

By their fourth plea, the Appellants criticize the GC for rejecting the fifth plea of the Application and upholding the relevant parts of the Decision, in which the Commission — in violation of the Fining Guidelines and the principles of fairness and equal treatment — denied KME the benefit of a fine reduction on account of the application of several mitigating factors. The Appellants submit, in particular, that the GC: (1) applied the wrong legal standard when assessing whether KME qualified for a fine reduction on account of its limited implementation of the Arrangements, (2) erred in dismissing KME's claim that KME's Fine should have been reduced because of the crisis in the copper plumbing tube industry; and (3) failed to remedy the Commission's unlawful denial of a fine reduction on account of KME's cooperation outside the Leniency Notice in relation to the broader European arrangements, on the ground that Outokumpu was the first undertaking to provide the Commission with information on the total duration of these arrangements.

By their fifth plea, the Appellants criticize the GC for rejecting the seventh plea of the Application and upholding the Commission's refusal to grant KME a fine reduction on account of its inability to pay. The Applicants submit that the GC erred in law in interpreting the test laid down in Section S(b) of the Fining Guidelines for a fine reduction on account of inability to pay to be granted, as well as in its failure to remedy the unlawful discrimination committed by the Commission against KME compared to SGL Carbon in the Specialty Graphite and Electrical and mechanical carbon and graphite cases. The GC also provided an illogical and inadequate statement of reasons for its dismissal of KME's claims.

By their sixth plea, the Appellants claim that the GC violated EU law and the Appellants' fundamental right to full and effective judicial review by failing to assess thoroughly and closely KME's arguments and showing a biased deference to the Commission's discretion.

Action brought on 3 August 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-390/10)

(2010/C 274/23)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Braun and L. de Schieter de Lopphem, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies⁽¹⁾ or, in any event, by not communicating such measures to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2007/36/EC expired on 3 August 2009. As at the date on which the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not notified the Commission thereof.

⁽¹⁾ OJ L 184, p. 17.

Action brought on 3 August 2010 — European Commission v Kingdom of Belgium

(Case C-391/10)

(2010/C 274/24)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Braun and L. de Schieter de Lopphem, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies⁽¹⁾ or, in any event, by not communicating such measures to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2007/36/EC expired on 3 August 2009. As at the date on which the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not notified the Commission thereof.

⁽¹⁾ OJ L 184, p. 17.

Reference for a preliminary ruling from Supreme Court of the United Kingdom made on 4 August 2010 — Dermod Patrick O'Brien v Ministry of Justice (Formerly the Department for Constitutional Affairs)

(Case C-393/10)

(2010/C 274/25)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Dermod Patrick O'Brien

Defendant: Ministry of Justice (Formerly the Department for Constitutional Affairs)

Questions referred

1. Is it for national law to determine whether or not judges as a whole are 'workers who have an employment contract or employment relationship' within the meaning of clause 2.1 of the Framework Agreement, or is there a Community norm by which this matter must be determined?
2. If judges as a whole are workers who have an employment contract or employment relationship within the meaning of clause 2.1 of the Framework Agreement, is it permissible for national law to discriminate (a) between full-time and part-time judges, or (b) between different kinds of part-time judges in the provision of pensions?

Action brought on 4 August 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-394/10)

(2010/C 274/26)

Language of the case: French

Parties

Applicant: European Commission (represented by: R. Troosters and J. Sénéchal, Agents, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC⁽¹⁾ or, in any event, by not communicating such measures to the Commission, the Luxembourg has failed to fulfil its obligations under Article 15 of that directive;

— order the Grand Duchy of Luxembourg to pay the costs.