

Form of order sought

The appellant claims that the Court should:

- conduct a hearing;
- order the European Commission to pay the appellant within 14 days the sum of EUR 2 623 282,31, together with interest of 6 % per annum on the sum of EUR 1 641 372,50 from 24 September 2007 and interest of 6 % per annum on the sum of EUR 981 909,81 from 16 October 2007;
- declare that the European Commission is obliged to compensate the appellant for any further losses in connection with lot KUK459 awarded on 3 September 2007 and lot KUK465 awarded on 17 September 2007;
- rule that the European Commission is to pay the appellant's costs to the appellant's lawyer within 14 days.

Pleas in law and main arguments

The appeal is directed against an order of the General Court, by which it dismissed, due to lack of any foundation in law, an action for damages in respect of the loss allegedly incurred by the applicant and appellant because the Commission did not check the conditions for the implementation of standing invitations to tender for the resale on the Community market of cereals, in this case maize, held by the Hungarian intervention agency.

The General Court's interpretation of the law, according to which the Commission cannot be accused of any unlawful conduct, is incorrect as the case-law⁽¹⁾ cited by the General Court cannot be applied to the present case.

Contrary to the interpretation of the General Court, it follows from the relevant provisions⁽²⁾ that standing invitations to tender for the resale of cereals held by the intervention agencies of the Member States are to be managed by the Commission. In doing so, the Commission has both the competence to take decisions and a duty to conduct checks.⁽³⁾ There was no discretion on the part of those intervention agencies.

The Commission's duty to conduct checks serves not only to protect the financial interests of the European Union, but also to protect the interests of individual market participants. Regulation No 884/2006⁽⁴⁾ sets out in specific terms the duty to conduct checks, to the effect that all intervention stores are to be checked at least once a year by the paying agencies in respect of proper conservation and the integrity of intervention stocks and a copy of the inspection reports must then be sent to the Commission. Those provisions were grossly disregarded in the present case.

The Commission's failure to exercise its powers of inspection prior to the invitation to tender at issue in the present case thus constitutes an aggravated and serious breach of duty.

In addition, the General Court made procedural errors in that it classified the statement of facts provided by the present appellant as incorrect without any taking of evidence and without a hearing.

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- (¹) Judgment of the Court of 1 January 2001 in Case C-247/98 *Commission v Greece* and judgment of the General Court of 13 November 2008 in Case T-224/04 *Italy v Commission*.
 - (²) In particular Articles 6 and 24 of Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals (OJ 2003 L 270, p. 78).
 - (³) Article 37 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).
 - (⁴) Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States (OJ 2006 L 171, p. 35).

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Administrative Court) (Austria) lodged on 30 September 2011 — ÖBB-Personenverkehr AG v Schienen-Control Kommission and Bundesministerin für Verkehr, Innovation und Technologie

(Case C-509/11)

(2012/C 13/08)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Administrative Court)

Parties to the main proceedings

Applicant: ÖBB-Personenverkehr AG

Defendants: 1. Schienen-Control Kommission

2. Bundesministerin für Verkehr, Innovation und Technologie

Questions referred

1. Is the first subparagraph of Article 30(1) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ 2007 L 315, p. 14, to be interpreted as meaning that the national body designated responsible for the enforcement of that regulation may prescribe,

with binding effect on a railway undertaking whose compensation terms do not conform to the criteria laid down in Article 17 of that regulation, the specific content of the compensation scheme to be used by that railway undertaking although national law permits that body only to declare such compensation terms null and void?

2. Is Article 17 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ 2007 L 315, p. 14, to be interpreted as meaning that a railway undertaking may exclude its obligation to pay compensation of the ticket price in cases of force majeure, either through application by analogy of the grounds for exclusion provided for in Regulations (EC) No 261/2004, (EU) No 1177/2010 and (EU) No 181/2011 or by taking into account the exclusions from liability provided for in Article 32(2) of the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV, Annex I to the Regulation) also for cases of compensation for the ticket price?

Reference for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 13 October 2011 — Laurence Prinz v Region Hannover

(Case C-523/11)

(2012/C 13/09)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Laurence Prinz

Defendant: Region Hannover

Question referred

Does it constitute a restriction of the right to freedom of movement and residence conferred on citizens of the European Union by Articles 20 and 21 TFEU, which is not justified under Community law, if pursuant to the Bundesausbildungsförderungsgesetz, a German national, who has her permanent residence in Germany and attends an education establishment in a Member State of the European Union, is only awarded an education grant for attending that education establishment abroad for one year because when she commenced her stay abroad she had not already had her permanent residence in Germany for at least three years?

Reference for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 20 October 2011 — Novartis Pharma GmbH v Apozyt GmbH

(Case C-535/11)

(2012/C 13/10)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Claimant: Novartis Pharma GmbH

Defendant: Apozyt GmbH

Question referred

Does the term 'developed' in the introductory sentence of the Annex to Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency⁽¹⁾ extend to processes in which portions only of a medicinal product which has been developed and produced on a ready-to-use basis in accordance with the above procedures are drawn off into another container, after being prescribed and ordered at the time concerned by a doctor, if as a result of the process the composition of the medicinal product is not modified, and therefore in particular to the production of pre-filled syringes which have been filled with a medicinal product which is authorised under the regulation?

⁽¹⁾ OJ 2004 L 136, p. 1.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 20 October 2011 — Bundeswettbewerbsbehörde v Donau Chemie AG and Others

(Case C-536/11)

(2012/C 13/11)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Bundeswettbewerbsbehörde

Defendants: Donau Chemie AG, Donauchem GmbH, DC Druck-Chemie Süd GmbH & Co KG, Brenntag Austria Holding GmbH, Brenntag CEE GmbH, Ashland-Südchemie-Kernfest GmbH, Ashland Südchemie Hantos GmbH.