

3. Third plea in law, alleging a substitution of grounds by the Tribunal. The applicant submits, firstly, that the budgetary grounds for the GPs emerged only at the hearing and, secondly, that that ground is different from that given to the applicant in the rejection of his claim (a ground which the Tribunal, moreover, accepted was inadequate). In accordance with the case-law, it is not for the Tribunal to remedy any lack of grounds or to supplement the Commission's grounds by adding to them or by substituting for them elements which are not apparent from the contested decision itself.
4. Fourth plea in law, alleging a manifest error of assessment, since the Civil Service Tribunal rejected the ground relating to the principle of equal treatment since the applicant failed to show that there was an unjustified difference in treatment. The applicant demonstrated that the difference in treatment at issue was not justified by the introduction of the Euro, the original ground for rejection of the claim.

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**Action brought on 23 June 2011 — Régie Networks and NRJ Global v Commission**

(Case T-340/11)

(2011/C 282/53)

*Language of the case: French*

**Parties**

*Applicants:* Régie Networks (Lyon, France) and NRJ Global (Paris, France) (represented by: B. Geneste and C. Vannini, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant submits that the Court should:

- establish the liability of the European Union for:
  - the European Commission's unlawful decision of 10 November 1997 concerning State aid N 679/97;
  - the Commission's failure to act following the formal establishment of that unlawfulness in the letter addressed to the French authorities on 8 May 2003;
- order the European Commission to compensate in full for the loss resulting for the applicants from the wrongful acts referred to in the application, which loss encompasses:
  - the amount of the tax paid for the period from 1 January 1998 to 31 December 2000;

- the fees incurred for the legal proceedings brought in order to obtain reimbursement of the tax paid for the period from 1 January 2001 to 31 December 2002;
- the fees incurred for the present legal proceedings;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging wrongful acts committed due to the unlawfulness of the Commission decision of 10 November 1997. In examining the radio broadcasting aid scheme in 1997, the Commission declared it to be compatible with the Treaty rules, without examining the manner in which that aid scheme was financed, which it was however required to do according to the Court of Justice's well-established case-law in the area, since the financing was an integral part of the aid scheme in question. The decision thus adopted by the Commission is unlawful and is a wrongful act entailing non-contractual liability on the part of the European Union.
2. Second plea in law, alleging infringement of the principle of sound administration resulting from the Commission's failure, in 2003, to compensate for the harmful effects of its 1997 decision. The Commission found that its decision of 19 November 1997 was unlawful at the latest on 8 May 2003, when it addressed a letter to the French authorities, stating that the detailed rules for financing the radio broadcasting aid scheme, as approved most recently by the decision of 10 November 1997, were contrary to the Treaty rules. However, the Commission did not take any measures to remedy the unlawful situation thus established. It is on that basis that the applicants consider that the Commission's failure to compensate for the harmful effects of the unlawful decision of 1997 infringes the principle of sound administration, which is a general principle of European Union law, and is therefore such as to entail liability on the part of the European Union.

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**Action brought on 7 July 2011 — Makhlof v Council**

(Case T-359/11)

(2011/C 282/54)

*Language of the case: French*

**Parties**

*Applicant:* Hafez Makhlof (Damas, Syria) (represented by: P. Grollet and G. Karouni, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant submits that the Court should:

- annul Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria, in so far as it concerns the applicant;
- annul Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, in so far as it concerns the applicant;
- annul Council Implementing Decision 2011/302/CFSP, by which the Annex to Decision 2011/273/CFSP is replaced by the text set out in the Annex to the Decision of 23 May, in so far as it concerns the applicant;
- order the Council of the European Union to pay the costs, pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of the rights of the defence and the right to a fair hearing. The applicant argues that his rights of defence have been infringed by the imposition of the penalties in question, without his having previously been heard, had the opportunity to defend himself or having been informed of the evidence on the basis of which the measures were adopted.
2. Second plea in law, alleging infringement of the obligation to state reasons provided for by the second paragraph of Article 296 TFEU. The applicant criticises the Council for having adopted restrictive measures in respect of him without having informed him of the grounds, in order to enable him to put forward his pleas in defence. The applicant criticises the defendant for having merely used a general, stereotypical formulation, without specifying the factual and legal elements justifying its decision and the considerations which led it to adopt that measure.
3. Third plea in law, alleging infringement of the guarantee relating to effective judicial protection. The applicant argues that not only did he not have the opportunity to make his views duly known to the Council, but that, in the absence of any indication in the contested decision as to the specific and actual reasons justifying it, nor is he able to pursue his action properly before the General Court.
4. Fourth plea in law, alleging infringement of the general principle of proportionality.

5. Fifth plea in law, alleging infringement of the right to property, in that the restrictive measures, more specifically the measure freezing funds, constitute a disproportionate interference with the applicant's fundamental right to dispose freely of his assets.
6. Sixth plea in law, alleging infringement of the right to privacy, in that the measures freezing funds and restricting the freedom of movement also constitute a disproportionate interference with the applicant's fundamental right.

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**Action brought on 12 July 2011 — Arla Foods v OHIM — Artax (Lactofree)**

**(Case T-364/11)**

(2011/C 282/55)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Arla Foods AMBA (Viby J, Denmark) (represented by: J. Hansen, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Artax Beteiligungs- und Vermögensverwaltungs AG (Linz, Austria)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 April 2011 in case R 1357/2009-2, and Community trade mark registration No 4647533 be declared invalid for goods in classes 5, 29, 30 and 32 in accordance with the decision of the Cancellation Division of 11 September 2009; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the Cancellation Division, before the Board of Appeal and before the General Court.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark 'Lactofree', for goods in classes 5, 29, 30 and 32 — Community trade mark registration No 4647533

*Proprietor of the Community trade mark:* The other party to the proceedings before the Board of Appeal