



INTERNATIONAL COURT OF APPEAL

INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by the

Royal Automobile Club of Belgium (RACB)

on behalf of its licence-holder Marc VDS racing team (Belgian Racing s.a.) against Decision n°3/2012 of the National Appeal and Disciplinary Tribunal of the Spanish Royal Automobile Federation (Tribunal Nacional de Apelación y Disciplina de la Federación Real Española de Automovilismo), under which the National Tribunal decided to dismiss the appeal filed by the Marc VDS racing team against Decision n°13 taken by the Stewards on 14 October 2012 concerning the Blancpain Endurance Racing Event held in Navarra (Spain) on 13 and 14 October 2012 and counting towards the Blancpain Endurance Series 2012

Case 2013-02

Hearing of Thursday 28 February 2013 in Paris



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The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr Harry Duijm (Netherlands), who was elected President, Mr Jean Luisi (France), Mr Philippe Narmino (Monaco) and Mr Dieter Roskopf (Germany), met in Paris on Thursday 28 February 2013 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Royal Automobile Club of Belgium (RACB) on behalf of its licence-holder Marc VDS racing team (Belgian Racing s.a.) (the “Appellant” or the “VDS Team”) against Decision n°3/2012 issued on 15 November 2012 by the National Appeal and Disciplinary Tribunal of the Spanish Royal Automobile Federation (the “NCA”), under which the NCA decided to reject the appeal filed by the Appellant against Decision n°13 taken on 14 October 2012 by the Stewards of the Blancpain Endurance Racing Event held in Navarra (Spain) on 13 and 14 October 2012 and rejecting a protest lodged by the Appellant for an alleged infringement of the Blancpain Endurance Series 2012 Sporting Regulations (the “BES 2012 Sporting Regulations”), the Court heard the statements and examined the submissions made by the Appellant, the Spanish Royal Automobile Federation (the “RFEDA”), the interested third party Belgian Audi Club Team WRT (the “BAC Team”) and the FIA.

The following persons were attending the above hearing:

on behalf of the RACB/Marc VDS Racing Team:

Mr Leinders Bas (VDS Team Principal)
Mr Pascal Nelissen Grade (Attorney-at-law)

on behalf of the Belgian Audi Club Team WRT:

Mr Pierre Dieudonné (Sporting Director)
Mr Christian Boumon (Attorney-at-law)

on behalf of the RFEDA:

Mr David Domingo (Attorney-at-law)
Mr Borja Callejo (Attorney-at-law)

on behalf of the FIA:

Mr Sébastien Bernard (FIA Legal Director)
Mr Pierre Ketterer (FIA Legal Counsel)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)
Mr Nicolas Cottier (Clerk of the FIA Courts)
Ms Sandrine Gomez (Administrator of the FIA Courts)



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The parties filed their written submissions and, at the hearing of 28 February 2013, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the hearing, notably the simultaneous translation, was raised by anyone.

REMINDER OF THE FACTS

1. During the final leg of the Blancpain Endurance Series 2012 held in Navarra (Spain) on 13 and 14 October 2012, cars n°1 and n°6 of the BAC Team finished second and third respectively, whereas the Appellant's car finished the race in 4th position.
2. Considering that the BAC Team had infringed the BES 2012 Sporting Regulations, the Appellant lodged a protest against the BAC Team, more precisely against its car n°1, before the Stewards of the event (the "Protest").
3. In its Protest, the Appellant stated the following:
"we would like to protest car number 1 (sic) for an illegal pit-stop, the 1st and 2nd stop, for connecting the air lance before refuelling."
4. The Protest was rejected by the Stewards and the Appellant then filed an appeal before the NCA of the RFEDA. This appeal was dismissed.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

