

**Form of order sought**

- To declare this application admissible;
- to annul the unreasoned decision of the European Commission of 6 December 2007 (Reference No A3 TF TCC(2007) 106233) not to invite the consortium led by Vakakis International SA to be interviewed in respect of the service tender procedure 'Technical Assistance to Support Rural Development Policy' number EuropeAid/125241/C/SER/CY;
- to annul the decision of the European Commission of 21 December 2007 (Reference No A3 TF TCC(2007) 106667) to reject the tender submitted by Vakakis International SA on the basis that it did not meet the technical requirements;
- pursuant to Article 65(b) of the Rules of Procedure of the Court of First Instance, to request the Commission to provide certain documents in relation to the activities of the evaluation committee established to review the tenders submitted in respect of the EuropeAid/125241/C/SER/CY tender procedure as well as the establishment of the short list of tenderers;
- to make any additional order which the Court considers necessary;
- to order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicant claims that the Commission's letter of 6 December 2007 informing the applicant it would not be invited to interview constitutes a decision which lacks sufficient reasoning in breach of Article 253 EC. Moreover, the applicant submits that this stage is an essential element of the tender procedure to which all tenderers, even those failing to meet the technical standard required, should be invited in order to maintain a competitive environment. Furthermore, the applicant argues that the said decision is legally flawed since it is based on non-compliance with the administrative criteria instead of non-compliance to the technical standard required. This amounts, according to the applicant, to a misuse of powers conferred to the Commission in the framework of the tenders' evaluation procedure.

In addition, and with regards to both the above-mentioned decision and the decision of 21 December 2007, the applicant submits that they are incompatible with the terms of the Practical Guide to Contract Procedures for EC External actions. Finally, the applicant claims that the Commission decision of 21 December 2007 purported to justify an unreasoned earlier decision excluding the applicant from the tender and therefore is legally flawed.

**Action brought on 24 January 2008 — Shetland Islands Council v Commission**

(Case T-42/08)

(2008/C 92/71)

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

*Applicant:* Shetland Islands Council (represented by: E. Whiteford, Barrister, R. Murray, Solicitor and R. Thompson, QC)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annulment of Articles 1(2), 3, 4 and 5 of the decision; and
- the costs of this application.

**Pleas in law and main arguments**

The applicant is a public authority that made payments to the fisheries sector under the scope of two general aid measures, named 'Aid to Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry' consisting of different types of aid schemes. The Commission found that the aid which the United Kingdom implemented on the basis of the 'Fishing Vessel Modernisation Scheme' was incompatible with the common market, in so far as it concerned aid granted for the modernisation projects concerning capacity in terms of tonnage or power.

By means of its application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C 37/2006 (ex NN 91/2005) of 13 November 2007 concerning the Fishing Vessel Modernisation Scheme implemented in the United Kingdom. In particular, the applicant seeks annulment of Article 1(2), 3, 4, and 5 of the contested decision on two grounds:

- (1) The Commission allegedly erred in law in finding that payments for replacement or improvement of engines that do not affect the gross tonnage or power of any vessel 'concern capacity in terms of tonnage or power' within the meaning of Article 9(1)(c)(i) of Regulation (EC) No 2792/1999 <sup>(1)</sup>, and are thus incompatible with the common market;
- (2) The Commission erred in law in finding that recovery of payments would be compatible with:
  - (a) Article 14(1) of Council Regulation (EC) No 659/1999 <sup>(2)</sup>;

(b) the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

- (<sup>1</sup>) Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ L 337, p. 10).  
 (<sup>2</sup>) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).

**Action brought on 24 January 2008 — Shetland Islands Council v Commission**

(Case T-43/08)

(2008/C 92/72)

*Language of the case: English*

**Parties**

*Applicant:* Shetland Islands Council (represented by: E. Whiteford, Barrister, R. Murray, Solicitor and R. Thompson QC)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annulment of Articles 3, 4 and 5 of the decision; and
- the costs of this application.

**Pleas in law and main arguments**

The applicant is a public authority that made payments to the fisheries sector under the scope of two general aid measures, named 'Aid to Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry' consisting of different types of aid schemes. The Commission found that the aid which the United Kingdom implemented on the basis of the 'Fish Factory Improvement Scheme' was incompatible with the common market, in so far as it concerned the amount of GBP 92 007, granted on 13 August 1997, 7 January 1999, 25 February 1999, 10 December 1999, 19 January 2001 and 15 December 2004.

By means of its application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C 38/2006 (ex NN 93/2005) of 13 November 2007 concerning the 'Fish Factory Improvement Scheme' implemented in the United Kingdom. In particular, the applicant seeks annulment of Articles 3, 4 and 5 of the contested decision on the ground that the Commission erred in finding that recovery of payments would be compatible with:

- (1) Article 14(1) of Council Regulation (EC) No 659/1999 (<sup>1</sup>); and

(2) the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

- (<sup>1</sup>) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).

**Action brought on 29 January 2008 — Transportes Evaristo Molina v Commission**

(Case T-45/08)

(2008/C 92/73)

*Language of the case: Spanish*

**Parties**

*Applicant:* Transportes Evaristo Molina S.A. (Santa María del Águila, Spain) (represented by: A. Hernández Pardo, L. Ruiz Ezquerro and M.C. Flores Hernández, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul Commission Decision of 12 April 2006 relating to a proceeding under Article 81 of the EC Treaty COMP/B-1/38.348 Repsol CPP, and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

This application was brought against the decision of the Commission of 12 April 2006 because it accepted the commitments proposed by REPSOL CPP in accordance with the provisions of Article 9(1) of Regulation (EC) 1/2003 (<sup>1</sup>).

That decision concerns the procedure initiated following the request by REPSOL CPP for negative clearance or, failing that, an individual exemption with respect to the standard agreements and/or contracts by means of which it carried out its fuel distribution activities for motor vehicles through service stations in Spain.

In the offer of commitments accepted by the Commission, REPSOL CPP undertook, inter alia, to increase the annual number of service stations which may change supplier, for which it undertook to offer the bare owners/operators of the service stations the possibility of recovery of the right *in rem* to the usufruct or over the buildings subject, however, to compliance with a series of conditions by the operator.