

Commission fixed the amount of the fine at a level which will irretrievably jeopardise its economic viability and cause all its assets to lose their value. In addition, the applicant contends that the commission committed an error of appraisal in considering that there was no specific social and economic context to be taken into account of in the applicant's case.

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- (¹) Commission Notice on Immunity from fines and reduction of fines in cartel cases (Text with EEA relevance) (OJ 2006 C 298, p. 17)
 (²) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)
 (³) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2)

Action brought on 13 October 2009 — Terezakis v Commission

(Case T-411/09)

(2009/C 312/57)

Language of the case: English

Parties

Applicant: Ioannis Terezakis (represented by: B. Lombart, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the Commission decision in the form of a letter dated 3 August 2009 received by the applicant on 10 August 2009, refusing to disclose to the latter some parts and the annexes of certain letters exchanged between the European Anti-Fraud Office (OLAF) and the Greek Ministry of Finances regarding possible tax irregularities in connexion with the construction of Spata airport in Athens, Greece,

— order that the costs of, and occasioned by these proceedings, be borne by the respondent.

Pleas in law and main arguments

The applicant seeks the annulment of the Commission's decision of 3 August 2009 which was notified to the applicant on 10 August 2009 refusing to disclose to the latter some parts and the annexes of certain letters exchanged between the European Anti-Fraud Office (OLAF) and the Greek Ministry of Finances regarding possible tax irregularities in connexion with the construction of the Athens international airport at Spata, on the basis of the following grounds.

The applicant claims, first, that the contested decision suffers from a manifest error in law and an error in the appreciation of facts insofar as the Commission wrongly interpreted and

applied Article 4(2), first indent, of Regulation (EC) No 1049/2001 (¹) of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. The applicant submits that the Commission merely invoked the exception to public access relating to the need to protect the commercial secrets in the abstract, in order to refuse the disclosure of certain parts of the documents concerned, without pleading specific grounds pertaining to the risk of effectively undermining the protection of commercial interests of the undertakings involved.

The applicant moreover submits that the Commission violated Article 1 of the abovementioned Regulation and the principle of widest possible access to documents held by the Commission set out in paragraph (a) of this Article as well as the case law of Community Courts.

Furthermore, the applicant claims that the Commission committed a manifest error of law by failing to inform the applicant of the grounds on which it based its decision. It is submitted that the Commission violated the obligation to state reasons enshrined in Article 253 EC by simply referring to the exceptions of Article 4(2), first indent, of Regulation (EC) No 1049/2001, in order to refuse the requested access.

Finally, the applicant contends that the Commission wrongly concluded that the annexes to the letters to which the applicant requested access were in the applicant's possession, departing from an erroneous interpretation that the documents requested were identical to those held by the applicant. Hence, the applicant submits that the contested decision is vitiated by a manifest error in law insofar as the Commission abstained to apply the provisions of Regulation (EC) No 1049/2001 and in particular, its Article 4.

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- (¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

Action brought on 14 October 2009 — CEA v Commission

(Case T-412/09)

(2009/C 312/58)

Language of the case: French

Parties

Applicant: Commissariat à l'énergie atomique (CEA) (Paris, France) (represented by: J. García-Gallardo Gil-Fournier, M. Arias Díaz and C. Humpe, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Acknowledge receipt of the application (application, authority to represent the applicant, together with copies and documents) and declare it admissible;
- examine the application lodged for and on behalf of CEA by its legal representatives;
- pursuant to Article 230 EC, annul the Commission's decision — notified to CEA by a letter dated 29 July 2009 — refusing to treat the 'indemnités de départ à la retraite' (retirement allowances; 'IDR') paid by CEA as eligible indirect costs and to grant CEA a certificate on the accounting methodology;
- in the alternative, declare, pursuant to Article 238 EC, (i) that the IDR is an eligible cost in accordance with the contractual provisions of the 7th Research Framework Programme, and (ii) that the European Community has failed to comply with its contractual commitments towards CEA in relation to the 7th Research Framework Programme;
- order the Commission to pay the costs.

Pleas in law and main arguments

Principally, by its action on the basis of Article 230 EC, the Commissariat à l'énergie atomique (CEA) seeks the annulment of the Commission's final decision, notified to CEA on 29 July 2009, refusing to treat the retirement allowances paid by CEA as eligible indirect costs and to grant CEA a certificate on the accounting methodology so that it can declare its indirect personnel costs in order to obtain reimbursement of costs incurred during the implementation of projects which are co-financed in connection with the 7th Research Framework Programme.

CEA takes the view that the Commission's decision that the retirement allowances do not constitute eligible indirect costs is based on errors of law and manifest errors of assessment of the facts, and that the Commission has failed to have regard to the principles of good administration, legal certainty, proportionality and the protection of legitimate expectations.

In the alternative, CEA seeks a declaration on the basis of Article 238 EC that the Commission has failed to comply with its contractual commitments towards CEA by refusing to treat the retirement allowances paid by CEA as eligible costs and, accordingly, to reimburse them.

Action brought on 14 October 2009 — Henkel v OHIM — JLO Holding (LIVE)**(Case T-414/09)**

(2009/C 312/59)

*Language in which the application was lodged: German***Parties**

Applicant: Henkel AG & Co. KGaA (Düsseldorf, Germany) (represented by: C. Milbradt, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: JLO Holding Company LLC (Santa Monica, United States of America)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 July 2009 in case R 609/2008-1 insofar as it made an order for revocation of the Community trade mark No 984 245 'LIVE' for the goods, soaps, perfumery, cosmetic products and make-up;
- order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'LIVE' for goods in Class 3 (Community trade mark No 984 245)

Proprietor of the Community trade mark: Henkel AG & Co. KGaA

Applicant for the declaration of invalidity: JLO Holding Company LLC

Decision of the Cancellation Division: Partial revocation of the Community trade mark

Decision of the Board of Appeal: Partial annulment of the Cancellation Division's decision and partial revocation of the Community trade mark

Pleas in law: Infringement of Articles 51(1)(a) and Article 51(2) of Regulation (EC) No 207/2009 ⁽¹⁾, on the ground that it was proved that the trade mark at issue in the proceedings had been used in such a way as to preserve the rights of the proprietor for the product group, soaps, perfumery, cosmetic products and make-up

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).