5. The Appellant lodged an appeal by fax with the Secretariat of the ICA on 18 December 2012. The original version of the appeal was received by the Secretariat of the ICA by registered mail on 20 December 2012.
6. In its Grounds of Appeal, dated 28 January 2013, the Appellant contends that the Court should:
 - admit the Appeal and declare it well-founded;
 - set aside the NCA's and the Stewards' decisions;
 - declare the Protest of the Appellant filed before the Stewards on 14 October 2012 admissible and well-founded;
 - modify the provisional ranking of the Event and downgrade car n°1 of the BAC Team by at least one place or "*at least*" impose on that car a time penalty of at least 30 seconds instead of the drive-through that it should have been given;



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- order the BAC Team to pay all the costs;
 - order the reimbursement of the amounts of EUR 2,500 and of EUR 12,000 paid by the VDS Team as appeal fees.
7. The RFEDA, in its Defence dated 2 February 2013, invites the Court:
- to confirm the decision taken by the NCA on 15 November 2012 in all its provisions;
 - to reject all the Appellant's Protests and order the Appellant to pay the costs of the procedure.
8. The BAC Team requested to take part in the present proceedings, as provided under Article 17.8 iii) of the Judicial and Disciplinary Rules of the FIA (the "JDR"), which was admitted by the President of the Hearing in its decision dated 17 January 2013. In this capacity, the BAC Team requested in its submissions, received by the ICA Secretariat on 12 February 2013, that the Court:
- dismiss the Appeal filed by the RACB on behalf of its licence-holder the VDS Team.
9. The FIA, in its written observations, dated 13 February 2013, invites the Court:
- to assess the admissibility of the appeal brought by the RACB on behalf of the Appellant against the decision issued by the RFEDA's NCA;
 - to declare the question of the decision of partial inadmissibility pronounced by the NCA as irrelevant;
 - to assess the facts in this case, after hearing the two competitors concerned, and return a ruling on the possible violation of the BES 2012 Sporting Regulations by the BAC Team and, if applicable, on the principle of a sanction.
10. After the filing of the written submissions, the Appellant and the BAC Team filed additional requests on 22 February 2013 and 25 February 2013 respectively. Such requests were admitted by the President of the Hearing in its decision dated 26 February 2013 with the express reference that no further submissions would be admitted by the Court.

ADMISSIBILITY

a) Arguments of the parties

11. The FIA indicates that the Appeal would be inadmissible if it appeared that it was received by the Court on 20 December 2012, as the ICA Secretariat's stamp on the first page of the Appeal seems to indicate. Based on the 7-day period provided under Article 17.3 (i) JDR, the Appeal should have indeed been received on 18 December 2012 at the latest.



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12. Based on the evidence produced before the Hearing, the FIA withdrew its submission on the Appeal's admissibility.
13. The BAC Team puts forward that the Appellant's Protest was directed against "car n°1". The BAC Team therefore claims that the Appeal is not admissible as a Protest must be lodged against a fellow competitor, as provided under Article 171 ISC.
14. No further issues were raised by the parties with respect to the Appeal's admissibility.

b) Conclusions of the Court

15. The Court notes first that it is no longer disputed that the Appeal was filed by the VDS Team by fax addressed to the Court's Secretariat on 18 December 2012, i.e. within the appeal period provided under Article 17.3 (i) JDR.
16. Coming to the BAC Team's submission, the Court notes that there has never been any doubt as to which competitor the Protest was lodged against. Article 171 ISC does not mention how the "competitor" should be designated. In particular, Article 171 ISC does not expressly require that the "competitor" be formally designated by name. It is thus sufficient that the "competitor" can be identified, as was the case in the Protest. The Court decides therefore to reject the BAC Team's submission.
17. All the other requirements of the JDR for the admissibility of the Appeal being met, which is not disputed, the Court thus declares the Appeal admissible.

