Nonetheless, in the opinion of the applicant, that judgment has no effect on the guarantee issued by the Banca di Roma, since, by virtue of the autonomy of that guarantee, within the meaning of Italian law (which is the law applicable to the facts of the case), the Banca di Roma is obliged to execute the guarantee upon mere request by the Commission, and no objection which may be raised by Ferrier Nord can justify refusal to execute.

(1) OJ 1989 L 260, p. 1.
(2) Not yet published in ECR.

## Action brought on 13 July 2007 — Lithuania v Commission

**(Case T-262/07)**

(2007/C 211/100)

*Language of the case: Lithuanian*

### Parties

*Applicant:* Republic of Lithuania (represented by: D. Kriaučiūnas and E. Matulionytė)

*Defendant:* Commission of the European Communities

### Form of order sought

— annul Commission Decision C(2007) 1979 final (1) of 4 May 2007 or, in the alternative, annul that decision in so far as it is addressed to the Republic of Lithuania;

— order the Commission to pay the costs.

### Pleas in law and main arguments

The contested decision sets out the quantities of agricultural products in free circulation in the new Member States at the date of accession exceeding the quantities which were to be regarded as constituting a normal carryover of stock at 1 May 2004, and the amounts to be charged to the new Member States in consequence of the expense of elimination of those excess quantities.

The applicant considers the contested decision to be unlawful. It relies on four pleas in law in support of its action.

1. Lack of power

The applicant states that paragraph 4 of Chapter IV of Annex IV to the Act of Accession does not confer upon the Commission power to impose on the Member States payments to the Community budget that are in the nature of penalties, in particular where it has not proved expenditure incurred by the Community in eliminating surplus stocks; also, the Commission exceeded the prescribed three-year period for adoption of the decision under Article 41 of the Act of Accession, which alone could be an appropriate legal basis for the decision.

2. Infringement of European Community law

*Infringement of the principle of legal certainty*: the contested decision infringes the principle of legal certainty because the methodology and criteria for calculating surplus stocks were not known when determining built up stocks at the time of accession, which would have allowed Member States to prevent surplus stocks from arising or to eliminate them at the expense of the economic operators who had built up the stocks. Moreover, the contested decision laid down different criteria — and extended the list of products assessed — compared with Article 4 of Regulation No 1972/2003, under which the States scrutinise the building up of surplus stocks.

*Infringement of the principle of non-discrimination*: unlike Commission Regulation (EC) No 144/97 on surplus stocks of agricultural products in Austria, Sweden and Finland, the contested decision assessed not only products which were granted export refunds or to which intervention measures were applied, but also stocks of other products. This principle has also been infringed by treating the different situations of new Member States in the same way and by failing, without justification, to have regard to the specific circumstances in which their stocks arose.

*Infringement of the principle of good administration and the principle of transparency*: the contested decision does not disclose comprehensively the criteria for calculating the payments and, moreover, the criteria continually change. Also, although the Member States themselves assessed stocks in accordance with measures of Community law, the Commission, without giving reasons as to why that assessment is inappropriate and without disputing it, conducted another assessment of the same stocks on the basis of its own criteria.

*Infringement of provisions of the Act of Accession*: first, the decision is not an appropriate means of achieving the objectives of the elimination of surplus stocks which is required by paragraph 2 of Chapter IV of Annex IV to the Act of Accession, in particular because it was not even attempted in the decision to link the penalties imposed with expenditure on the elimination of stocks actually incurred by the Community. Second, the decision was adopted after expiry of the period, laid down in Article 41 of the Act of Accession, of three years from the date of accession during which the Commission could adopt transitional measures.

3. Inadequate statement of reasons

In the applicant's submission, the contested decision has an inadequate statement of reasons or entirely lacks reasons; in particular, it is not shown in the decision that (and in what amount) the European Community actually incurred, by reason of elimination of the alleged surplus stocks, expenditure which Member States should meet.

4. Manifest errors of assessment

The applicant asserts that the Commission made manifest errors of assessment in that, first, it selected a method at macroeconomic level and did not assess the stocks that had actually arisen in the Member States and, second, when assessing specific arguments of the parties it did not have regard to the specific and objective circumstances obtaining in the Republic of Lithuania in which national stocks arose in the milk sector.

(1) Commission Decision 2007/361/EC of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in relation to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2007 L 138, p. 14).

## Action brought on 9 July 2007 — Air One SpA v Commission

**(Case T-266/07)**

(2007/C 211/101)

*Language of the case: Italian*

### Parties

*Applicant:* Air One SpA (represented by: M. Merola and P. Ziotti, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— Annul Commission Decision C (2007 1712) of 23 April 2007 on public service obligations on certain routes to and from Sardinia, to the extent that it requires the Italian Government to allow all air carriers who accept the relevant public service obligations (PSO) to operate routes between Sardinia and the mainland, irrespective of whether their acceptance is made before or after expiry of the period of 30 days laid down in the national legislation (Article 1(a) of that Decision);

— Order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicant requests, under the fourth paragraph of Article 230 EC, the annulment of Article 1(a) of Commission Decision C (2007 1712) of 23 April 2007 on public service obligations on certain routes to and from Sardinia, under Article 4 of Council Regulation No 2408/92 on access for Community air carriers to intra-Community air routes.

In support of its action, the applicant submits the following pleas in law:

— Manifest error of appreciation and illogical and contradictory statement of reasons. The applicant submits first of all that the Commission — by requiring the Italian Government to allow all air carriers who intend to respect the PSO to operate the routes in question, regardless of the period in which they notified their intention to commence service provision and whether or not notification was sent during or after the 30-day period set in the Decrees — has erred in its assessment of the scheme introduced by the Italian Government in the light of the reasoning and objectives of the relevant Community rules. In particular the applicant claims that Article 4 of Regulation No 2408/92 obliges Member States to achieve the objective of territorial continuity by means of the imposition of public service obligations which, although they represent an exception to the principle of free access for Community carriers to intra-community routes, nonetheless respect the principle of proportionality and therefore restrict as far as possible the concession of exclusive rights and/or financial compensation. In the applicant's opinion, the Italian Government has fully complied with the spirit of the Community legislation, given that setting a mandatory period for the 'first phase' of the procedure of imposing public service obligations:

  — encourages the submission of offers from carriers and the allocation by the State of the relevant public service obligations in the course of that 'first phase', and

  — restricts the possibility of passing to the 'second phase' in which the Government would be obliged to grant, by means of invitation to tender, exclusive rights, with the possibility of taking responsibility for the relevant financial compensation.

— It is moreover obvious — notwithstanding what is implicitly claimed by the Commission — that competition between air carriers on routes burdened by public service obligations cannot be carried on in the same way as that found on routes free of such obligations. In as much as PSO schemes presuppose that problems of profitability are a feature of the routes in question, to the extent that no carrier would choose to operate such routes, in a manner which met the public interest, in normal market conditions: it is therefore necessary to introduce safeguard mechanisms for law-abiding and diligent carriers.

— The applicant claims further that the regulatory framework prescribed by the Commission is discriminatory, since the elimination of the mandatory period for acceptance of public service obligations in the 'first phase' is to the advantage principally of carriers which have significant market power, allowing them to offer for the PSO routes after expiry of the period, when competitors have submitted offers, with the primary objective of taking market share from those competitors.