groups and entities whose funds and economic resources are frozen pursuant to Articles 2, 3 and 4 of Council Common Position 2001/931/CFSP [4] and Article 2(3) of Regulation No 2580/2001 with a view to combating terrorism.

The applicant puts forward seven pleas in law in support of its action. With respect to Council Act 2010/C 188/09 it alleges:

— infringement of the third subparagraph of Article 297(2) TFEU in that the applicant did not receive notification of that act and mere publication in the *Official Journal of the European Union* cannot be deemed to be notification of such an act;

— infringement of the second indent of Article 41(2) of the Charter of Fundamental Rights of the European Union in that that act was virtually inaccessible for the applicant;

— infringement of Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the right of an accused person to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

With respect to Decision 2010/386/CFSP and Regulation No 610/2010 the applicant alleges:

— manifest error of assessment, as Hamas is a legitimately elected government and, in accordance with the principle of non-interference in the internal matters of a State, cannot be placed on lists of terrorists;

— infringement of the applicant's fundamental rights through the infringement of:

  — its rights of defence, and the right to good administration, as the decision to retain the applicant on the list of persons, groups and entities whose funds and economic resources are frozen was not preceded by a notification of the evidence held against it and the applicant was not given the opportunity to present duly its submissions on that evidence;

  — property rights, in that the freezing of the applicant's funds is an unjustified restriction on its property rights;

— infringement of the obligation to state reasons pursuant to Article 296 TFEU, in that the Council did not provide a specific statement of reasons either in Decision 2010/386/CFSP or in Regulation No 610/2010.

[1] Council Act 2010/C 188/09 of 13 July 2010: Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2010 C 188, p. 13).

[2] Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2010 L 178, p. 28).

[3] Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1).

[4] Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

Action brought on 14 September 2010 — Republic of Hungary v European Commission

(Case T-407/10)

(2010/C 317/61)

Language of the case: Hungarian

Parties

Applicant: Republic of Hungary (represented by: M. Fehér and K. Szíjjártó, Agents)

Defendant: European Commission

Form of order sought

— Annulment of Article 1(3) and (4) of and Annex 2 to Commission Decision C(2010) 4593 of 8 July 2010 concerning the major project for 'reconstruction of the Budapest-Kelenföld Székesfehérvár-Boba railway line, Section I, phase 1' forming part of the 'Transport' operational programme for financial structural aid granted by the European Regional Development Fund and the Cohesion Fund, in so far as those provisions lay down the maximum quantity to which the co-financing rate should be applied in such a way as to exclude payments of VAT from eligible expenditure.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests in part Commission Decision C(2010)4593 of 8 July 2010 concerning the major project for 'reconstruction of the Budapest-Kelenföld Székesfehérvár-Boba railway line, section I, phase 1' forming part of the 'Transport' operational programme for financial structural aid granted by the European Regional Development Fund and the Cohesion Fund under the Convergence objective. In that Decision, the Commission authorises the payment of a contribution to that major project from the European Regional Development Fund and the Cohesion Fund. In addition, the Commission takes the view that recoverable VAT could not be included in the maximum quantity to which the priority co-financing rate of the operational programme for the major project in question was to be applied.

In the grounds for its application, the applicant claims that the Commission adopted the contested Decision in breach of the provisions of European Union law applicable in this area and Article 56(4) of Regulation (EC) No 1083/2006 [1] and Article 3 of Regulation (EC) No 1084/2006, [2] in particular.

The applicant considers that Article 3(e) of Regulation No 1084/2006 clearly establishes that recoverable value added tax is not eligible for support in the form of a contribution from the Cohesion Fund. In the opinion of the applicant it follows unequivocally from that provision, on the other hand, that non-recoverable value added tax is eligible for support. Accordingly, having regard to the fact that, under European Union or national law on value added tax the beneficiary of the major project which is the subject of the contested Decision (Nemzeti Infrastruktúra Fejlesztő Zrt.) is not a taxable person, so that it cannot claim back the input value added tax charged to it, the applicant argues that, in the contested Decision, it is not open to the Commission to exclude expenditure arising from that tax.

Furthermore, the applicant complains that, given that the Commission did not consider to be eligible expenditure which Regulation No 1084/2006 did not include under expenditure which was not eligible and which the equivalent national legislation expressly described as eligible expenditure, by the contested Decision, the Commission was depriving the Member States of the powers devolved on them by Article 56(4) of Regulation No 1083/2006.

The applicant also alleges that the Commission's assertion that the value added tax charged to the beneficiary will be 'recoverable' through the value added tax paid on the fee collected by the management of the infrastructure built by the beneficiary is a very wide interpretation of the concept of 'recoverable value added tax' used in Article 3(e) of Regulation No 1084/2006, which the wording of that provision does not support, and is, moreover, contrary to the legislation of the European Union on value added tax. According to the applicant, the beneficiary which carries out the construction work and the bodies managing the built infrastructure are independent of one another and have only an indirect relationship, as a result of the relevant legal provisions and, therefore, not through commercial transactions. In those circumstances, the applicant claims that the beneficiary is in fact obliged to bear the final burden of the VAT charged.

Finally, the applicant states that neither Regulation No 1083/2006 nor Regulation No 1084/2006 allows an interpretation to the effect that the Commission, when assessing eligible expenditure, including eligible value added tax, could base its decision on the fact that the Member State could have opted for a different legal solution as regards the organisation of the project and the management of the infrastructure. In that regard, the applicant takes the view that running the administration of national infrastructures and related public services is, essentially, the task of the Member States. Similarly, the applicant considers that, provided that they comply with the requirements laid down by European Union law, the Commission has to accept the option chosen by the Member State, together with the consequences for the assessment of eligible expenditure entailed by the beneficiary's status as a taxable person or non-taxable person.

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[1] Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

[2] Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94 (OJ 2006 210, p. 79).

Action brought on 15 September 2010 — Socitrel v Commission

(Case T-413/10)

(2010/C 317/62)

Language of the case: Portuguese

Parties

Applicant: Sociedade Industrial de Trefilaria, SA (São Romão de Coronado, Portugal) (represented by: F. Proença de Carvalho and T. de Faria, lawyers)

Defendant: European Commission.

Form of order sought

— partially annul Article 1 and Article 2 of the Commission decision of 30 June 2010 relating to a proceeding under the terms of Article 101 of the TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing Steel) with regard to the Applicant;

— reduce the fine;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested by the applicant is the same decision contested in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

The applicant submits to the Court:

(i) Serious failure to state reasons in the contested decision, in breach of Article 296 of the TFEU, and breach of the principle of legitimate expectation in the application of the fine, infringing the rights of defence of the applicant when calculating the fine imposed on it.