ON THE PROCEDURE

First Plea – On the Power of the NCA and of the ICA to review facts and legal grounds not mentioned in the Protest

a) Arguments of the parties

18. The NCA rejected several submissions of the Appellant for the reason that such submissions were based not only on the facts which were specifically mentioned in the Protest and which connected to Articles 91 and 92 of the BES 2012 Sporting Regulations, but also on facts connected to Articles 89 and 90 of the BES 2012 Sporting Regulations. According to the NCA, new facts or legal grounds, which were not raised before the Stewards, cannot be put forward afterwards.
19. In its written submissions filed before the Hearing, the Appellant contests the NCA's opinion and claims that nothing prohibits new arguments from being raised before the NCA or, later, the ICA. In any case, the Appellant puts forward that those submissions raised before the NCA remained "within the framework" of the Protest, Articles 89 and 90 of the BES 2012 Sporting Regulations being closely linked with Articles 91 and 92 of the BES 2012 Sporting Regulations and the Protest concerning pit stops made by the BAC Team in general. All facts related to these pit stops should thus have been assessed by the NCA.



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20. The RFEDA argues that the NCA was right in rejecting the arguments presented before it, as those were not submitted by the Appellant to the Stewards. The appeal before the NCA could only be limited to the legal and factual arguments raised before the Stewards, namely the arguments related to Articles 91 and 92 of the BES 2012 Sporting Regulations and more specifically to the connection of the air hose to car n°1.
21. The BAC Team stresses on its side that the Protest made within the deadline fixed by Article 174 of the International Sporting Code (the “Code”) was limited to the issue of the connection of the air hose by the BAC Team before or while proceeding with the refuelling of its car. The Protest cannot be extended to new factual and legal arguments through an appeal before the NCA, i.e. after the above-mentioned deadline expired.
22. The FIA reminds the Court that according to Article 39 of the BES 2012 Sporting Regulations, the Protest must be made according to the Code. Based on Article 174 of the Code, the FIA expresses the view that, in order to meet the deadline set under this article, only the facts reported before the Stewards within such deadline should be the grounds of the procedure before them, and before any further instance, notably the NCA.
23. The FIA thus states that the ICA must assess the NCA’s and the Stewards’ decisions on the basis of the facts set out in the Protest. As to the legal grounds, the FIA stresses that the Stewards had decided that no infringement was committed by the BAC Team without basing their decision on specific legal grounds; therefore, it is the view of the FIA that the NCA did not need to pronounce the “partial inadmissibility” of the appeal lodged before it, but only to assess the facts reported in the Protest.
24. At the Hearing, the Appellant informed the Court that it would in the end restrict its Appeal to the facts mentioned in its initial Protest, namely to the connection of the air hose to the BAC Team’s car n°1.

b) Conclusions of the Court

25. Following the statement made by the Appellant at the Hearing, by which the Appellant explained that it was restricting its Appeal to the facts contained in its Protest, the Court finds that the first plea is withdrawn and that all written submissions made by all the parties in relation with it are no longer relevant.

ON THE SUBSTANCE

Second Plea - The videos of the event show that the BAC Team infringed the BES 2012 Sporting Regulations

a) Arguments of the parties

26. Following its statements at the Hearing regarding the scope of its Appeal, the Appellant limits its submission to the alleged infringement of Article 92 of the BES



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2012 Sporting Regulations, namely that the air hose was connected to car n°1 during the refuelling. It founds its submissions on a video that its team filmed during the Event.

