second plea in law, alleging that the contested measures are invalid due to infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union by reason of the disproportionately long processing time taken to adopt the measure and the abovementioned debit note (infringement of the principle of legal certainty and of the principle of the reasonable duration of proceedings).
3. Third plea in law, alleging that the contested measures are invalid due to infringement of Article 296 TFEU and Articles 41 and 42 of the Charter of Fundamental Rights of the European Union by reason of the errors committed in the establishment of the facts, the erroneous, inadequate and contradictory nature of the statement of reasons for the measure and infringement of the right to access documents.
4. Fourth plea in law, alleging that the contested measures are invalid due to infringement of Articles 2 and 4 of Regulation (EC, Euratom) No 2988/95 and infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union by reason of the disproportionate nature of the amount requested to be repaid, the lack, or erroneous nature, of the establishment of the facts, and the inadequate or contradictory statement of reasons for the measure.
5. Fifth plea in law, alleging that the amount which the Commission claimed from the applicant in Debit Note No 3241712708 of 2 October 2017 is not owed because the Commission infringed the contractual principle of good faith, established the facts in a tardy and inadequate manner, and failed to assess, or assessed incorrectly, the evidence available.
6. Sixth plea in law, alleging that the amount which the Commission requested from the applicant in Debit Note No 3241712708 of 2 October 2017 is not owed, as the conclusions drawn by the Commission on the basis of the OLAF report do not tally with the facts.
7. Seventh plea in law, alleging that the amount which the Commission claimed from the applicant in Debit Note No 3241712708 of 2 October 2017 was not, in any event, owed to that extent on the grounds that, pursuant to Article 19 of Annex II to the Grant Agreement, only amounts which have in fact been received in error have to be repaid, while those amounts which were paid out on the basis of an invoice which is correct and complies with the contractual conditions do not have to be repaid (infringement of the principle of good faith and of the principle of proportionality).

⁽¹⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Action brought on 29 November 2017 — TecAlliance v EUIPO — Siemens (TecDocPower)

(Case T-789/17)

(2018/C 042/50)

Language in which the application was lodged: German

Parties

Applicant: TecAlliance GmbH (Ismaning, Germany) (represented by: P. Engemann, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Siemens AG (Munich, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: EU word mark 'TecDocPower' — EU trade mark No 13 402 326

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 September 2017 in Case R 2433/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;