

Order of the General Court of 15 January 2013 — Alfacam and Others v Parliament

(Case T-21/12) ⁽¹⁾

(Action for annulment — Public service contracts — Procurement procedure — Supply of audiovisual services to the Parliament — Rejection of a tenderer's bid — Articles 94 and 103 of Regulation (EC, Euratom) no 1605/2002 — Action manifestly devoid of any basis in law)

(2013/C 71/34)

Language of the case: French

Parties

Applicants: Alfacam (Lint, Belgium); Via Storia (Schiltigheim, France); DB Video Productions (Aartselaar, Belgium); IEC (Rennes, France) and European Broadcast Partners (Eubropa) (Aartselaar) (represented by: B. Pierart, lawyer)

Defendant: European Parliament (represented initially by: P. López-Carceller and C. Braunstein, and subsequently by: P. López-Carceller and G. Hellinckx, acting as Agents)

Re:

Annulment of the Parliament's decision of 18 November 2011 to award lot No 1 in the call for tenders EP/DGCOMM/AV/11/11 relating to the provision of audiovisual services within the Parliament in Brussels (Belgium) to watch tv and of the Parliament's decision of 18 November 2011 rejecting Eubropa's bid for that lot.

Operative part of the order

1. *The action is dismissed.*
2. *The applicants shall bear their own costs and pay the costs incurred by the European Parliament.*

⁽¹⁾ OJ C 89, 24.3.2012.

Action brought on 16 October 2012 — Wojciech Gęšina Firma Handlowa Faktor B. i W. Gęšina v Commission

(Case T-468/12)

(2013/C 71/35)

Language of the case: Polish

Parties

Applicant: Wojciech Gęšina Firma Handlowa Faktor B. i W. Gęšina (Warsaw, Poland) (represented by: H. Mackiewicz, legal adviser)

Defendant: European Commission

Form of order sought

— annul Commission Implementing Regulation (EU) No 554/2012 of 19 June 2012 concerning the classification of certain goods in the Combined Nomenclature;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. The first plea concerns adoption of the contested regulation by the Commission in breach of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ⁽¹⁾ in particular through an incorrect interpretation of the explanatory notes to heading CN 9505, which finds expression in the determination that, as the decorative article does not contain any festive imprints, ornaments, symbols or inscriptions, it has not been exclusively designed and manufactured as a festive article and is not recognised as such.

In the applicant's view, the content of heading CN 9505 and of the explanatory notes thereto shows that, in order for an article to be recognised as a festive article, it does not need to have specific imprints, ornaments, symbols or inscriptions directly referring to a particular festivity.

The question whether an article is exclusively designed, manufactured and recognised as a festive article must be assessed in the light of the festivity-related symbolism attaching to a given article in a Member State and of the article's connection with the festive tradition and culture in that State. Where such an article is recognisable in a given cultural circle as a festive article, it need not (but can) have additional symbols ornaments or inscriptions underlining its connection with a particular festivity.

2. The second plea concerns adoption of the contested regulation by the Commission in breach of the Explanatory Notes to the Combined Nomenclature of the European Communities ⁽²⁾ concerning heading CN 9505, through an incorrect interpretation of the notes which consists in the determination that, as the decorative article does not contain any festive imprints, ornaments, symbols or inscriptions, it has not been exclusively designed and manufactured as a festive article and is not recognised as such.

The Explanatory Notes to the Combined Nomenclature clearly indicate that products classified under heading CN 9505 are according to their construction and design (imprints, ornaments, symbols or inscriptions) intended to be used for a specific festivity. The words in brackets define merely by way of example what a product's 'construction and design' might cover. In other words, the Combined Nomenclature does not exclude the situation where a product (as such) is a symbol of specific festivities in a particular cultural circle although the product does not bear any imprints, ornaments, symbols or inscriptions.

3. The third plea concerns breach by the Commission of the principle of equal treatment by acceptance of a situation in which one category of products (artificial flowers and plants used for a festivity) is denied classification as festive articles because of a lack of festive imprints, ornaments, symbols or inscriptions, whereas other categories are so classified under heading CN 9505 even though the articles do not have such festive imprints, ornaments, symbols or inscriptions.

In the course of trade in the European Union, binding tariff information issued by individual Member States exists that specifies classification under heading CN 9505 for articles (including artificial flowers) which do not bear particular symbols, designs or ornaments. This confirms that an article in itself, without inscriptions or ornaments, can be a symbol of specific festivities in the cultural circle of a particular Member State and is accordingly recognised, designed and manufactured there as a festive article.

Neither the notes on Chapter 95 of the Combined Nomenclature nor the commentary in the Explanatory Notes to the Combined Nomenclature show that, in order for a product to acquire the status of a festive article, it must be recognised as festive throughout the European Union. Such an interpretation of 'festive article' would lead to a situation where only a few products would meet these criteria. More than 500 million citizens with different traditions and cultures and differing faiths live in the European Union. Therefore, not only is there no common festive tradition in the European Union but also the list of holidays in individual Member States differs. Finally, some products directly classified under heading 9505 are festive in nature only in some Member States and the corresponding tradition is not known, or is not very popular, in the other Member States.

Action brought on 17 December 2012 — Mory and Others v Commission

(Case T-545/12)

(2013/C 71/36)

Language of the case: French

Parties

Applicants: Mory SA (Pantin, France); Mory Team (Pantin) and Compagnie française superga d'investissement dans le service (CFSIS) (Miraumont, France) (represented by: B. Vatier and F. Loubières, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission Decision;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law in support of their action against Commission Decision C(2012) 2401 final of 4 April 2012, by which the Commission states that the obligation imposed on the Sernam companies to repay State aid by Article 2 of Commission Decision C(2012) 1616 final of 9 March 2012 does not extend to the potential purchasers of the assets of the Sernam Group.⁽¹⁾

1. First plea in law, alleging that the Commission lacked the powers to adopt the contested decision and thus a misuse of powers, since the Commission is not competent to adopt a decision finding that the procedure adopted to execute the decision of 9 March 2012 does not constitute a circumvention of that procedure without a fresh in-depth investigation.
2. Second plea in law, alleging infringement of the obligation to apply the formal investigation procedure when verifying State aid in the event of serious concerns.
3. Third plea in law, alleging inconsistent subject-matter and reasons inasmuch as, firstly, the subject-matter of the decision referred to by the Commission and the actual content thereof do not equate to each other and, secondly, the decision applies contradictory criteria to assess the absence of economic continuity between the aided activities and the purchaser of those activities.

⁽¹⁾ OJ 1987 L 256, p. 1.

⁽²⁾ OJ 2008 C 133, p. 1.