27. According to the Appellant, the alleged breach committed by the BAC Team allowed it to save a lot of time and the car should have been sanctioned with a drive through. This would have led car n°6 of the BAC Team to beat car n°1 of the same BAC Team, leading the Appellant's car to end with the same number of points in the championship as car n°1 of the BAC Team. Consequently, the Appellant's car would have won the championship for having won one more race than the BAC Team over the whole 2012 championship.
28. The RFEDA argues that the Appellant did not bring any proof to support its submissions, which should thus be rejected together with the Appeal.
29. The BAC Team claims that the Appellant had the videos made by unknown third parties in order to try to obtain evidence to support any potential protest that the Appellant might find useful to lodge at the end of the Event. According to the BAC Team, this attitude is contrary to the sporting spirit. The BAC Team adds further that its car n°1 was the only target of those videos, although other competitors were using the same procedure to earth their cars. The BAC Team then claims that only videos which are at the disposal of the Stewards should be used. Subsidiarily, the BAC Team submits that the Court should in any case view the images in real time and not in slow motion.
30. Stressing the distinction that must be made between Article 91 and Article 92 of the BES 2012 Sporting Regulations, the BAC Team argues that connecting the air hose is a measure which aims firstly to earth the car before refuelling as provided under Article 91 of the BES 2012 Sporting Regulations, and not a measure governed by Article 92 of the BES 2012 Sporting Regulations, which relates to the action of lifting the car in order to change its wheels. One should in that context not forget that a car can be lifted by other means than using an air jack system, so that connecting the air hose is obviously not a mandatory action to be taken under Article 92 of the BES 2012 Sporting Regulations. This way of earthing the car was allegedly admitted by the Officials of the Blancpain Endurance Series and adopted by many other teams throughout the year.
31. As to the impact of the alleged breach of the BES 2012 Sporting Regulations and of any sanction imposed on its car n°1, the BAC Team explains, firstly, that the alleged breach could not have any material impact on the final results of the race, and, secondly, that, its cars n°1 and n°6 applied the same refuelling procedures and should then have been equally sanctioned if a breach had been found, leading to no change in the final ranking of the Event.
32. The BAC Team is of the opinion that the Appellant, which bears the burden of proof in the present proceedings, did not bring any valid evidence to support its submissions.
33. Lastly, the BAC Team puts forward that the BES Sporting Regulations have been amended for 2013 in order to render invalid the procedure followed by the BAC Team



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in 2012, which shows *a contrario* that the procedure followed in 2012 was valid under the BES 2012 Sporting Regulations. It claims its good faith and argues that the refuelling procedure applied having been approved by officials, all competitors should be able to rely on these approvals.

34. The FIA stresses that the Stewards decide primarily and in a discretionary manner on the responsibilities and on the sanctions related to any breach of the regulations which are applicable to an event.
35. The Stewards based their decision on Articles 91.1, 91.2 and 92 of the BES 2012 Sporting Regulations. The only issue raised before the Stewards related to the refuelling operation and the connection of the air hose to the BAC Team's car n°1. The FIA is therefore of the opinion that the NCA did not need to declare the appeal filed by the Appellant before it as partially invalid and simply had to review the facts which were mentioned in the Protest on the basis of the evidence available to the Stewards at the moment of their decision.
36. The FIA leaves it up to the Court to decide whether the BES 2012 Sporting Regulations were infringed or not.
37. The video was shown during the Hearing and the parties had the opportunity to comment on it. In that context, the BAC Team confirmed that during the refuelling operations which took place at the two pit-stops, not only the air hose was connected to car n°1 but also a copper cable. The BAC Team explained at the Hearing that the reason for connecting the air hose to the car during the refuelling operations, despite the fact that a copper cable was connected in the meantime, was that it allegedly provided an additional level of security.

b) Conclusions of the Court

38. The Court carefully read the written submissions of the parties and listened to the explanations put forward at the hearing.
39. The Court decides first that the Appellant's video must be admitted before it, as it constituted a factor of the Stewards' Decision.
40. The Court then stresses that the facts related in the Protest, namely the issue of the connection of the air hose to car n°1 before and during the refuelling, are governed by Articles 91 (Refuelling) and 92 (Tyre changes) of the BES 2012 Sporting Regulations. The question at stake is whether the air hose may be connected during the refuelling or only after it.
41. Article 91 (Refuelling) of the BES 2012 Sporting Regulations provides, in its relevant part, that:

“ (...) 1) *Before and during any refuelling operation, the car must be electrically earthed (...)*”.



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42. Article 92 (Tyre changes) of the BES 2012 Sporting Regulations provides, in its relevant part, that:

“ (...) **TYRE CHANGES** may be carried out on the car, after refuelling (red.),

(...)

