

Action brought on 14 May 2009 — Hellenic Republic v Commission**(Case T-184/09)**

(2009/C 193/37)

*Language of the case: Greek***Parties***Applicant:* Hellenic Republic (represented by: V. Kontolaimos, E. Leftheriotou, V. Karra)*Defendant:* Commission of the European Communities**Form of order sought**

- grant the application and annul the contested decision or, in the alternative, alter it so that the financial correction is reduced to 5 % or, in the alternative, the correction of 10 % is applied only to the amount which corresponds to the sugar imported by E.V.Z.;
- order the Commission to pay the costs.

Pleas in law and main arguments

In its application for annulment of the Commission decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), which was notified under document number C(2009) 1945 and published under No 2099/253/EC (OJ 2009 L 75, p. 15) and which concerns the imposition of corrections in respect of export refunds and the common organisation of the market in sugar, because of a lack of controls, the Hellenic Republic puts forward the following pleas for annulment.

By the first plea for annulment, the Hellenic Republic submits that the procedure for clearance of the accounts was invalid because of breach of a substantial procedural requirement that is laid down by Article 8(1) of Regulation (EC) No 1663/95, ⁽¹⁾ relating to the failure to engage in bilateral discussion, so far as concerns the imposition of a correction for refunds in respect of sugar in non-Annex I products.

By the second plea for annulment, the Hellenic Republic alleges misappraisal of the facts, an insufficient statement of reasons and that the limits of the Commission's discretion were exceeded, as regards the assessment of risk for the Fund.

By the third plea for annulment, it alleges breach of the principle of proportionality.

⁽¹⁾ Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

Action brought on 2 June 2009 — Denmark v Commission**(Case T-212/09)**

(2009/C 193/38)

*Language of the case: Danish***Parties***Applicant:* Kingdom of Denmark (represented by: J. Bering Liisberg, Agent, assisted by P. Biering and J. Pinborg, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- Primarily, set aside the Commission decision of 19 March 2009 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 under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark;
- In the alternative, set aside in part the Commission decision of 19 March 2009 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 under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark, to the extent to which the exclusion from Community financing is based on:
 - an alleged breach of the rules on, and weakness in, the control of set-aside areas in 2002, 2003 and/or 2004; and/or
 - an alleged breach of the rules on, and weakness in, remote-sensing control in 2003 and/or 2004;
- Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision 2009/253/EC of 19 March 2009 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 under the European Agricultural Guarantee Fund (EAGF), in so far as that decision involves the exclusion from Community financing of the expenditure declared by Denmark. ⁽¹⁾

The applicant submits that the Commission's decision is, in a number of respects, based on an erroneous understanding and application of the legal basis, particularly in regard to the issue of maintenance of the set-aside areas and the requirements relating to remote-sensing control.

It is further submitted that the decision suffers from fundamental defects in its reasoning and is in a number of respects at variance with the principle of the protection of legitimate expectations and with the principle of legal certainty.

In conclusion, the applicant contends that the correction was carried out in a manner contrary to the Commission's own guidelines, has an insufficient basis in the facts and is disproportionate in light of the fact that the European Agricultural Guidance and Guarantee Fund was not faced with a genuine financial risk in this case.

⁽¹⁾ OJ 2009 L 75, p. 15; notified under document number C(2009) 1945.

Action brought on 9 June 2009 — British Telecommunications v Commission

(Case T-226/09)

(2009/C 193/39)

Language of the case: English

Parties

Applicant: British Telecommunications plc (London, United Kingdom) (represented by: G. Robert and M. M. Newhouse, Solicitors)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 685 final of 11 February 2009 declaring incompatible with the common market the aid granted by the British authorities in favour of the applicant by means of Crown guarantee to BT Pension Fund (State aid N° C 55/2007 (ex NN 63/2007, CP 106/2006)).

The applicant puts forward seven pleas in law in support of its claims.

First, the applicant claims that in concluding that the applicant has a selective economic advantage, the Commission erred in law and committed a manifest error of assessment incorrectly applying Article 87(1) EC and the notion of State aid. The applicant submits that the Commission failed to take into account the full economic and factual context in which the applicant acts.

Second, the applicant contends that in concluding that the applicant enjoys a selective economic advantage because the Trustees of the BT Pension Scheme (BTPS) do not contribute

to the Pension Protection Fund (PPF) in respect of the pensions of BTPS members covered by the Crown guarantee, the Commission committed a manifest error of assessment and infringed the principle of equal treatment by failing to compare like with like. In the applicant's opinion, the Commission failed to take into consideration differences between the private sector schemes covered by PPF and civil service-type scheme inherited by the applicant at the time of privatisation.

Third, the applicant argues that the Commission erred in law and infringed the principle of legitimate expectations in re-characterising a measure which was not aid at the time it was granted as the 'underlying reason' why it should be considered to be an aid twenty years later because a legislative measure has been adopted in the meantime.

Fourth, the applicant submits that in requiring the BTPS Trustees to contribute to the PPF, the Commission infringed the principles of equal treatment and proportionality.

Fifth, it claims that the Commission committed a manifest error of assessment and failed to investigate as to whether the selective economic advantage alleged by the Commission distorts competition and affects trade between Member States within the meaning of Article 87(1) EC.

Sixth, the applicant argues that the Commission made a manifest error of fact and law in concluding that there existed a transfer of state resources.

Seventh, it submits that, by failing to provide reasons for the contested decision, the Commission infringed Article 253 EC.

Action brought on 10 June 2009 — Feng Shen Technology v OHIM — Majtczak (FS)

(Case T-227/09)

(2009/C 193/40)

Language in which the application was lodged: English

Parties

Applicant: Feng Shen Technology Co. Ltd (Gueishan, Taiwan) (represented by: W. Festl-Wietek and P. Rath, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Jarosław Majtczak (Łódź, Poland)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 April 2009 in case R 529/2008-4;