

4. Fourth plea in law, alleging that the contested decision did not provide an adequate statement of reasons in so far as the Commission did not explain in detail how the conditions set out in the decision were capable of rendering the scheme compatible despite the finding that the method of financing was incompatible.
5. Fifth plea in law, alleging infringement of the principle of proportionality in so far as the applicants submit that by choosing to declare the aid scheme compatible by imposing retroactive conditions rather than purely and simply finding it incompatible, while exempting the French Republic from recovering the aid from the beneficiaries, the Commission infringed the principle of proportionality.
6. Sixth plea in law alleging abuse of process and infringement of Article 7 of Regulation (EC) No 659/1999 in so far as the Commission, at the end of the formal investigation procedure, adopted a conditional decision, even though not only had its doubts as regards the compatibility of the aid scheme not been removed but it was also satisfied that the scheme was incompatible. It infringed the provisions of Regulation No 659/1999 and therefore committed an abuse of process.

**Action brought on 10 June 2011 — Buzzi Unicem v Commission**

(Case T-297/11)

(2011/C 226/56)

*Language of the case: Italian*

**Parties**

*Applicant:* Buzzi Unicem (Casale Monferrato, Italy) (represented by: C. Osti and A. Prastaro, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the Contested Decision in its entirety for failure to state reasons, or to state adequate reasons, and the consequent breach of the applicant's rights of defence and the principle of due process;
  - annul the Contested Decision in its entirety for excess and abuse of powers and for the consequent reversal of the burden of proof;
  - annul the Contested Decision, in whole or in part, as being *ultra vires* with respect to the powers conferred on the Commission under Article 18 [of Regulation No 1/2003]; and for breach of the principles of proportionality and due process, and failure to hear argument on an *inter partes* basis, in breach of the Commission's 'Best Practices';
  - in any event, order the Commission to pay the costs.
- Pleas in law and main arguments**
- In support of the action, the applicant relies on five pleas in law.
1. First plea in law, alleging failure to state reasons, or to state adequate reasons; breach of the rights of the defence; and breach of the principle of due process
    - the applicant objects that the Contested Decision fails to fulfil the Commission's duty to state reasons and entails breach of the applicant's rights of defence in that it does not provide, or provides in a manner that is wholly inadequate, information regarding the subject and purpose of the investigation.
  2. Second plea in law, alleging excess and abuse of powers, and reversal of the burden of proof
    - the applicant claims that the Commission exceeded and abused its powers in that the request for information should be used to verify evidence already in its possession, not for compiling — in the absence of evidence — a comprehensive database on the market. That also amounts to a breach of the presumption of innocence and entails a complete reversal of the burden of proof.
  3. Third plea in law, alleging that the Commission acted *ultra vires* with respect to the powers conferred upon it under Article 18 of Regulation No 1/2003
    - the applicant argues that the pattern of requests from the Commission is in excess of the powers conferred under Article 18, in accordance with which the Commission may request only information which is necessary as relating to the facts of which the undertaking can be aware and communicating to it the relevant documents in its possession.
  4. Fourth plea in law, alleging breach of the principle of proportionality and that the Commission acted *ultra vires* in relation to Article 18
    - the applicant claims that the Contested Decision exceeds the limits laid down in Article 18 concerning necessity and breaches the principle of proportionality in that (i) it requests information which is unnecessary; (ii) it did not choose, from among a number of suitable measures, the course of action which would entail the least inconvenience for the undertaking; and (iii) the requests are excessively burdensome for the applicant.
  5. Fifth plea in law, alleging breach of the Commission's 'Best Practices' and the principle of sound administration

— the applicant claims that the Commission acted in breach of its own 'Best Practices' in that it first asked the applicant to comment on the draft Contested Decision but did not then take any account of those comments; also in that the Contested Decision differs significantly from the draft. Furthermore, the applicant claims that the constant amendments to the requests constitute clear evidence of the lack of diligence which characterised the Commission's conduct, in breach of the principle of sound administration.

### Action brought on 16 June 2011 — Ben Ali v Council

(Case T-301/11)

(2011/C 226/57)

*Language of the case: French*

#### Parties

*Applicant:* Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Tunis, Tunisia) (represented by: A. de Saint Remy, lawyer)

*Defendant:* Council of the European Union

#### Form of order sought

The applicant claims that the General Court should:

- adopt a measure of organisation of procedure under Article 64 of the General Court's Rules of Procedure, to ensure that the Commission disclose all documents relating to the adoption of the contested regulation;
- annul Council Regulation (EU) No 101/2011 of 4 February 2011 [concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia] in so far as it concerns the applicant;
- failing annulment, apply derogations in respect of financial assets serving basic needs, but also some extraordinary expenses assessed case by case;
- order the Council of the European Union to pay the applicant an overall sum of EUR 50 000 in compensation for all forms of damage;
- order the Council of the European Union to pay the applicant a sum of EUR 7 500 for legal expenses in support of the application;
- order the Council of the European Union to pay the costs.

#### Pleas in law and main arguments

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

1. First plea in law, alleging lack of sufficient legal basis since first, the measure is not aimed at the maintenance or resto-

ration of peace and security and infringes the individual rights of the applicant, second, the statement of reasons for the decision contains inaccuracies and errors and, third the measure is disproportionate and unjustified.

2. Second plea in law, alleging an infringement of the rights of the defence and of the right to an effective legal remedy.
3. Third plea in law, alleging an infringement of the duty to state reasons in the measure where, first, the freezing of funds is a penalty decided upon by a political body, second, no procedure for removal from the list is mentioned in the contested regulation, third, the applicant's fundamental rights have been infringed at every stage of the procedure and, fourth, the statement of reasons for the measures is general, without foundation, vague and imprecise.
4. Fourth plea in law, alleging a manifest error in assessment of the facts since the applicant's participation in an unlawful act has not been proved.
5. Fifth plea in law concerning the right to property to the extent that the measures are an unjustified restriction on the applicant's right to property.
6. Sixth plea in law, alleging an infringement of the principle of proportionality.
7. Seventh plea in law concerning the right to life since the effect of the freezing of assets should not be to jeopardise the applicant's means of support and right to life.

### Action brought on 16 June 2011 — Alumina v Council

(Case T-304/11)

(2011/C 226/58)

*Language of the case: French*

#### Parties

*Applicant:* Alumina d.o.o (Zvornik, Bosnia and Herzegovina) (represented by: J.-F. Bellis and B. Servais, lawyers)

*Defendant:* Council of the European Union

#### Form of order sought

The applicant claims that the General Court should:

- annul the anti-dumping duty imposed on the applicant by Council Implementing Regulation (EU) No 464/2011 of 11 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of zeolite A powder originating in Bosnia and Herzegovina;