1) *Personnel authorised in the pit lane working area for tyre changes:*

- *1 Team Manager*
- *2 mechanics maximum, (...), are allowed to carry out any operations needed to change the tyres, using only one wheel gun or torque wrench. These two people may start these operations only once the fuel filler and vent have been disconnected from the car, if refuelling has taken place (red.) or only after the car has stopped.*

They must (red.):

- *bring and connect the air hose to the air jacks;*

(...)”

43. Based on the clear wording of Articles 91 and 92 of the BES 2012 Sporting Regulations, the Court finds that, under these articles, it is admitted to connect the air hose to the car only after the refuelling operations have taken place.

44. Car n°1 of the BAC Team and, based on the evidence produced during the proceedings, the other car of the BAC Team as well as several other teams which competed in the Blancpain Endurance Series 2012 did therefore infringe Article 92 of the BES 2012 Sporting Regulations.

45. The BAC Team puts forward that the connection of the air hose was justified by the fact that, during the refuelling, it achieved the purpose of earthing the car electrically, as required under Article 91 of the BES 2012 Sporting Regulations.

46. The Court must reject this submission for the following reasons:

47. First, the video showed that the car was already earthed by a copper cable, which is undisputed. Second, nothing in the file shows how the connection of the air hose provides additional security, a submission of the BAC Team made actually only at the Hearing. In any case, the connection of the air hose as a technical means to earth a car is not mentioned in the BES 2012 Sporting Regulations. Moreover, the Court notes that the draft of the BES 2013 Sporting Regulations, submitted to the Court by the



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BAC Team itself, does even expressly and exclusively refer to the connection of a copper cable as a way to earth a car.

48. Based on all the above, the Court finds that the BAC Team did not manage to demonstrate why the connection of the air hose to its car n°1 during the refuelling was necessary to earth the car, when it was already earthed through a copper cable. There is thus no reason to divert from the clear wording of Article 92 of the BES 2012 Sporting Regulations, which prohibits any operations linked to tyre changes, including “bring[ing] and connect[ing] the air hose to the air jacks”.
49. The Court thus decides that Article 92 of the BES 2012 Sporting Regulations was infringed. The decision of the NCA, dated 15 November 2012, and that of the Stewards, dated 14 October 2012, shall thus be declared void and replaced by the present decision of the Court.

Third Plea - The “affidavit” of Mr Cocquyt, dated 14 October 2012, is irrelevant

a) Arguments of the parties

50. The Appellant explains that the affidavit drafted by Mr Cocquyt on 14 October 2012, i.e. after the event, and taken into consideration by the Stewards to pass their Decision, was of pure convenience and must be considered as an invalid amendment to the BES 2012 Sporting Regulations.
51. The BAC Team declares that the “affidavit” of Mr Cocquyt is actually a report for the attention of the Stewards, describing a procedure authorised before the Event, even if the report of Mr Cocquyt was formally issued after it. The purpose of this report is not to amend the BES 2012 Sporting Regulations but to confirm that the refuelling procedure is in line with the BES 2012 Sporting Regulations. The BAC Team notes as well that several other competitors have attested that they were following the same procedure.
52. The FIA stresses that the interpretation of the BES 2012 Sporting Regulations is under the sole competence of the Stewards or of the Race Director and must respect the formalities set in Article 32 of the BES 2012 Sporting Regulations. The FIA is of the opinion that Article 32 was not respected in the present case, so that the document issued by Mr Cocquyt should not be taken into consideration by the Court.

b) Conclusions of the Court

53. Based on the evidence produced by the parties, the Court finds that the Stewards should not have taken into consideration the opinion of Mr Cocquyt. As stated before, the wording of Article 92 of the BES 2012 Sporting Regulations is clear and nothing could justify the connection of the air hose to car n°1 of the BAC Team during the Event in Navarra. Besides, the car was already earthed by a copper cable, so there was no reason to try and find justifications in earthing the car with the air hose.



