Form of order sought

— annul the contested decision;

— in the alternative, annul Article 2 of the operative part of that decision;

— in the further alternative, reduce the amount of the fine imposed on the applicant in the contested decision;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2006) 6765 final of 20 December 2006 in Case COMP/39.234 — Alloy surcharge re-adoption. In the contested decision, which concerns the reopening of the proceeding in Case IV/35.814 — Alloy surcharge, a fine was imposed on the applicant for infringement of Article 65(1) CS by Thyssen Stahl GmbH (previously Thyssen Stahl AG) in that it agreed an alteration to the reference values used to calculate the alloy surcharge and applied that alteration.

The applicant raises ten pleas in law in support of its action:

— infringement of the principle of *nulla poena sine lege*, since, in the absence of transitional provisions, the Commission had no power to apply retroactively the CS Treaty which expired in 2002;

— unlawful application of Regulation (EC) No 1/2003 ([1]), since it grants entitlement only to apply Articles 81 EC and 82 EC, but not the CS Treaty;

— infringement of the principal of *res iudicata*, since the Court of Justice has already given final judgment in the case to the effect that on the merits the applicant is not liable for the infringement of Thyssen Stahl AG which was alleged against it and attributed to it once more in the contested decision;

— lack of responsibility of the applicant by way of a private declaration of assumption of liability, since such a declaration is declaratory at most;

— infringement of the principle of legal certainty since the basis for the penalty and the basis for the attribution of liability are insufficiently certain;

— infringement of the principle of *ne bis in idem*, because a fine has been imposed on the applicant already in the first proceedings on the same facts, a matter on which the Court has given final judgment;

— the infringement is time barred;

— infringement of the right of access to the file;

— infringement of the right to be heard due to incomplete objections; and

— miscalculation of the fine in the light of the 1996 Leniency Notice ([2]).

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
([2]) Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

Action brought on 7 February 2007 — LIPOR v Commission

(Case T-26/07)

(2007/C 82/89)

Language of the case: Portuguese

Parties

Applicant: LIPOR — Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Gondomar, Portugal) (represented by: P. Pinheiro, M. Gorjão-Henriques and F. Quintela, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annulment in part of Article 1 of Commission Decision C(06)5008 of 17 October 2006, addressed to the Portuguese State, in so far as it considers that the total assistance granted by the Cohesion Fund under Commission decisions Nos C(93)3347/3 of 7 December 1993, C(94)3721 final/3 of 21 December 1994 and C(96)3923 final of 17 December 1996, reproduced in Decision C(98)2283/f, must be regarded as reduced by EUR 1 511 591 and of the decision to order reimbursement of that amount to the Member State;

— annulment of Article 1 of the contested decision in so far as it orders a financial correction of 100 % in relation to the contracts concluded by the applicant with the IDAD (Instituto do Ambiente e Desenvolvimento, Environment and Development Institute) for breach of the principle of proportionality, and in so far as it orders the Member State to reimburse EUR 458 683;

— an order that the Commission should pay the costs of the proceedings, including the applicant's costs;

— as a subsidiary matter, annulment in part of Article 1 of the contested order for breach of the principle of proportionality, with regard to the contracts concluded by the applicant with Hidroprojecto;

— again as a subsidiary matter, the applicant requests that the Court of First Instance, if it should consider that Lipor has not satisfied all the requirements of Directive 92/50/EC, should order the Commission, because of breach of the principle of proportionality, to fix at 100 % the financial correction relating to the financing of the contracts with Hidroprojecto.

Pleas in law and main arguments

In support of its action the applicant alleges errors of law, manifest errors of assessment, insufficient and inaccurate reasoning and breach of the principle of proportionality.

So far as the contract concluded by the applicant with Hidroprojecto in 1989 is concerned, the applicant claims that the Commission erred in its assessment of the value of Block D of the contract.

With regard to the contract concluded by the same bodies in 1997, the applicant claims that the Commission erred in its assessment, not understanding that those contracts were, in part, the realisation of the 1989 contract and, in part, extensions of that contract which proved necessary as the project developed. It also criticises the Commission for having considered that the contracts ought to have been awarded by open tendering procedure. In the applicant's view, even if it were to be held that those contracts were independent of the 1989 contract and that they crossed the threshold value fixed by Directive 92/50 for award by open tender, the exception provided for by Article 11 of that directive was applicable to them.

In respect of the contracts of 28 March and 28 April 1995, also concluded by the same bodies, the applicant claims that the Commission made an error of assessment in regarding them as a single contract and as an extension of the 1989 contract and in asserting that the award of the procurement contract ought to have been preceded by a call for tenders. It argues that there are in fact two contracts concluded on different dates. One of them was concluded following a restricted invitation to tender and the other did not cross the value threshold that would have made it subject to the tendering procedure. In any case, both were concluded in accordance with Portuguese law at a time when Directive 92/50 had not yet been transposed into domestic law.

Finally, with regard to the contracts concluded by the applicant with IDAD in 1999, the applicant, although admitting that the Commission could consider them together in order to determine their respective values and whether they were subject to the rules governing public procurement contracts, explains the reasons which led it to enter into separate contracts and claims that IDAD is a public body and, as such, a contracting authority for the purposes of Directive 92/50. Consequently, it takes the view that the Commission ought to have taken those reasons into account and not ordered a financial correction of 100 %. According to the applicant, that correction runs counter to the principle of proportionality.

Action brought on 5 February 2007 — Denka International v Commission

(Case T-30/07)

(2007/C 82/90)

Language of the case: English

Parties

Applicant: Denka International BV (Barneveld, The Netherlands) (represented by: K. Van Maldegem, C. Mereu, lawyers)

Defendant: Commission of the European communities

Form of order sought

— annulment of Article 2(b) and Annex II of Commission Directive 2006/92/EC; and

— order the defendant to pay all costs and expenses in these proceedings, as well as interests thereof.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment of Commission Directive 2006/92/EC [1], of 9 November 2006, amending Annexes to Council Directives 76/895/EEC, 86/362/EEC and 90/642/EEC as regards maximum residue levels for dichlorvos (hereinafter the 'the MRL Directive' or 'the contested measure') and in particular its Article 2(b) and Annex II thereof.

The applicant claims that these provisions modify the maximum residue level for the substance at stake from the previously applicable 2 mg/kg to a new threshold value of 0.01 mg/kg based on an underlying assessment of the applicant's dossier conducted under the related assessment of Directive 91/414/EEC (hereinafter, 'PPPD') that is procedurally, scientifically and legally flawed.

Procedurally, the applicant submits that the contested measure was adopted in violation of the procedural safeguards set out in Article 8 of Regulation 451/2000 and the *auditum alteram partem* principle or principle to a fair hearing, while it also infringes the duty to state reasons (Article 235 EC). In addition, the applicant claims that through the adoption of the contested measure the Commission misused its powers, as it achieved the same objective as a decision of non-inclusion without having recourse to such decision.