

Defendants: European Parliament (represented by: N. Lorenz, N Görlitz, P. López-Carceller, agents) and European Commission (represented by: L. Lozano Palacios and I. Martinez del Peral, agents)

Re:

Application for a declaration of failure to act on the part of the European Parliament and the European Commission in that those institutions unlawfully failed to respond to the applicant's letter of 6 October 2009, an application for directions to be issued and a request for protective measures.

Operative part of the order

1. *The action is dismissed.*
2. *Mr Fernando Marcelino Victoria Sánchez is ordered to pay the costs.*
3. *There is no need to adjudicate on the application for leave to intervene of Mr. Ignacio Ruipérez Aguirre and the ACT Petition Association.*

⁽¹⁾ OJ C 100, 17.4.2010, p. 58.

Action brought on 1 September 2010 — Maftah v Commission

(Case T-101/09)

(2011/C 13/51)

Language of the case: English

Parties

Applicant: Elmabruk Maftah (London, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

- Annul Regulation (EC) No 1330/2008 ⁽¹⁾ insofar as it relates to the applicant;
- Order the defendant to immediately remove the applicant from the annex to the said regulation; and
- Order the defendant and/or the Council of the European Union to pay, in addition to its own costs, those incurred by the applicant and any sums advanced by way of legal aid by the cashier of the Court of Justice of the European Union.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 1330/2008, insofar as the name of the applicant has been placed on the list of persons and entities to which certain restrictive measures were imposed.

In support of his action, the applicant submits the following pleas in law:

Firstly, the Commission has failed to independently review the basis of the applicant's inclusion in Annex I to Regulation (EC) No 881/2002 ⁽²⁾ at any point, or required any reasons or evidence for that inclusion.

In addition, the Commission has failed to provide to the applicant with any reasons at all and then failed to provide any adequate reasons justifying his inclusion in Annex I to Regulation (EC) No 881/2002 in breach of his right to an effective judicial remedy, the right to defend himself and in breach of his rights to property under the European Convention on Human Rights.

Finally, the continued inclusion in Annex I to Regulation (EC) No 881/2002 is irrational given that: (i) there were and are no reasons available which would satisfy the relevant criteria for inclusion in the said annex; (ii) the United Kingdom's government's position is that the applicant no longer fulfils the relevant criteria; and (iii) the judgments by a specialized UK Court that the Libyan Islamic Fighting Group has not merged with the Al-Qaida network and/or every person associated with the Libyan Islamic Fighting Group has an Al-Qaida violent global jihadist ideology.

⁽¹⁾ Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2008 L 345, p. 60).

⁽²⁾ Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 1 September 2010 — Elostá v Commission

(Case T-102/09)

(2011/C 13/52)

Language of the case: English

Parties

Applicant: Abdelrazag Elostá (Pinner, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

- Annul Regulation (EC) No 1330/2008 ⁽¹⁾ insofar as it relates to the applicant;
- Order the defendant to immediately remove the applicant from the annex to the said regulation; and

— Order the defendant and/or the Council of the European Union to pay, in addition to its own costs, those incurred by the applicant and any sums advanced by way of legal aid by the cashier of the Court of Justice of the European Union.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 1330/2008, insofar as the name of the applicant has been placed on the list of persons and entities to which certain restrictive measures were imposed.

In support of his action, the applicant submits the following pleas in law:

Firstly, the Commission has failed to independently review the basis of the applicant's inclusion in Annex I to Regulation (EC) No 881/2002⁽²⁾ at any point, or required any reasons or evidence for that inclusion.

In addition, the Commission has failed to provide to the applicant with any reasons at all and then failed to provide any adequate reasons justifying his inclusion in Annex I to Regulation (EC) No 881/2002 in breach of his right to an effective judicial remedy, the right to defend himself and in breach of his rights to property under the European Convention on Human Rights.

Finally, the continued inclusion in Annex I to Regulation (EC) No 881/2002 is irrational given that: (i) there were and are no reasons available which would satisfy the relevant criteria for inclusion in the said annex; (ii) the United Kingdom's government's position is that the applicant no longer fulfils the relevant criteria; and (iii) the judgments by a specialized UK Court that the Libyan Islamic Fighting Group has not merged with the Al-Qaida network and/or every person associated with the Libyan Islamic Fighting Group has an Al-Qaida violent global jihadist ideology.

(¹) Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2008 L 345, p. 60).

(²) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 11 October 2010 — France v Commission

(Case T-488/10)

(2011/C 13/53)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and N. Rouam, Agents)

Defendant: European Commission

Form of order sought

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of European Commission Decision No C(2010) 5229 of 28 July 2010 concerning the cancellation of part of the contribution of the European Regional Development Fund (ERDF) under the single programming document for objective 1 for Community structural assistance in Martinique, France. That decision cancels in its entirety the contribution of the ERDF allocated to the major project entitled 'Village de vacances Club Méditerranée — Les Boucaniers' of EUR 12 460 000.

The applicant puts forward four pleas in law in support of its action.

By its first plea, the applicant submits that the Commission has infringed Article 2(1) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts⁽¹⁾, by taking the view that the works contracts concluded for the renovation and extension of 'Club Méditerranée — Les Boucaniers' constituted works contracts directly subsidised by more than 50 % by the contracting authorities. Those contracts were subsidised by only 29,92 % of the cost of the project. The tax relief which the partners of the private companies received on account of their investment in the project cannot constitute a subsidy within the meaning of Article 2(1) of Directive 93/37/EEC.

By its second plea in law, which is divided into two parts, the applicant submits that the Commission infringed Article 2(2) of Directive 93/37/EEC by taking the view that the works contracts for the renovation and extension of 'Club Méditerranée — Les Boucaniers' concerned building work for facilities intended for sports, recreation and leisure within the meaning of that provision.