

Form of order sought

The applicants claim that the Court should:

- annul the decision of the Executive Board of the European Central Bank, notified by letter of 16 October 2017, by which the applicants' application for access to the European Central Bank document 'Responses to questions concerning the interpretation of Article 14.4 of the Statute of the ESCB and of the ECB' of 23 April 2015 was rejected;
- order the defendant to pay the costs of the proceedings, including the costs of any intervening party, pursuant to Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea in law: Incorrect application of the second indent of Article 4(2) of Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) ⁽¹⁾
 - The applicants claim that the publication of the legal opinion in question would not undermine the defendant's legal advice and that there is an overriding public interest in its disclosure. Furthermore, there was a lack of consideration and a failure to state adequate reasons.
2. Second plea in law: Incorrect application of Article 4(3) of Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3)
 - Publication of the legal opinion in question would not undermine its internal use as part of deliberations and preliminary consultations within the European Central Bank, or for exchanges of views between the European Central Bank and national central banks.

⁽¹⁾ Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42).

Action brought on 11 December 2017 — Scania and Others v Commission

(Case T-799/17)

(2018/C 042/56)

Language of the case: English

Parties

Applicants: Scania AB (Södertälje, Sweden), Scania CV AB (Södertälje) and Scania Deutschland GmbH (Koblenz, Germany) (represented by: D. Arts, F. Miotto, C. Pommiès, K. Schillemans, C. Langenius, L. Ulrichs and P. Hammarskiöld, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- adopt a measure of organisation of procedure pursuant to Article 88(1) and Article 89(3)(d) of the Rules of Procedure requesting the Commission to produce the written submissions of DAF and Iveco to the statement of objections;
- annul the decision of the European Commission of 27 September 2017 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (AT.39824 — Trucks)(the contested decision);
- in the alternative, partially annul the contested decision and reduce the fine imposed on the Applicants under Article 261 TFEU and Article 31 of Regulation 1/2003;
- in any event, substitute its own appraisal for the Commission's as regards the amount of the fine and reduce the fine imposed on the Applicants under Article 261 TFEU and Article 31 of Regulation 1/2003; and

— order the Commission to pay the costs pursuant to Article 134 of the Rules of Procedure.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violates the Applicants' rights of defence as deriving from Article 48 (2) of the EU Charter of Fundamental Rights, Articles 27(1) and 27(2) of Regulation 1/2003, the duty of EU institutions to conduct an impartial investigation, as deriving from Article 41(1) of the EU Charter of Fundamental Rights, and the principle of the presumption of innocence, as laid down in Article 48(1) of the EU Charter of Fundamental Rights.
2. Second plea in law, alleging that the Commission violated Articles 27(1) and 27(2) of Regulation 1/2003, and Article 48 (2) of the Charter in denying Scania access to potential new exculpatory evidence contained in DAF's and Iveco's replies to the Statement of Objections.
3. Third plea in law, alleging that the contested decision misapplies Article 101 TFEU and Article 53 of the EEA Agreement by finding that the exchanges of information in the Test & Drive circle constitute an infringement.
4. Fourth plea in law, alleging that the contested decision violates Article 296 TFEU because it provides an inconsistent reasoning in relation to the alleged agreement or concerted practice on the introduction on the market of emission technologies, as well as misapplies Article 101 TFEU and Article 53 EEA Agreement in finding that the Applicants have entered into an agreement or concerted practice on the timing of the introduction on the market of emission technologies.
5. Fifth plea in law, alleging that the contested decision misapplies Article 101 TFEU and Article 53 of the EEA Agreement by incorrectly characterising the information exchange within the German circle as a 'by object' infringement.
6. Sixth plea in law, alleging that the contested decision misapplies Article 101 TFEU and Article 53 of the EEA Agreement because, in holding the geographic scope of the infringement concerning the German circle to be EEA-wide, it commits a manifest error in the assessment of the facts and in their legal characterisation.
7. Seventh plea in law, alleging that the contested decision misapplies Article 101 TFEU and Article 53 of the EEA Agreement because, in holding that the identified behaviour amounts to a single and continuous infringement and in determining that the Applicants are liable in that regard, it commits a manifest error in the assessment of the facts and in their legal characterisation.
8. Eighth plea in law, alleging that the contested decision misapplies Article 101 TFEU and Article 53 of the EEA Agreement, as well as Article 25 of Regulation 1/2003, by imposing a fine in relation to conduct that is time-barred and, in any event, by not taking into account that the conduct was not continuous.
9. Ninth plea in law, alleging that the contested decision violates the principle of proportionality and the principle of equal treatment with respect to the level of the fine, and the Court should, in any event, reduce the amount of the fine by application of Article 261 TFEU and Article 31 of Regulation 1/2003.

Action brought on 11 December 2017 — Brown Street Holdings v EUIPO — Enesan (FIGHT LIFE)

(Case T-800/17)

(2018/C 042/57)

Language in which the application was lodged: German

Parties

Applicant: Brown Street Holdings Ltd (Auckland, New Zealand) (represented by: C. Hufnagel, M. Kleespies, A. Bender and J. Clayton-Chen, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Enesan AG (Zurich, Switzerland)