

Action brought on 10 September 2008 — Portugal v Commission

(Case T-378/08)

(2008/C 285/91)

*Language of the case: Portuguese***Parties**

Applicant: Portuguese Republic (represented by L.Inez Fernandes and J. de Oliveira, Agents)

Defendant: Commission of the European Communities

Form of order sought

- Principally, a declaration that the notice of payment MARKT/C2/PMS/bmgD(2008) 13692 issued by the Director-General of Directorate-General Internal Market and Services of 15 July 2008 under the heading 'demand for payment of the periodic penalty payable by the Portuguese Republic in compliance with the judgment given in Case C-70/06 *Commission v Portuguese Republic*' is invalid;
- alternatively, a declaration that that notice is invalid, in so far as its effects extend beyond 29 January 2008;
- an order that the Commission of the European Communities should pay the costs or, if the Court of First Instance should reduce the amount of the periodic penalty, an order that each party should bear its own costs.

Pleas in law and main arguments

The Portuguese Republic claims that it has fully complied with the judgments of the Court of Justice by adopting Law No 67/2007 expressly repealing Decree-Law No 48051.

The Portuguese Republic further claims that the Director-General of DG Internal Market and Services had no power to adopt the contested measure, which failed to have regard to the Portuguese Republic's rights of the defence, fails to state the reasons on which it is based and was adopted in breach of essential procedural requirements.

Action brought on 9 September 2008 — Kingdom of the Netherlands v Commission of the European Communities

(Case T-380/08)

(2008/C 285/92)

*Language of the case: Dutch***Parties**

Applicant: Kingdom of the Netherlands (represented by: C. Wissels and M. de Mol, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission's Decision of 30 June 2008 under reference SG.E3/MV/psi D(2008)5364;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the decision of 13 December 2006 in Case COMP/38.456 — Bitumen (Netherlands) ⁽¹⁾ the Commission imposed fines on a large number of undertakings, suppliers and purchasers of road pavement bitumen for infringements of Article 81 EC. The Commission did not publish all particulars in that decision. Various legal persons, public and private, including the applicant, have suffered serious losses as a result of the undertakings' actions. As knowledge of that information would be extremely useful in order to recover those losses, the applicant applied under Article 6(1) of Regulation No 1049/2001 ⁽²⁾ for access to the complete, uncensored version of the decision of 13 September 2006. By decision of 30 June 2008, the Commission rejected that application.

In support of its application the applicant submits that the contested decision is contrary to the right of access referred to in Article 255 EC, read in conjunction with Articles 1 and 4 of Regulation No 1049/2001.

Secondly, the applicant submits that the Commission should have provided partial access, as referred to in Article 4(6) of Regulation No 1049/2001.

Thirdly, the contested decision is contrary to the principle of proportionality.

Fourthly, the contested decision infringes Article 253 EC, as its statement of reasons is defective.