

Action brought on 6 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-447/09)

(2010/C 24/98)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the decision of 28 August 2009 relating to the set-off between the claim arising under contract FP7 239108 ICT — VAMDC/=PF=, and the Community's alleged claim on the applicant under the NEMAGENETAG contract;
- order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) seeks the annulment of the set-off measure contained in Decision BUDG/C3 D(2009) 10.5 — 1232 of 28 August 2009, by which the Commission recovered sums paid to the applicant pursuant to the NEMAGENETAG contract relating to a project under the Sixth Framework Programme for Research and Technological Development.

The applicant puts forward three pleas in law in support of its application, alleging:

- infringement of the rights of the defence, in that the decision was taken without the Commission having considered the information in the applicant's detailed response to the final audit report;
- errors of law and manifest errors of assessment of the facts which affected the decision and which led the Commission to refuse costs by adjusting the criteria for the assessment of eligible expenditure, and erroneously to dismiss conclusive evidence of expenditure incurred for the purposes of the project;
- infringement of Article 73(1) of the Financial Regulation, in that (1) the claim at issue could not be regarded as 'certain, of a fixed amount and due', owing to the serious nature of the challenge mounted against it; (2) the claims offset against each other could not be regarded as reciprocal,

since one is collective and the other personal; and (3) the amount of pre-financing payable under the VAMDC contract was not due at the time of the adoption of the set-off measure.

Action brought on 4 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-448/09)

(2010/C 24/99)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Declare the action admissible and well founded;
- order the Commission to refund the amount allegedly receivable of EUR 110 102,26, together with interest on late payment at the statutory rate in accordance with Belgian law governing the contract, claimed by the Commission under the contract by its debit note of 29 June 2009 (Ref No 3230906067) and which gave rise to a set-off measure dated 17 August 2009 (Ref BUDG/C3 D(2009) 10.5 — 1232);
- order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) requests the Court to order the Commission to refund the amount receivable (EUR 110 102,26) referred to in debit note No 3230906067 of 29 June 2009, which is allegedly payable by the applicant under the EURO-THYMAIDE contract relating to a project under the Sixth Framework Programme for Research and Development, and which gave rise to a set-off measure dated 17 August 2009, together with interest on late payment.

The applicant puts forward three pleas in law in support of its application, alleging:

- failure to comply with the contractual criteria for justification of costs, in that the Commission failed to apply Article II.19.1 of the General Conditions of the EURO-THYMAIDE contract relating to eligible costs; and, in the alternative, with the obligation of good faith laid down by

Article 1134 of the Belgian Civil Code — by dismissing evidence of the direct costs of staff involved in the project, the evidential value of which was nevertheless obvious. This approach caused the Commission erroneously to reject certain direct personnel costs and to make adjustments which resulted in the disputed claim;

- the erroneous assessment of the *Provision pour Perte d'Emploi* (loss of employment provision; 'PPE') in the light of the criteria laid down by Articles II.19.1, II.19.2.c and II.20 of the General Conditions of the EURO-THYMAIDE contract, in so far as, contrary to its misleading name, PPE is a personnel cost associated with unemployment insurance that is indissociable from eligible personnel costs. By refusing to allow eligible costs to include amounts corresponding to the PPE levied against the pay of temporary CNRS staff involved in the project, the Commission infringed the requirements referred to above;
- the manifestly erroneous assessment of sick pay in the light of the eligibility criteria provided for under the contract, in that, contrary to Article II.19 of the General Conditions of the EURO-THYMAIDE contract, the Commission included in the costs deemed ineligible salaries paid during periods of sick leave to CNRS staff involved in the project.

Action brought on 6 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-449/09)

(2010/C 24/100)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Declare the action admissible and well founded;
- order the Commission to refund the sum of EUR 97 399,55 allegedly receivable and claimed by the Commission pursuant to the contract in its debit note of 6 July 2009 (Ref No 3230906573) which gave rise to the set-off measure of 28 August 2009 (Ref BUDG/C3 D2009 10.5 — 1232), together with interest on late payment at the statutory rate in accordance with Belgian law governing the contract;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) requests the Court to order the Commission to refund the amount receivable (EUR 97 399,55) referred to in debit note No 3230906573 of 6 July 2009, which is allegedly payable by the applicant under the NEMAGENETAG contract relating to a project under the Sixth Framework Programme for Research and Development, and which gave rise to a set-off measure dated 28 August 2009, together with interest on late payment.

The applicant puts forward two pleas in law in support of its application, alleging:

- failure to comply with the criteria for the definition and justification of eligible costs provided for in the NEMAGENETAG contract and with the principle of good faith in the implementation of agreements, thereby limiting, in some cases even depriving the applicant altogether of, the opportunity to adduce evidence of the proper performance of the contract;
- the erroneous assessment of the *Provision pour Perte d'Emploi* (loss of employment provision; 'PPE') in the light of the criteria laid down by Articles II.19.1, II.19.2.c and II.20 of the General Conditions of the NEMAGENETAG contract, in so far as, contrary to its misleading name, PPE is a personnel cost associated with unemployment insurance that is indissociable from eligible personnel costs. By refusing to allow eligible costs to include amounts corresponding to the PPE levied against the pay of temporary CNRS staff involved in the NEMAGENETAG project, the Commission infringed the requirements referred to above.

Action brought on 9 November 2009 — Wind v OHIM — Sanyang Industry (Wind)

(Case T-451/09)

(2010/C 24/101)

Language in which the application was lodged: English

Parties

Applicant: Harry Wind (Selfkant, Germany) (represented by: J. Sroka, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sanyang Industry Co. Ltd (Hsinchu, Taiwan)