

**Re:**

Application for interim relief, in particular an application for suspension of operation of the restrictive measures instituted by the Council against Syria, in so far as those measures affect the applicant.

**Operative part of the order**

1. *The application for interim relief is dismissed.*
2. *Costs are reserved.*

---

**Order of the President of the General Court of 23 April 2012 — Ternavsky v Council**

(Case T-163/12 R)

*(Applications for interim measures — Common foreign and security policy — Restrictive measures against Belarus — Freezing of funds and economic resources — Application for suspension of operation of a measure — Disregard of the formal requirements — Inadmissibility)*

(2012/C 174/40)

*Language of the case: French*

**Parties**

*Applicant:* Anatoly Ternavsky (Moscow, Russia) (represented by: C. Rapin and E. Van den Haute, lawyers)

*Defendant:* Council of the European Union

**Re:**

Application for suspension of the application of point 2 of Annex II to Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2012 L 87, p. 95) and of point 2 of Annex II to Council Implementing Regulation (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 87, p. 37)

**Operative part of the order**

1. *The application for interim measures is dismissed.*
2. *The costs are reserved.*

---

**Action brought on 2 March 2012 — France v Commission**

(Case T-135/12)

(2012/C 174/41)

*Language of the case: French*

**Parties**

*Applicant:* French Republic (represented by: E. Belliard, G. de Bergues, J. Gstalter and J. Rossi, Agents)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision in its entirety;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

By its application, the applicant seeks the annulment of Commission Decision C(2011) 9403 final of 20 December 2011 declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)).

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

1. First plea in law, divided in two parts, alleging breach of Article 107(1) TFEU in that the Commission considered that the reform of the method of financing the pensions of public-service employees working for France Télécom amounted to State aid. The applicant submits that:
  - the Commission was wrong to take the view that the reduction in the contribution to be paid to the State by France Télécom does not free the latter from the structural disadvantage suffered by it following the entry into force of the 1990 Law and that the measure confers an advantage on that company;
  - in the alternative, the Commission was wrong to take the view that France Télécom benefited from an advantage as from 1996 despite the payment of an exceptional flat-rate contribution by that company.
2. Second plea in law, alleging, in the alternative, breach of Article 107(3)(c) TFEU in that the Commission made the compatibility of the measure in question conditional upon the requirement laid down in Article 2 of the contested decision being satisfied. The second plea is divided into two parts.
  - By the first part of the plea, the applicant submits that the Commission infringed Article 107(3)(c) TFEU when it took the view that the competitively fair rate had not been attained in the present case because non-common risks had not been taken into account in calculating the contribution paid by France Télécom following the entry into force of the 1996 Law.
  - By the second part of the plea, the applicant submits, in the alternative, that the Commission infringed Article 107(3)(c) TFEU when it refused to assess the inadequacy of the competitively fair rate in the light of the payment of an exceptional flat-rate contribution by France Télécom and when it concluded that that company had not been placed in a completely equivalent position to that of its competitors until 2043.

3. Third plea in law, alleging a manifest error of assessment in that the Commission refused to accept a rate of 7 % as the discount rate for the exceptional flat-rate contribution.

---

**Action brought on 12 April 2012 — Deutsche Börse v Commission**

(Case T-175/12)

(2012/C 174/42)

*Language of the case: English*

**Parties**

*Applicant:* Deutsche Börse AG (Frankfurt am Main, Germany) (represented by: C. Zschocke, J. Beninca and T. Schwarze, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the Commission Decision COMP/M.6166 Deutsche Börse/NYSE Euronext of 1 February 2012; and

— Order the defendant to pay the costs of this application.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the defendant failed to properly assess the horizontal competitive constraints to which the parties are subject to, alleging that the Commission's consideration of over-the-counter ('OTC') derivatives trading and its claim that the constraints the parties supposedly exercise on each other's exchange fees was vitiated by errors of law and assessment. In addition, the Commission's claim that the parties constrain each other through innovation competition is manifestly incorrect and its analysis of competition among trading platforms was not based on cogent and consistent evidence. Furthermore, the Commission failed to properly consider the demand-side constraints because it failed to analyze and assess the crucial role of the parties' customers among which are the main participants of OTC trading, and to carry out any quantitative analysis.

2. Second plea in law, alleging that the defendant's assessment of the parties' efficiencies claims was vitiated by manifest errors and not supported by cogent and consistent evidence.

The Commission inaccurately accepted only some of the efficiencies as verifiable, merger-specific and likely to directly benefit customers, and incorrectly claimed that they were insufficient to counteract the competitive effects of the merger. In relation to its evaluation of both collateral savings and liquidity benefits, the Commission violated the parties' right to be heard by relying on evidence and arguments introduced after the oral hearing on which the parties were not given opportunity to comment. The Commission's 'claw back' theory and its assessment of the merger-specificity of collateral savings were based on new theories and requirements that are not supported by the Commission's Horizontal Merger Guidelines <sup>(1)</sup>.

3. Third plea in law, alleging that the defendant failed to properly assess the remedies offered by the parties. The rejection of the commitment concerning the full divestiture of NYX' (the applicant and NYSE Euronext) overlapping single equity derivatives business, including the divestiture of NYX' BClear facility, was based on incorrect evidence. The alleged 'symbiotic relationship' between single equity and equity index derivatives does not exist, contradicts the Commission's own market definition analysis, and was raised in violation of the parties' right of defence. The Commission's rejection of the software licensing commitment is vitiated by error and contradicts its conclusions regarding technology competition.

---

<sup>(1)</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5)

---

**Action brought on 16 April 2012 — Bank Tejarat v Council**

(Case T-176/12)

(2012/C 174/43)

*Language of the case: English*

**Parties**

*Applicant:* Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, and F. Zaiwalla, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

*Defendant:* Council of the European Union