

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)