determine the moment from which the period of four years laid down in Article 3 of Regulation No 2988/95 ([3]) started to run with regard to those irregularities.

([1]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).
([2]) Case C-443/97 *Spain* v *Commission* (2000) ECR I-2415.
([3]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Action brought on 4 March 2010 — United Kingdom v Commission

(Case T-115/10)

(2010/C 113/109)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, acting as agent, assisted by D.Wyatt, QC and M. Wood, Barrister)

Defendant: European Commission

Form of order sought

— annul Commission Decision 2010/45/EU, of 22 December 2009 adopting, pursuant to Council Directive 92/43/EEC (the Habitats Directive) ([1]), a third updated list of sites of Community importance for the Mediterranean bio-geographical region ([2]), to the extent that it lists the Estrecho Oriental site of Community importance, identified by code ES6120032,

— award costs against the Commission.

Pleas in law and main arguments

By means of the present application, the applicant challenges the validity of Commission Decision 2010/45/EU (notified under document number C(2009) 10406) to the extent of its listing of the Estrecho Oriental site of Community importance, and seeks annulment of the listing of the Estrecho Oriental site of Community importance.

The applicant puts forward the following pleas in law in support of its claims.

First, the applicant submits that the contested decision was adopted in breach of Directive 92/43/EEC, in that the listing of the Spanish Estrecho Oriental site of Community importance was incompatible with it, because:

— a very substantial area of that site is located within British Gibraltar Territorial Waters (BGTW), which fall within the effective control of the United Kingdom rather than Spain, and

— because it completely overlaps the existing UK Southern Water of Gibraltar site of Community importance.

Secondly, the applicant claims that the contested decision was adopted in breach of the principle of legal certainty, in that the listing of the Estrecho Oriental site of Community importance purports to impose obligations on Spain under Directive 92/43/EEC in respect of an area within an existing site of Community importance, in respect of which the Government of Gibraltar is already subject to identical obligations under that Directive. The effect is to purport to qualify or call into question the authority of the Government of Gibraltar to implement the Directive in the Southern Waters of Gibraltar site of Community importance, and to enforce the law of Gibraltar in BGTW, creating legal uncertainty for the Government of Gibraltar, and for EU citizens.

Thirdly, the applicant contends that the contested decision was adopted in breach of the principle of proportionality, in that the listing of the Spanish Estrecho Oriental site of Community importance so as to include the whole of the UK Southern Waters of Gibraltar site of Community importance and other areas of BGTW is neither appropriate, nor necessary, to attain the environmental objectives pursued by Directive 92/43/EEC.

Finally, the applicant contends that the contested listing of the Estrecho Oriental site of Community importance must be annulled in its entirety, since partial annulment of the listing would have the affect of changing its substance, and would entail amendment by the Court of the listing, and recalculation of the centre point of the site of Community importance, and of its area, and an environmental assessment of the eligibility of the remaining part of the site to qualify as an site of Community importance.

(1) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7
(2) OJ 2010 L 30, p. 322

Action brought on 5 Mars 2010 — Acron v Council

(Case T-118/10)

(2010/C 113/110)

Language of the case: English

Parties

Applicant: Acron OAO (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 125112009 of 18 December 2009 amending Regulation (EC) No 1911/2006 (1), in so far as it affects the applicant;

— order the Council to pay the costs of and occasioned by these proceedings.

Pleas in law and main arguments

In support of its application, the applicant puts forward a single ground for annulment, divided in three pleas.

The applicant submits that the Union's institutions breached Articles 1 and 2 of the Basic Regulation, Article 11(9) of the Basic Regulation (2) when read together with Article 2 of the Basic Regulation and committed series of manifest errors of assessments, as a result of which they established an artificially increased constructed normal value for the applicant, and hence made an unwarranted finding of dumping.

In the first plea, the applicant challenges the rationale for the gas adjustment. More specifically, the applicant submits that the institutions erred in law and violated Article 2 (3) and (5) of the Basic Regulation, by disregarding a major part of the cost of production in the country of origin and/or by de facto applying a non-market economy methodology for establishing the major part of the applicant's normal value.

In the second plea, the applicant challenges the method used for the gas adjustment. The applicant submits that once having decided to proceed with the gas adjustment, the Commission violated Article 2(5), second sentence, of the Basic Regulation and/or made a manifest error of appreciation and showed a lack of reasoning, by making the gas adjustment on the basis of the price of Russian gas at Waidhaus, Germany, by failing to consider a penalised market sharing cartel in respect of Russian gas coming via Waidhaus, and by failing to deduct 30 % Russian export duty on Russian gas and by adjusting to reflect local distribution cost.

In the third plea, the applicant challenges the determination of profit margin used in constructed normal value. The applicant submits that the profit margin determined by institutions and added to the cost of manufacturing to form constructed normal value of the applicant in the findings of the contested regulation, is in breach of Article 2(3) and 2(6)(c) of the Basic Regulation and manifestly unreasonable, and is vitiated by a manifest error of assessment. Also the profit margin thus determined departs significantly, in breach of Article 11(9) of the Basic Regulation, from the profit and methodology for constructed normal value used in the original investigation which led to the duty under review.

(1) Council Implementing Regulation (EU) No 1251/2009 of 18 December 2009 amending Regulation (EC) No 1911/2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating, inter alia, in Russia, OJ 2009 L 338, p. 5
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)