

2. Second plea in law, alleging that the Commission breached the applicants' rights of defence, as:
 - The Commission breached the applicants' rights of defence by relying on evidence that was not referred to in the Statement of Objections;
 - The Commission breached the applicants' rights of defence by relying on an interpretation of evidence that was not clearly set out in the Statement of Objections;
 - The Commission breached the applicants' rights of defence by raising objections in the contested decision on which the applicants had not had an opportunity to comment.
3. Third plea in law, alleging that the Commission breached the principles of equal treatment, individual liability and proportionality when determining the basic amount of the fine imposed on the applicants, as:
 - The Commission's determination of the duration of the infringement did not correspond to the finding of both knowledge of and intent to participate in the alleged common anti-competitive plan;
 - The Commission erred when calculating the basic amount;
 - The Commission's calculation of the basic element of the fine failed to reflect the Applicants' limited participation in the alleged infringement; and
 - The Commission's calculation of the basic element of the fine failed to reflect that the alleged infringement did not cover the entire price of the relevant services.
4. Fourth plea in law, alleging that the Commission breached the principle of equal treatment and failed to state reasons when adjusting the basic fine amount for mitigating circumstances, as:
 - The Commission failed to account for the very significant differences between the applicants' level of participation and the much greater participation of other airlines; and
 - The Commission failed to objectively justify its identical treatment of different airlines despite their significantly different situations.
5. Fifth plea in law, alleging that the Commission failed to state the reasons for its exclusion of eleven addressees of the Statement of Objections in the contested decision, for its finding that the applicants engaged in a single and continuous infringement, and for its calculation of the fine imposed as:
 - The Commission failed to state its reasons for omitting from the contested decision eleven carriers that were addressed by its Statement of Objections;
 - The Commission failed to state its reasoning in relation to the constituent elements required by the Court to find that the applicant engaged in a single and continuous infringement; and
 - The Commission failed to state the reasoning that underlies its calculation of the fine imposed on the applicants under Article 5 of the contested decision.
6. Sixth plea in law, alleging that the Commission breached the applicants' right to a fair trial and, as a result, breached Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention on Human Rights, as:
 - The applicants were denied the opportunity to examine or cross-examine witnesses;
 - The applicants were denied the opportunity to comment on the calculation of the fine imposed on them;
 - The fine was imposed following an oral hearing that was not public and which the decision-maker did not attend; and
 - The contested decision was adopted by an administrative body, and no judicial body has full jurisdiction to review all aspects of it.

Action brought on 19 January 2011 — Universal v Commission

(Case T-42/11)

(2011/C 80/53)

Language of the case: English

Parties

Applicant: Universal Corp. (Richmond, United States) (represented by: C.R.A. Swaak, lawyer)

Defendant: European Commission

Form of order sought

- Annul the contested decision set out in the letters of 12 and 30 November 2010; and/or
- Declare that the applicant cannot be held liable to pay for any part or all of the fine imposed in this case until a definitive judgment in case T-12/06 Deltafina v Commission or any follow-on proceedings is issued; and

— Condemn the Commission to the costs of the proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of the Commission Decision contained in the letter from the Commission to Universal Corporation, dated 12 November 2010, and confirmed by the letter dated 30 November 2010, requiring the latter to pay the joint and several fine imposed on Universal Corporation and Deltafina SpA in case COMP/C.38.281.B2 — *Raw Tobacco Italy* of 20 October 2005 following the withdrawal of case T-34/06 *Universal Corp. v Commission* but prior to the resolution of case T-12/06 *Deltafina SpA v Commission* and any follow-on proceedings.

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the contested decision is vitiated;

— The contested decision is vitiated insofar as the fine is fully covered by the guarantee provided by its subsidiary Deltafina. The applicant is only jointly and severally liable as the 100 % parent company for the payment of the fine imposed by the Commission on Deltafina for its direct participation in the infringement. The withdrawal of the application for annulment lodged by the applicant is therefore irrelevant to the question of when the fine must be paid.

2. Second plea in law, alleging a breach of the principle of protection of legitimate expectations;

— The contested decision violates the principle of protection of legitimate expectations in relation to the validity of the bank guarantee until the conclusion of the Deltafina proceedings. On the basis of the Commission's acceptance of a bank guarantee relating to the application for annulment by Deltafina, the Commission created the legitimate expectation that it would refrain from seeking payment of the fine prior to a definitive judgment in case T-12/06. The Commission further violated the applicant's legitimate expectation of consistent treatment by the Commission of the applicant and Deltafina as a single undertaking for the purposes of liability and enforcement.

3. Third plea in law, alleging breach of the obligation of good administration flowing from Article 266 TFEU;

— The contested decision violates the obligation of good administration flowing from Article 266 TFEU by requiring premature payment of the joint fine pending the outcome of the Deltafina proceedings, with which the Commission must comply. In the event that Deltafina is wholly or partly successful the Commission will be obliged to reduce or eliminate the amount for which Universal is held jointly and severally liable.

Action brought on 17 January 2011 — Italy v Commission

(Case T-44/11)

(2011/C 80/54)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: L. Ventrella, avvocato dello Stato)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul in part Commission Decision C(2010) 7555, notified on 5 November 2010, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and the European Agricultural Fund for Rural Development (EAFRD).

Pleas in law and main arguments

The applicant relies on three grounds in support of its action.

1. First ground, alleging infringement of essential procedural requirements (Article 269 TEU, formerly Article 253 EC), on the basis of failure to state reasons; distortion of facts; infringement of the principle of proportionality; infringement of Article 24(2) of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder (OJ 1999 L 340, p. 3).

It is submitted in this connection that the Commission applied a number of financial corrections in the skimmed milk powder sector on the basis of the allegedly incorrect application of regulatory aid reductions and sanctions. In particular, on the basis of a strict interpretation of Article 24(2) of Regulation (EC) No 2799/0999, which was incorrect and inconsistent with the spirit of that provision, it found that the quarterly check, carried out the week following that in which the irregular sample was taken, was not the special enquiry provided for by Community legislation and could not therefore act as a substitute for it. Moreover, on the basis of a small number of specific cases, the Commission made generalisations concerning any failure — wholly hypothetical — on the part of the Italian authorities to impose penalties, which also led it to distort the facts. Lastly, since the amount which, it is