

- (a) The existence of horizontal agreements of the Asociación de Operadores Petrolíferos (AOP) and its members which limited competition between them.
- (b) Infringement of Article 101 and Article 102 TFEU for fixing retail prices.
- (c) Failure on the part of REPSOL to comply with the Commission's decision of 12 April 2006 (2006/446/EC) relating to a proceeding pursuant to Article 81 of the EC Treaty and adopted pursuant to Article 9 of Regulation (EC) No 1/2003 (Case COMP/B-1/38.348 — Repsol CPP), and the [absence] of consequences following from that failure.

In the contested decision the Commission considers that there were not sufficient grounds to adopt against Repsol any of the measures provided for in Regulation (EC) No 1/2003 for the failure of parties to comply with their commitments.

The applicants rely on two pleas in law in support of their action.

1. First plea in law, based on an infringement of Article 9 of Regulation (EC) No 1/2003, together with an infringement of the principle of direct effect of European Union law.
 - The applicants claim, in particular, that, in the light of the findings of the National Competition Authority, the Commission cannot simply ignore REPSOL's failure to comply with its commitment to put an end to its practice of price-fixing. Indeed, the facts set out by the National Competition Authority in relation to the infringement of Article 101 TFEU should have been sufficient for the Commission to consider it well established that REPSOL had failed to comply with its commitments.
 - The Commission's failure to intervene faced with a failure to comply with a commitment decision, on the basis that it has discretion in that regard, threatens the very essence of the mechanisms underlying the acceptance of commitments as an alternative solution to imposing sanctions and converts the Commission's power of discretion into an arbitrary power which could lead to a blatant denial of legal protection.
2. Second plea in law, based on an infringement of Article 23(2)(c) and Article 24(1)(c) of Regulation (EC) No 1/2003.
 - In the view of the applicants, faced with an infringement of Article 9 of Regulation (EC) No 1/2003, as is in this instance, the Commission should have imposed fines and periodic penalty payments as provided for in those provisions.

Action brought on 28 June 2011 — Netherlands v Commission

(Case T-343/11)

(2011/C 252/91)

Language of the case: Dutch

Parties

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

Defendant: European Commission

Form of order sought

- Annul Article 1 of Commission Decision 2011/244/EU of 15 April 2011, notified on 18 April 2011, on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as Article 1 of that decision concerns the Netherlands and in so far as it concerns the exclusion of the sum of EUR 22 691 407,79 from the financing applicable to the expenditure declared in 2006 to 2008 in connection with operational programmes and the recognition of producer organisations;
- Order the Commission to pay the costs.

Pleas in law and main arguments

In Decision 2011/244/EU the Commission treated all costs relating to printing on packages, regardless of the nature and purpose of such printing, as general production costs within the meaning of Annex II to Commission Regulation No 1433/2003,⁽¹⁾ and accordingly deemed those costs to be ineligible for Community financing. The Netherlands Government takes the view that the printing on packages of a brand or trade mark of producer organisations which also has a promotional intent must be treated as generic promotion and/or promotion of quality labels and promotion of producer organisations' brands/trade marks. The costs of such operations are in fact eligible under Annex I to Regulation No 1433/2003.

Further, in Decision 2011/244/EU the Commission excluded altogether from financing expenditure in the context of the operational programmes of the producer organisation FresQ for marketing years 2004 to 2007 on the basis that FresQ did not satisfy the terms and conditions for recognition under Regulations No 2200/96⁽²⁾ and No 1432/2003. The Commission bases that assessment on the finding that some of FresQ's subsidiary sellers were exclusively marketing the products of one producer, and that as a result of the

presumed influence of that producer on the subsidiary, FresQ was no longer fulfilling its central management role in relation to marketing and price setting. The Netherlands Government challenges that assessment and also the related finding that the Netherlands authorities should have withdrawn recognition of producer organisation FresQ.

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

1. First plea in law, alleging infringement of Article 7(4) of Regulation No 1258/1999 ⁽³⁾ and Article 31 of Regulation No 1290/2005 ⁽⁴⁾ in conjunction with Article 15 of Regulation No 2200/96 and Article 8, in conjunction with Annex I, points 8 and 9, of Regulation No 1433/2003, in so far as expenditure on printing on packages was treated as general production costs and accordingly excluded from financing.
2. Second plea in law, alleging infringement of Article 7(4) of Regulation No 1258/1999 and Article 31 of Regulation No 1290/2005 in conjunction with Article 11 of Regulation No 2200/96 and Articles 6 and 7 of Regulation No 1432/2003, in so far as it was concluded that producer organisation FresQ did not fulfil the terms and conditions for recognition.
3. In the alternative, third plea in law, alleging infringement of Article 7(4) of Regulation No 1258/1999 and Article 31 of Regulation No 1290/2005 in conjunction with Article 21 of Regulation No 1432/2003, in so far as all of the aid received by FresQ for the marketing years 2004 to 2007 was considered ineligible for Community co-financing.
4. In the further alternative, fourth plea in law, alleging infringement of Article 7(4) of Regulation No 1258/1999 and Article 31 of Regulation No 1290/2005, as well as of the principle of proportionality, since the amount of financial correction is disproportionate to the actual financial risk to the Agricultural Fund.

⁽¹⁾ Commission Regulation (EC) No 1433/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance (OJ 2003 L 203, p. 25).

⁽²⁾ Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1).

⁽³⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

⁽⁴⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 7 July 2011 — Gollnisch v Parliament

(Case T-346/11)

(2011/C 252/92)

Language of the case: French

Parties

Applicant: Bruno Gollnisch (Limonest, France) (represented by: G. Dubois, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should:

- annul the decision of European Parliament of 10 May 2011 to waive the applicant's parliamentary immunity and to adopt Report No A7-0155/2011;
- award Mr GOLLNISCH the sum of EUR 8 000 in compensation for non-material damage;
- award Mr GOLLNISCH the sum of EUR 4 000 by way of costs incurred for legal advice and the preparation of this action.

Pleas in law and main arguments

The applicant seeks, first, the annulment of the decision of the European Parliament of 10 May 2011 to adopt the report of the Committee on Legal Affairs (A7-0155/2011) and to reject the request for the defence of immunity and privileges of Bruno Gollnisch (2010/2284(IMM)) and, second, compensation for the non-material damage that it allegedly suffered in consequence of the adoption of the contested decision.

In support of the action, the applicant relies on seven pleas in law:

1. First plea, alleging infringement of Article 9 of the Protocol on the privileges and immunities of the European Union of 8 April 1965.
2. Second plea, concerning the necessary application in the present case of Article 9 of the Protocol.
3. Third plea, alleging failure to follow the precedents set by previous decisions of the Committee on Legal Affairs of the European Parliament.
4. Fourth plea, alleging failure to respect the legal certainty of European Union law and breach of legitimate expectations.