

Pleas in law and main arguments

The Commission considers that the abstraction, impoundment, storage, treatment and distribution of surface water or ground water for the purposes of hydro electric power production, navigation and flood protection are also included within water services. Further, personal consumption is also be categorised under water services.

The use of the concept 'water services' by the defendant is contrary to Article 9 of the Water Framework Directive (WFD). The defendant excludes water services such as impoundment which is intended for hydro electric power production, navigation and flood protection from the scope of water services within the meaning of the Directive. Such a narrow interpretation is not compatible with the WFD, undermines the effectiveness of Article 9 WFD and thereby jeopardises the attainment of the Directive's objectives.

It is true that the Member States enjoy a certain margin of discretion on the basis of Article 9 WFD to exclude water services from recovery of costs. They might first have regard to the social, environmental and economic effects of the recovery of costs as well as the geographic and climatic conditions. Further, a Member state might under Article 9(4) WFD decide not to apply the provisions of the second sentence of Article 9(1) WFD in relation to water-pricing policies and recovery of the costs of water services. That option is subject to the condition that there is an established practice in the Member State and that the purposes and the achievement of the objectives of the Directive are not compromised.

However, the complete exclusion of a substantial range of water services, as effected by the defendant, goes far beyond that margin of discretion.

⁽¹⁾ OJ 2000 L 321, p. 1

Action brought on 20 November 2012 — European Commission v Federal Republic of Germany

(Case C-527/12)

(2013/C 26/68)

Language of the case: German

Parties

Applicant: European Commission (represented by: T. Maxian Rusche and F. Erlbacher, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the measures necessary to ensure the immediate and effective implementation of the Commission's decision by recovering granted aid, the

Federal Republic of Germany has failed to fulfil its obligations resulting from Article 288 TFEU, Article 108(2) TFEU, the principle of effectiveness, Article 14(3) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾ and Articles 1, 2 and 3 of Commission Decision 2011/471/EU of 14 December 2010 on State aid granted by Germany to the Biria group (C 38/05 (ex NN 52/04)); ⁽²⁾

— order the defendant to pay the costs.

Pleas in law and main arguments

The Commission claims that the Federal Republic of Germany has failed to comply with its obligations resulting from Article 288 TFEU, Article 108(2) TFEU, the principle of effectiveness, Article 14(3) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty and Articles 1, 2 and 3 of Commission Decision 2011/471/EU of 14 December 2010 on State aid granted by Germany to the Biria group (C 38/05 (ex NN 52/04)) by failing to adopt all the measures necessary to ensure the immediate and effective implementation of the Commission's decision by recovering granted aid.

The Commission takes the view that the instrument chosen by the defendant to recover the aid, namely the granting of civil law claim and a corresponding action for enforcement before the German civil law courts, is not appropriate to ensure the immediate and effective implementation of the Commission's decision. In the alternative, it submits that, on the day the action was lodged, the defendant had not made use of the provisional basis provided to it by the judgment taken by default to implement the Commission's decision.

⁽¹⁾ OJ 1999 L 83, p. 1.

⁽²⁾ OJ 2011 L 195, p. 55.

Appeal brought on 21 November 2012 by Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the General Court (Seventh Chamber) delivered on 13 September 2012 in Case T-404/10: National Lottery Commission v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-530/12 P)

(2013/C 26/69)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, F. Mattina, Agents)

Other party to the proceedings: National Lottery Commission

(²) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark
OJ L 303, p. 1

Form of order sought

The appellant claims that the Court should:

- Annul the Judgment under Appeal,
- Order the National Lottery Commission (Applicant before the General Court) to bear the costs incurred by the Office.

Action brought on 23 November 2012 — European Commission v Grand Duchy of Luxembourg

(Case C-532/12)

(2013/C 26/70)

Language of the case: French

Pleas in law and main arguments

The Office raises three pleas in law, namely (i) the violation of Article 76(1) CTMR (¹), (ii) the breach of OHIM's right to be heard and (iii) the manifest inconsistency and distortion of facts affecting the Judgment under Appeal.

The first plea is divided in two limbs. On the one hand, the General Court infringed Article 76(1) CTMR, as interpreted by the Court of Justice in relation to Article 53(2) CTMR and Rule 37 CTMIR (²) in the Elio Fiorucci Judgment, to the extent that it relied on provisions of national law, namely Article 2704 of the Italian Civil Code, which had not been invoked by the parties and which therefore did not form part of the dispute before the Board. On the other, the General Court infringed Article 76(1) CTMR to the extent that it relied on national jurisprudence, namely the above mentioned ruling No 13912 of 14 June 2007 by the Corte Suprema di Cassazione referred to at paragraph 32 of the Judgment under Appeal, which had not been invoked by the parties and which did not form part of the dispute before the Board.

The second plea concerns the breach of OHIM's right to be heard, to the extent that the Office was not given the opportunity to comment on procedural and substantive aspects relating to the ruling of the Corte Suprema di Cassazione. Had the Office been given this opportunity, it cannot be excluded that the reasoning and conclusion of the General Court would have been different.

The third plea concerns the manifest inconsistency and the distortion of facts affecting the reasoning and conclusion of the General Court. The Office considers that the General Court misread and distorted the analysis of the Board as well as the National Lottery Commission's own arguments and failed to appreciate that the Board applied the correct legal standard, under Italian law, in finding that the National Lottery Commission had not adduced proof that the date of the post office stamp affixed to the 1986 Agreement was not conclusive.

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

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet, A. Tokár, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

- Declare that, by not having adopted the laws, regulations and administrative provisions necessary to transpose Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (¹) or, in any event, by not having notified those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 72(1) of that directive;
- impose on the Grand Duchy of Luxembourg, in accordance with Article 260(3) TFEU, a penalty payment of EUR 8 320 per day from the date of delivery of the judgment in this case;
- order the Grand Duchy of Luxembourg to pay the costs.

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The period prescribed for transposition of Directive 2009/81/EC expired on 21 August 2011.

(¹) OJ L 216, 20.8.2009, p. 76.