By its first ground of appeal, the Commission claims that, by finding, first, that the Commission 'omitted' to formulate the complaint of buttressing of the positions of Schneider and Legrand in its statement of objections of 3 August 2001 and, second, that such formulation presented 'no particular technical difficulty', the Court of First Instance disregarded the authority of a judgment delivered but still possibly subject to appeal, made materially incorrect findings, distorted the evidence submitted to its evaluation and failed in its duty to state reasons for its judgments.

By its second ground of appeal, the Commission maintains that the Court of First Instance erroneously described the facts, made an error of law and failed in its duty to state reasons in holding that the procedural error found in the judgment of 22 October 2002 in Case T-310/01 *Schneider Electric* v *Commission* was a 'sufficiently serious' breach of a rule of law the object of which was to confer rights on individuals.

By its third ground of appeal, the Commission alleges that the Court of First Instance made materially mistaken findings, distorted the evidence, erroneously described the facts in question and made an error of law in holding that there was a 'sufficiently direct causal link' between the wrongful act or omission and the second head of damage pleaded, namely the anticipated conclusion of Schneider's negotiations with Wendel-KKR on the transfer price of Legrand SA.

By its fourth ground of appeal, the Commission complains that the Court of First Instance was in breach of its duty to state reasons by reason of a contradiction in the grounds vitiating its reasoning concerning the causal link between the wrongful act or omission and the various heads of damage pleaded.

By its fifth ground of appeal, the Commission maintains that the Court of First Instance made materially incorrect findings of fact, distorted the evidence and made an error of law in not concluding that Schneider contributed to the entirety of the second head of damage pleaded. That undertaking failed in several respects in its duty to take reasonable care to avoid the damage or mitigate its extent, particularly by failing to bring an interlocutory application in regard to the obligation to transfer Legrand to which it claims to have been made subject and by having chosen to transfer that undertaking at a time when it was not, anyway, subject to any obligation to do so.

By its sixth ground of appeal, the Commission complains that the Court of First Instance made rulings beyond those sought, misapplied the rules governing the burden of proof and infringed the rights of the defence by identifying a head of damage which was not pleaded by the applicant undertaking.

By its seventh and last ground of appeal, the Commission alleges that the Court of First Instance made an error of law in awarding Schneider compensatory interest from the accrual of the second head of damage on 10 December 2002.

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**Appeal brought on 28 September 2007 by Clara Centeno Mediavilla, Delphine Fumey, Eva Gerhards, Iona M.S. Hamilton, Raymond Hill, Jean Huby, Patrick Klein, Domenico Lombardi, Thomas Miller, Miltiadis Moraitis, Ansa Norman Palmer, Nicola Robinson, François-Xavier Rouxel, Marta Silva Mendes, Peter van den Hul, Fritz Von Nordheim Nielsen, and Michaël Zouridakis against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered on 11 July 2007 in Case T-58/05 Centeno Mediavilla and Others v Commission of the European Communities**

**(Case C-443/07 P)**

(2008/C 22/39)

*Language of the case: French*

**Parties**

*Appellants:* Isabel Clara Centeno Mediavilla, Delphine Fumey, Eva Gerhards, Iona M.S. Hamilton, Raymond Hill, Jean Huby, Patrick Klein, Domenico Lombardi, Thomas Millar, Miltiadis Moraitis, Ansa Norman Palmer, Nicola Robinson, François-Xavier Rouxel, Marta Silva Mendes, Peter van den Hul, Fritz Von Nordheim Nielsen, and Michaël Zouridakis (represented by: G. Vandersanden and L. Levi, avocats)

*Other parties to the proceedings:* Commission of the European Communities, Council of the European Union

**Form of order sought**

— set aside the judgment of the Court of First Instance of the European Communities of 11 July 2007 in Case T-58/05;

— consequently, deliver judgment in accordance with the form of order sought at first instance and, therefore,

  — annul the grade classification granted to the appellants in the decisions relating to their recruitment in so far as that classification is based on Article 12(3) of Annex XIII to the new Staff Regulations;

