

4. Fourth plea in law, alleging

- that the Commission breached Articles 23 and 27 of Regulation No 1/2003, the applicants' rights of defence, the 2006 Fining Guidelines⁽²⁾, the principle that the punishment must fit the offence, as well as the principles of sound administration, *nulla poena sine culpa* and proportionality and it committed a manifest error of assessment in determining the amount of the fines on the basis of turnover exceeding the maximum theoretical amount that could have been generated by the conduct defined in Articles 1(2)(g), 1(3)(a), 1(3)(b) and 1(4)(h) of the contested decision;

5. Fifth plea in law, alleging

- that the Commission breached Article 23 of Regulation No 1/2003, the Leniency Notice⁽³⁾, as well as the principle of equal treatment and committed a manifest error of assessment in determining the applicants' fine reduction rates;

6. Sixth plea in law, alleging

- that the Commission breached Article 23 of Regulation No 1/2003, the principle of equal treatment and committed a manifest error of assessment by refusing to initiate settlement talks under the Settlement Notice⁽⁴⁾.

(¹) Council Regulation No 141 of 26 November 1962 exempting transport from the application of Council Regulation No 17 (OJ, English Special Edition 1959-1962, p. 291)

(²) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2)

(³) Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 11)

(⁴) Commission Notice on the conduct of settlement procedures in view of the adoption of decisions pursuant to Articles 7 and 23 of Regulation No 1/2003 in cartel cases (OJ 2008 C 167, p. 1)

Action brought on 18 June 2012 — Suwaid v Conseil**(Case T-268/12)**

(2012/C 243/51)

*Language of the case: English***Parties**

Applicant: Joseph Suwaid (Damascus, Syria) (represented by: L. Defalque and T. Bontinck, lawyers)

Defendant: Council of the European Union

Form of order sought

- Annul paragraph 7, of Section A, of Annex I to Council implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 87, p. 103);

- Annul paragraph 7, of Section A, of Annex I to Council implementing Regulation (EU) No 266/2012 of 23 March 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 87, p. 45);

- Failing that, declare the contested decision and regulation inapplicable to the applicant and order the removal of his name and personal data from the list of persons subject to EU sanctions;

- Order the defendant to pay all the costs and in particular all charges, fees and disbursements incurred by the present proceedings.

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

- infringement of fundamental rights and procedural guarantees and violation of Article 21(2) of Council Decision 2011/782/CFSP and of Article 32(2) of Council Regulation No 36/2012 since the contested measures were not notified to the applicant and neither was he sent any evidence or serious indications to justify his inclusion in the list of persons subject to sanctions;

2. Second plea in law, alleging

- a manifest error of assessment since the applicant is not involved in the Syrian regime's policy;

3. Third plea in law, alleging

- infringement of the rights of defence, the principle of a fair trial, and the principle of effective judicial protection, in so far as the Council has not responded to the applicant's request, and has therefore not explained why the applicant's name was added to the sanctions' lists, neither produced the evidence justifying his inclusion in these lists, nor offered him the opportunity of being heard orally, before and after, the disputed restrictive measures had been adopted;

4. Fourth plea in law, alleging

- infringement of the duty to state reasons, in so far as the Council merely used an affirmative and vague wording in the contested decision and regulation, without providing detailed justification, when adopting the restrictive measures against the applicant;

5. Fifth plea in law, alleging

- that the Council is at fault in deliberately failing to mention in the contested acts fundamental rights and principles granted under EU law in the European Union. In this connection the applicant further stresses that the Council has adopted the contested acts on the basis of Article 215 TFUE, which provides no 'democratic safeguards'.