Pleas in law and main arguments

By the present application, the applicants are seeking annulment of the contested regulation to the extent that it imposes anti-dumping duties on their exports to the European Union. The application is based on the following grounds:

— A breach of Articles 2(7)(b) and (9)(5) of Council Regulation (EC) No 384/96 on protection against dumped imports (the 'Basic Regulation'), Article VI of the GATT, as well as principles of non-discrimination, *nemo auditur* and legitimate expectations, with regard to the failure of the Community institutions to examine each Market Economy Treatment ('MET') and Individual Treatment ('IT') request individually;

— a violation of Articles 18 and 20 of the Basic Regulation, and a breach of the applicants' rights of defence with regard to the Community's Institutions' failure to inform the applicants of the treatment accorded to MET and IT requests;

— a manifest error of assessment as well as a breach of Articles 5(4) of the Basic Regulation with regard to the evaluation of the standing of the Community producers in supporting the investigation, Article 1(4) of the Basic Regulation with regard to the definition of the product scope, Article 17 of the Basic Regulation and Article 253 EC with regard to the selection of the sample of exporting producers, Article 3(2) of the Basic Regulation and Article 253 EC with regard to the injury of determination, Article 3(2) of the Basic Regulation with regard to the assessment of the causal link between dumped imports and injury, and, finally, Article 9(4) of the Basic Regulation in the calculation of the injury elimination level.

Action brought on 27 December 2006 — Spain v Commission

(Case T-402/06)

(2007/C 42/62)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo)

Defendant: Commission of the European Communities

Form of order sought

— annulment of Commission decision C(2006) 5105 of 20 October 2006 reducing the assistance granted by the Cohesion Fund for eight projects under way in the territory of the Autonomous Community of Catalonia;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

This action challenges Commission decision C(2006) 5105 of 20 October 2006 reducing the assistance granted by the Cohesion Fund for the eight projects under way in the territory of the Autonomous Community of Catalonia ('the contested decision'), viz:.

— No 2001.ES.16.C.PE.058 (project for extension of biological treatment at the Besos treatment station)

— No 2003.ES.16.C.PE.005 (project for waste-water disposal infrastructures in small towns in Catalonia)

— No 2001.ES.16.C.PE.054 (project for treatment of sludge and reuse of urban waste water in Catalonia)

— No 2000.ES.16.C.PE.112 (project for drainage and water treatment in the Ebro Basin: Monzón, Caspe and inland river basins of Catalonia)

— No 2002.ES.16.C.PE.006 (project for a desalination [of seawater] plant in the Tordera delta)

— No 2001.ES.16.C.PE.055 (project for construction and improvement of the infrastructures for treating municipal solid waste in Catalonia)

— No 2001.ES.16.C.PE.057 (project for municipal waste-treatment plants in the districts of Urgell, Pallars Jussa and Conca de Barberá)

— No 2002.ES.16.C.PE.041 (project for the establishment and improvement of the network of infrastructures for the treatment of municipal waste in Catalonia).

In the contested decision the defendant made a correction of 2 % of the Community assistance (85 %) granted for the project 2001.ES.16.C.PE.058, because the management company had charged ineligible expenditure.

So far as concerns the other projects, the Commission, having regard to the use of the 'average prices' system and the 'experience of previous works' criterion, has decided to apply a financial correction to 100 % of the Community difference in terms of Community assistance between the tenders selected and those recalculated contract by contract.

In support of its claims, the applicant State alleges, principally, misinterpretation of Article 30(1) of Directive 93/37/EEC [1] and of Article 36(1) and (2) of Directive 92/50/EEC [2], in so far as the contested decision concludes that application of the average prices system used in the analysis of 'the most economically advantageous tender' in the projects awarded infringes the principle of equal treatment, by discriminating against tenders which are too low compared with other more costly tenders.

In the alternative, the applicant alleges infringement of Article H(2) of Annex II to Regulation (EC) 1164/94 ([3]), by reason of breach of the principles of proportionality and sound administration.

With specific regard to the project for the Besos treatment station, the applicant also alleges infringement of Article 17 of Regulation (EC) No 1386/2002 ([4]), on the ground that there are no real irregularities or, alternatively, on the ground of the principle of subsidiarity laid down in that act.

([1]) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 115).
([2]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).
([3]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).
([4]) Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections (OJ 2002 L 201, p. 5).

Action brought on 22 December 2006 — Belgium v Commission

(Case T-403/06)

(2007/C 42/63)

Language of the case: French

Parties

Applicant: Kingdom of Belgium (represented by: L. Van den Broeck, Agent, and J. Meyers, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision pursuant to Article 230 EC;

— order the Commission (Eurostat) to pay the costs in connection with this action.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of the Commission's decision, contained in the letter of the Statistical Office of the European Communities (Eurostat) of 18 October 2006, to amend the data relating to the government deficit and the government debt of Belgium for 2005 and to provide the data thus amended, pursuant to Article 8h(2) of Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the EC Treaty ([1]), as amended. The applicant objects to two amendments made by the Commission, namely the classification of the Fonds de l'infrastructure ferroviaire (FIF) (Railway Infrastructure Fund) in the public administration sector rather than in the non-financial corporations sector for the application of the European system of accounts 1995 (ESA 95) ([2]) and the recording of a capital transfer of EUR 7 400 million on account of the assumption by the State (FIF) in 2005 of the debts of the Société nationale des Chemins de fer belges (SNCB).

The applicant relies on the following pleas in law in support of its application for annulment.

As regards the classification of FIF in the public administration sector, the applicant puts forward a plea alleging infringement of Article 8h(2) of Regulation (EC) No 3605/93 and paragraphs 2.12, 3.19 and 3.27 to 3.37 of ESA 95. The applicant submits that FIF must be categorised as an 'institutional unit' within the meaning of paragraph 2.12 of ESA 95 and as a 'market producer' under the criteria set out in paragraphs 3.19 and 3.27 to 3.37 of ESA 95, and must as such be classified outside the public administration sector. The applicant therefore claims that the contested decision is wrong to find that FIF does not satisfy that twofold condition for 2005.

In the alternative, as regards the capital transfer of EUR 7 400 million from the Belgian State to SNCB on account of FIF's assumption in 2005 of SNCB's debts, the applicant relies on three pleas. The first is based on infringement of Article 8h(2) of Regulation (EC) No 3605/93 and of paragraphs 1.33, 1.44(c), 4.165(f) and 6.30 of ESA 95. The applicant claims that the allocation of the debt in question to FIF does not flow from a 'transaction' within the meaning of paragraph 1.33 of ESA 95 but from a 'restructuring' within the meaning of paragraphs 1.44(c) and 6.30 of ESA 95. As an alternative plea, the applicant submits that, even if the allocation of the debt to FIF were to be analysed as a 'transaction' within the meaning of paragraph 1.33 of ESA 95, it does not involve a capital transfer for the purposes of paragraph 4.165(f) of ESA 95. The second plea put forward in connection with the objection to the recording of the capital transfer of EUR 7 400 million from the Belgian State to SNCB alleges breach of Article 253 EC in that, according to the applicant, the Commission failed to give a sufficient statement of reasons for the contested decision on that point. Furthermore, the applicant claims that the contested decision infringes the principle of protection of legitimate expectations in that it disregards the opinion expressed by the Commission (Eurostat) in its email of 13 August 2004, in which a Commission expert agreed with the analysis submitted by the applicant in this case.

([1]) OJ 1993 L 332, p. 7.
([2]) Approved by Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ 1996 L 310, p. 1).