

### Pleas in law and main arguments

In support of the appeal, the appellant relies on seven pleas in law, some of which concern the staff appraisal system and others of which concern the promotion system.

#### — The appraisal system

1. First plea in law, alleging an infringement of Article 43 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), breach of the rules on the allocation of the burden of proof, breach of the rule against ruling *ultra petita* and breach of the appellant's rights of the defence.
2. Second plea in law, alleging infringement of the limits of judicial review. The appellant submits that, in the judgment under appeal, the Civil Service Tribunal ('the CST') has exceeded the limits of its power of judicial review several times, and appears to be seeking to oblige it to adopt a particular system of staff appraisal.
3. Third plea in law, alleging that the Tribunal erred in law in finding that an appraisal system not based on marks lacks objectivity, and that it infringed Article 43 of the Staff Regulations.
4. Fourth plea in law alleging an infringement of Article 266 TFEU, in that, by partially annulling the decision at issue, the CST made it impossible to implement the judgment under appeal without giving rise to other instances of unlawfulness. The appellant submits that, if Article 4 of the decision at issue is unlawful, a new comparative analysis of the defendant's merits with those of the other officials eligible for promotion in his grade must be made, pursuant to the judgment under appeal, on the basis of the staff appraisal reports which, in accordance with the CST's ruling, do not make it possible for that analysis to be made on an objective and comparable basis.

#### — The promotion system

5. Fifth plea in law alleging infringement of the rule against ruling *ultra petita* and of the appellant's rights of the defence.
6. Sixth plea in law alleging infringement of the rules on the allocation of the burden of proof.
7. Seventh plea in law alleging that the CST erred in law in finding that the appellant had infringed Article 45 of the Staff Regulations.

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### Action brought on 21 August 2015 — Romania v Commission

(Case T-478/15)

(2015/C 346/39)

Language of the case: Romanian

#### Parties

*Applicant:* Romania (represented by: R.Radu, A. Buzoianu and E. Gane, acting as Agents)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the Commission decision adopted by letter BUDG/B/3/MV D(2015) 2453089 of 11 June 2015 ordering Romania to make available to the EU budget the gross amount of EUR 1 079 513,03 as own resources;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission lacked competence to adopt the contested decision.

- EU legislation contains no provision conferring on the Commission the power to require a Member State to pay a sum of money corresponding to a loss of EU own resources which occurred following the remission of customs duties decided by another Member State which was responsible for the assessment and collection of customs duties and their payment to the EU budget as traditional own resources.

2. Second plea in law, alleging that the reasons stated in the decision are insufficient and inadequate

- The reasons stated in the contested decision are not sufficient or adequate, as required under Article 296 TFEU, since, first, the contested decision does not include the legal basis for its adoption and that basis cannot be inferred from the other elements of the letter and, secondly, the Commission did not set out, in the contested decision, the legal reasoning which led it to require Romania to make payment.

3. Third plea in law, alleging that the Commission failed to exercise its powers correctly

- In the event that the Court finds that the EU institution acted within the limits of the powers conferred upon it by the Treaties, Romania considers that that institution exercised its powers incorrectly and infringed the principle of good administration and Romania's rights of the defence.
- The Commission infringed its obligations in respect of due care and good administration, since it did not carefully examine all the relevant information available to it and did not request additional necessary information before adopting the contested decision. The Commission did not establish a direct causal link between the acts imputed to Romania and the loss of EU own resources. Nor did the Commission justify the sum required from Romania by reference to the amount of customs duty corresponding to the value of the transit operation in question but based it on the value remitted by Germany.
- The Commission's actions were unforeseeable and did not allow Romania to exercise its rights of the defence.

4. Fourth plea in law, alleging a failure to observe the principles of legal certainty and legitimate expectations

- The legal rules on the basis of which the Commission imposed the obligation to make payment were not identified or specified in the decision in question. Nor was their application foreseeable for Romania. Prior to receiving the Commission's letter, Romania could not foresee or be aware of the obligation to make available to that institution the sum of money requested, corresponding to the loss of EU traditional own resources. By the same token, Romania considers that, by adopting the contested decision and requiring Romania to make payment, five years after the events in question took place and in spite of the conclusions reached by the Commission in the dialogue which took place with the Romanian authorities during that period, the Commission breached Romania's legitimate expectations that it would not be required to pay the customs duties relating to the transit operations in question.

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**Action brought on 31 August 2015 — Netherlands v Commission**

(Case T-501/15)

(2015/C 346/40)

*Language of the case: Dutch*

**Parties**

*Applicant:* Kingdom of the Netherlands (represented by: M. Bulterman, B. Koopman and H. Stergiou, acting as Agents)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision
- in so far as it relates to the financial correction concerning the sanctioning system deemed by the European Commission to be too lenient in the amount of EUR 336 064,53 (2009), EUR 403 863,66 (2010) and EUR 230 786,49 (2011);
- in so far as it relates to the financial correction that is applied in connection with the partial control for 3 SMRs in 2009 (EUR 1 597 182 EUR 15,53 and EUR 358,20), 4 RBes in 2010 (EUR 1 630 540,68 and EUR 6 520,50) and 4 RBes in 2011 (EUR 1 631 326,51) in so far as it concerns the European Commission's finding that the Netherlands has breached SMR8; and
- order the European Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant seeks the partial annulment of Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (notified under document C(2015) 4076) (OJ 2015 L 182, p. 39).