

7. Seventh plea in law, in relation to the request for review of the fine pursuant to the unlimited jurisdiction of the Court, alleging a manifest error of assessment and a breach of the principle of proportionality.
 - The applicant puts forward that the Commission incorrectly determined the value of sales by wrongly taking into account inbound flights and grossly overstated the overall gravity of the alleged infringement. In relation to the applicant, the Commission wrongly assessed the gravity and duration of the alleged infringement and mistakenly rejected mitigating factors.

Action brought on 30 May 2017 — Help — Hilfe zur Selbsthilfe v Commission

(Case T-335/17)

(2017/C 239/71)

Language of the case: German

Parties

Applicant: Help — Hilfe zur Selbsthilfe e.V. (Bonn, Germany) (represented by: V. Jungkind and P. Cramer, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 21 March 2017 (Ares(2017)1515573) by which a partial amount of the funding for the assistance project Food Security Promotion for very food insecure farming households in Zimbabwe (ECHO/ZWE/BUD/2009/02002) totalling EUR 643 627,72 was to be recovered as well as the payment request based thereupon of 7 April 2017 (No 3241705513) by which the defendant demanded the payment of the first instalment totalling EUR 321 813,86; and
- order the defendant to pay the cost of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: The approach complained about by the defendant is not an infringement of substantive law

- The applicant's action, of which the defendant complains, in the award of two contracts for the delivery of agricultural goods did not infringe binding substantive law requirements for the organisation of calls to tender in the field of humanitarian projects. In particular, it was in conformity with the mandatory procurement principles under Article 184(1) of the Implementing Rules relating to the EU Financial Regulation 2009 and Article 2(3) of the Rules and Procedures in Annex IV to the Framework Partnership Agreement on the EU's cooperation with Non-Governmental Organisations in the field of humanitarian assistance of 2008.
 - The action complained of moreover does not infringe the documentation requirement under Article 23(4) of the general rules laid down in Annex III to the Framework Partnership Agreement.

2. Second plea in law: No other grounds for the recovery

- There are also no other grounds for a recovery of the financial assistance. In particular, the undertaking chosen by the applicant delivered the ordered goods on time, in full and of appropriate quality. The applicant moreover carried out the assistance project successfully, which was confirmed by, in total, four independent reviews by third parties.
 - There was no criminal conduct on the part of the applicant's staff. The Staatsanwaltschaft Bonn (Public Prosecutor's Office, Bonn, Germany) did not initiate a criminal investigation as a criminal offence was not suspected.

3. Third plea in law (in the alternative): Failure to exercise discretion and disproportionality

- The decision on the recovery of the financial assistance which has been awarded was taken by the defendant on the erroneous assumption that it was subject to a binding recommendation of the European Anti-Fraud Office (OLAF) on the recovery. This is a failure to exercise discretion on the part of the defendant with the result that the recovery is unlawful.
- The recovery of the total partial sum of EUR 643 627,27 is, moreover, unlawful due to the infringement of the principle of proportionality under Article 5(4) TEU. It goes beyond what is necessary to protect the financial budget and, in particular in the light of the assistance project being successfully carried out, would not be proportionate to the applicant's burden.

Action brought on 31 May 2017 — Shenzhen Jiayz Photo Industrial v EUIPO — Seven (sevenoak)

(Case T-339/17)

(2017/C 239/72)

Language in which the application was lodged: English

Parties

Applicant: Shenzhen Jiayz Photo Industrial Ltd (Shenzhen, China) (represented by: M. de Arpe Tejero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Seven SpA (Leini, Italy)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark containing the word element 'SEVENOAK' — Application for registration No 13 521 125

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 23 March 2017 in Case R 1326/2016-1

Form of order sought

The applicant claims that the Court should:

- reject the contested decision;
- grant the EUTM application No 13 521 125 'SEVENOAK' for all the goods included in the application;
- order EUIPO to bear the costs of the proceedings.

Plea in law

- Infringement of Article 8(1) (b) Regulation No 207/2009.

Action brought on 30 May 2017 — Japan Airlines v Commission

(Case T-340/17)

(2017/C 239/73)

Language of the case: English

Parties

Applicant: Japan Airlines Co. Ltd (Tokyo, Japon) (represented by: J.-F. Bellis and K. Van Hove, lawyers, and R. Burton, Solicitor)