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54. More importantly, it appears that the formal requirements set in Article 32 of the BES 2012 Sporting Regulations were in any case not met. No amendment was formally made to the BES 2012 Sporting Regulations and no communication was made on the interpretation of Articles 91 and 92 of the BES 2012 Sporting Regulations, according to Article 32 of the BES 2012 Sporting Regulations.
55. As far as the issue of the infringement of Article 92 of the BES 2012 Sporting Regulations is concerned, the Court therefore rejects all submissions related to the “affidavit” of Mr Cocquyt as well as to what indeed appears to have been a practice of several teams during the Blancpain Endurance Series 2012, notably during the Event in Navarra. For the reasons expressed above, those submissions are irrelevant to the interpretation of Articles 91 and 92 of the BES 2012 Sporting Regulations.

Fourth Plea – The sanction

b) Arguments of the parties

56. In essence, the Appellant explains that the BAC Team should be sanctioned with a time penalty which should technically lead car n°1 of the BAC Team to finish behind car n°6 of the same BAC Team. Although this sanction would not change the ranking of the Appellant’s car, it would reduce the number of points scored by car n°1 of the BAC Team, the latter finishing the 2012 Series with the same number of points as the Appellant’s car, which would then win the championship as it won more races in 2012 than car n°1 of the BAC Team.
57. The BAC Team and the RFEA oppose any sanction against car n°1 of the BAC Team as they contest the allegation that the latter committed any infringement.
58. Lastly, the FIA leaves it up to the Court to decide on the sanction to be pronounced against car n°1 of the BAC Team.

b) Conclusions of the Court

59. According to Article 96 of the BES 2012 Sporting Regulations, “*any breach of the provisions of the Code or these Sporting Regulations relating to pit lane assistance and refuelling will entail penalties at the Stewards’ discretion (red.)*.”
60. Article 153 ISC provides for a scale of penalties, including notably a reprimand, a fine and a time penalty.
61. Based on all the circumstances of the case, the Court decides that a fine shall be the appropriate sanction.
62. In the present case, a time penalty would not be appropriate for the following reasons:



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63. Nothing in the file indicates how much time was saved by the BAC Team's car n°1 due to the infringement of Article 92 of the BES 2012 Sporting Regulations. It does not appear that car n°1 was really advantaged as it has been admitted by all the parties that many other cars, notably car n°6 of the BAC Team, committed the same infringement. Lastly, the evidence put forward before the Court shows that this infringement was quite a common practice among teams during several races, including during the Event in Navarra. In accordance with Article 96 of the BES 2012 sporting regulations, the Court took into consideration all elements presented when deciding on the sanction to be imposed on car n°1 of the BAC Team.
64. In conclusion, the Court finds that the Appeal must be partially admitted and that the BAC Team must be sanctioned with a fine of 10,000 euros.

COSTS

65. Considering that the Appeal was admitted in its essential parts, the Court leaves it to the BAC Team to bear the costs in accordance with Article 18.2 JDR.



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ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Declares that the BAC Team committed a breach of Article 92 of the BES 2012 Sporting Regulations;**
- 3. Declares void Decision n°3/2012 of the National Appeal and Disciplinary Court of the Spanish Royal Automobile Federation and Decision n°13 taken by the Stewards on 14 October 2012 concerning the Blancpain Endurance Racing Event held in Navarra (Spain) on 13 and 14 October 2012 and counting towards the Blancpain Endurance Series 2012;**
- 4. Imposes a fine of 10,000 euros on the Belgian Audi Club Team WRT;**
- 5. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 6. Orders the restitution of the whole appeal fees paid to the National Appeal and Disciplinary Tribunal of the Spanish Royal Automobile Federation and to the Court by the Appellant;**
- 7. Leaves it to the Belgian Audi Club Team WRT to pay all the costs, in accordance with Article 18.2 of the Judicial and Disciplinary Rules of the FIA;**
- 8. Rejects all other and further conclusions.**

A handwritten signature in blue ink, consisting of a vertical line on the left, a horizontal line across the middle, and a wavy horizontal line extending to the right.

Paris, 28 February 2013

The President