  — restructure the appellants' career (including valuation of their experience in the grade as thus corrected, their rights to advancement to a higher step and their pension rights), on the basis of the grade at which they would have been appointed on the basis of the competition notice in pursuance of which they were placed on the list of suitable candidates, either to the grade mentioned on that competition notice or to the grade corresponding to its equivalent according to the classification in the new Staff Regulations (and the appropriate step in accordance with the rules applicable before 1 May 2004), as from the date of the decision to appoint them;

— award the appellants interest for late payment on the basis of the rate set by the European Central Bank on all sums corresponding to the difference between the salary corresponding to their classification in the decision to appoint them and the classification to which they ought to have been entitled, until the date on which the decision to classify them in their proper grade is taken;

— order the defendant to pay all the costs incurred at first instance and on appeal.

**Grounds of appeal and main arguments**

After stating, at the outset, that the Court of First Instance treated all the appellants in the same way in the contested judgment without taking into account the particular situation of each of them, and that it based its decision on the presumption, which they dispute, that the legality of their grade classification can be assessed only as from the date of their appointment, the appellants raise two grounds in support of their appeal.

By their first ground of appeal the appellants allege that the Court of First Instance was wrong in concluding that Article 12(3) of Annex XIII to the Staff Regulations is lawful. In that regard, they claim, first, that the Court of First Instance infringed Article 10 of the old Staff Regulations in so far as it assimilated the substitution of grades which took place in the present case to a 'specific' adaptation of the transitional provisions leading towards the new career structure, justifying the fact that the Staff Regulations Committee was not re-consulted, even though the consequences, in particular financial, of that substitution of grades for the situation of the persons concerned are considerable and amply justified consultation of that committee.

In support of that same ground of appeal, the appellants claim, second, an infringement of the principle of vested rights. Contrary to what was held by the Court of First Instance, the relevant question in the present case was not whether there was a vested right in being appointed, but a vested right in being classed in a certain grade in the event of appointment. Although it is not disputed that a competition notice and inclusion in a list of suitable candidates do not grant entitlement to recruitment, that notice and that inclusion do, however, create a right for the participants in the competition and, *a fortiori*, for those on the list of laureates, to be treated in accordance with the competition notice. That right constitutes the consideration for the obligation on the part of the appointing authority to respect the framework which it laid down for itself in the competition notice and which corresponds to the requirements of the posts to be filled and the interests of the service.

The appellants claim, third, that the Court of First Instance infringed the principle of equal treatment in making a distinction between the laureates of the competition who were appointed before 1 May 2004 and those who were appointed after that date since, in any case, the hypothetical nature of the appointment of the laureates of a competition does not infringe their right to rely, in the event of actual recruitment, on the classification criteria laid down in the competition notice and applicable, therefore, to the recruitment of all the laureates of that competition. In addition, the Court in no way carried out an examination of the possible justification for the difference in treatment made between the two categories of officials at issue.

The appellants claim, fourth, that the Court of First Instance infringed the principle of legitimate expectations and misinterpreted the evidence. The documents submitted to that court contain a large amount of information capable of substantiating the claim that the appellants actually received specific assurances that they would be recruited at the grade stipulated in the competition notice.

Finally, the appellants claim that the Court of First Instance misconstrued the scope of Articles 5, 7 and 31 of the Staff Regulations and, in that regard, also infringed the duty of the Community judicature to give reasons.

By their second ground of appeal, the appellants contest the judgment under appeal further in that it dismissed the actions brought against the decisions concerning their appointment on the ground that, although the defendant infringed its duty to provide pre-contract information, that inadequacy cannot, in itself, render the contested decisions unlawful. They claim, in that regard, the concurrent infringement of the principles of sound administration, transparency, legitimate expectations, good faith, equal treatment and equivalence between job and grade and the duty of care.

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**Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 24 October 2007 — Association Générale de l'Industrie du Médicament ASBL, Bayer SA, Servier Benelux SA, Janssen Cilag SA, Pfizer SA v Belgian State — Intervener: Sanofi-Aventis Belgium SA**

**(Case C-471/07)**

(2008/C 22/40)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Applicants:* Association Générale de l'Industrie du Médicament ASBL, Bayer SA, Servier Benelux SA, Janssen Cilag SA, Pfizer SA

*Defendant:* Belgian State