

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the annulment of Commission Decision notified under document C(2010) 4754 of 13 July 2010 as a letter to Ireland, to reject a safety capacity application concerning a new fishing vessel, the Niamh Eoghan, and to replace the decision regarding the said application contained in Commission Decision No 2003/245 of 4 April 2003 on the requests received by the Commission to increase in MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12m in length overall (OJ 2003 L 90, p. 48), which was annulled, in so far as the applicant is concerned, by judgment of the General Court delivered on 13 June 2006 in Joined Cases T-218/03 to T-240/03 *Boyle and Others v Commission* [2006] ECR II-1699.

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

Firstly, the applicant submits that the defendant acted without a legal basis. Article 4(2) of Council Decision No 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with the view to achieving a balance on a sustainable basis between resources and exploitation (OJ 1997 L 175, p. 27) continues to provide the appropriate legal basis for the impugned decision and, thus, the Commission lacked a legal basis purportedly to adopt the decision as an *ad hoc* decision.

Secondly, the applicant submits that the Commission breached an essential procedural requirement. The applicant submits that the impugned decision, under Council Decision No 97/413/EC, should have been adopted pursuant to the management committee procedure and that, in choosing to adopt the decision on an *ad hoc* basis, the Commission acted in breach of essential procedural requirements.

Thirdly, the applicant submits that by misinterpreting Article 4(2) of Council Decision No 97/413/EC, the Commission exceeded its powers, in particular in relying upon irrelevant criteria and ignoring the definition of 'fishing effort' provided in Council Decision No 97/413/EC and in Community fisheries legislation applicable at the time of the applicant's application for safety tonnage in December 2001.

In addition, it is submitted that the impugned decision contains a number of manifest errors in its assessment of the applicant's application for safety tonnage. In particular, the applicant claims that the Commission's decision to refuse the applicant's appli-

cation because of the use of replacement capacity from a number of smaller vessels for the Niamh Eoghan, meant there was no increase in the total capacity of the polyvalent segment of the Irish fleet when that vessel was registered is unfounded.

Finally, the applicant alleges that the Commission breached its right to good administration. It is submitted that Commission's refusal to assess the merits of his application constitutes a breach of its obligations under article 41 of the Charter of Fundamental Rights of the European Union, and in particular, of his right to have his application, under Article 4(2) of Council Decision No 97/413/EC, assessed 'fairly and within a reasonable time'.

Action brought on 27 September 2010 — Murphy v Commission

(Case T-467/10)

(2010/C 328/76)

Language of the case: English

Parties

Applicant: Larry Murphy (Castletownbere, Ireland) (represented by: A. Collins SC, N. Travers, Barrister and D. Barry, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Commission Decision notified under document C(2010) 4753 of 13 July 2010 as a letter to Ireland, to reject a safety capacity application concerning a new pelagic trawler, to replace the MFV Menhaden, and to replace the decision regarding the said application contained in Commission Decision No 2003/245 of 4 April 2003 on the requests received by the Commission to increase in MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12m in length overall (OJ 2003 L 90, p. 48), which was annulled, in so far as the applicant is concerned, by judgment of the Court of Justice delivered on 17 April 2008 in Joined Cases C-373/06 P, C-379/06 P and C-382/06 P *Flaherty and Others v Commission* [2008] ECR I-2649; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the annulment of Commission Decision notified under document C(2010) 4753 of 13 July 2010 as a letter to Ireland, to reject a safety capacity application for a proposed new pelagic trawler to replace the MFV Menhaden, and to replace the decision regarding the said application contained in Commission Decision No 2003/245 of 4 April 2003 on the requests received by the Commission to increase in MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12m in length overall (OJ 2003 L 90, p. 48), which was annulled, in so far as the applicant is concerned, by judgment of the Court of Justice delivered on 17 April 2008 in Joined Cases C-373/06 P, C-379/06 P and C-382/06 P *Flaherty and Others v Commission* [2008] ECR I-2649.

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

Firstly, the applicant submits that the defendant acted without a legal basis. Article 4(2) of Council Decision No 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with the view to achieving a balance on a sustainable basis between resources and exploitation (OJ 1997 L 175, p. 27) continues to provide the appropriate legal basis for the impugned decision and, thus, the Commission lacked a legal basis purportedly to adopt the decision as an *ad hoc* decision.

Secondly, the applicant submits that the Commission breached an essential procedural requirement. The applicant submits that the impugned decision, under Council Decision No 97/413/EC, should have been adopted pursuant to the management committee procedure and that, in choosing to adopt the decision on an *ad hoc* basis, the Commission acted in breach of essential procedural requirements.

Thirdly, the applicant submits that by misinterpreting Article 4(2) of Council Decision No 97/413/EC, the Commission exceeded its powers, in particular in relying upon irrelevant criteria and ignoring the definition of 'fishing effort' provided in Council Decision No 97/413/EC and in Community fisheries legislation applicable at the time of the applicant's application for safety tonnage in December 2001.

In addition, it is submitted that the impugned decision contains a number of manifest errors in the assessment of the applicant's application for safety tonnage. In particular, the applicant claims that the Commission's decision to refuse the applicant's application because of the greater volume under the main deck of the proposed new vessel compared to the Menhaden is manifestly flawed, as is its assumption that the proposed new vessel's 'fishing effort' will be greater than that of the Menhaden.

Finally, the applicant alleges that the Commission breached the right to equal treatment. It is submitted that Commission's rejection of the application because of the greater volume

under the main deck of his proposed new vessel constitutes gross difference in treatment amounting to impermissible discrimination against him compared to the wholly different approach adopted regarding the treatment of some of the applications for additional safety tonnage accepted in Commission Decision No 2003/245, as well as regarding one of the applications initially rejected in that decision but then accepted in the Commission Decision notified under document C(2010) 4765 of 13 July 2010.

Action brought on 4 October 2010 — Portugal v Commission

(Case T-475/10)

(2010/C 328/77)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, assisted by C. Botelho Moniz and P. Gouveia e Melo, lawyers)

Defendant: European Commission

Form of order sought

— repeal Commission Decision C(2010) 4891 final of 20 July 2010, concerning the parafiscal charge to promote wine applied by Portugal — State aid No C-43/2004 (ex NN 38/2003);

in the alternative, failing that,

— annul the seventh and ninth conditions of Article 3(2) of the Decision;

and, in either case,

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

(a) Error of law, by infringing Article 107(1) of the EC Treaty by classifying as state resources that part of the proceeds of the promotional tax applied to funding support for the promotion and advertising of wine, under the terms of Decree-Law No 119/97 of 15 May;

(b) Error of law, by infringing Articles 107(1) and 296 of the EC Treaty and of Commission Regulation (EC) No 1860/2004, (1) in so far as the Commission classified the support for the promotion and advertising of wine as public aid without analysing whether it is liable to restrict competition or whether it could constitute *de minimis* aid;