

- when the Court considers the second of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 267 746 EUR, or, in the alternative and because of an error of calculation, by 90 186 EUR
  - when the Court considers the third of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 76,369 EUR,
  - when the Court considers the fourth of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 3 264 849 EUR.
- Order the Commission to pay the costs.

### Pleas in law and main arguments

The present action is directed at Commission Decision C(2006) 5103 of 20 October 2006, in that it reduces the assistance from the Cohesion Fund to five projects carried out in the Comunidad Autónoma de Andalucía, and namely:

- N. 2000.ES.16.C.PE.012 (Measures to be undertaken for the management of waste by the Comunidad Autónoma de Andalucía).
- N. 2000.ES.16.C.PE.066 (Clearance and treatment measures in the Guadalquivir basin).
- N. 2001.ES.16.C.PE.004 (Clearance and treatment measures in the Southern basin: Phase I).
- N. 2000.ES.16.C.PE.025 (Enlargement of municipal solid waste (MSW) treatment facilities in the Comunidad Autónoma de Andalucía).
- N. 2000.ES.16.C.PE.138 (Measures to be undertaken for the management of waste by the Comunidad Autónoma de Andalucía).

In the contested decision, whose primary purpose was to examine project 012, the Commission applies a correction of EUR 4 735 284, on the basis of considerations relating to the sufficiency of controls in respect of the eligibility of expenditure and observance of certain rules on tendering procedures (direct award of two contracts, use of experience as a criterion of the award and alleged irregularities in the publication of certain contracts).

In support of its claims, the applicant alleges:

- Infringement of the principles of legitimate expectations, legal certainty and proportionality in relation to the eligibility of certain expenditure inasmuch as the impugned measure was adopted even before expiry of the prescribed period requested in order to disqualify non-eligible expenditure and replace it with other eligible expenditure.
- Incorrect interpretation of Article 11(3)(b) and (e) of Directive 92/50/EEC<sup>(1)</sup> in relation to the alleged irregularities

detected in the direct award of two service contracts. As part of that plea, in the alternative, error of calculation.

- Breach of the directives on public contracts regarding the inclusion of the 'criterion of experience' as one of the criteria for the contract award. It is submitted in this regard that, while that criterion is not expressly provided for in the applicable rules, Community case-law allows for this possibility, and the use of that criterion can in no way constitute a grave and manifest infringement of the Community rules, or, in any event, can only amount to an excusable error of law on account of lack of clarity of the applicable rule.
- Lack of grave and manifest breach, and, therefore, of a sufficiently serious breach of Community law in relation to the irregularities stemming from the failure to publish certain contracts.

<sup>(1)</sup> Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

### Action brought on 5 January 2007 — Belgium v Commission

(Case T-5/07)

(2007/C 56/63)

*Language of the case: French*

### Parties

*Applicant:* Kingdom of Belgium (represented by: L. Van den Broeck, Agent, J.-P. Buyle and C. Steyaert, avocats)

*Defendant:* Commission of the European Communities

### Forms of order sought

The applicant claims that the Court should:

- declare that the application is admissible and well founded;
- annul the Commission's decision of 18 October 2006 in so far as that decision considers that the 'old ESF debts' — which the Kingdom of Belgium paid voluntarily, but without prejudice, on 21 December 2004 — are not subject to a limitation period;

- in consequence, rule that those debts are subject to a limitation period pursuant to Article 3(1) of Regulation No 2988/95/EC, Euratom and, in consequence, order the European Commission to repay the Kingdom of Belgium the sum of EUR 63 117 760, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;
- in the alternative, annul the Commission's decision of 18 October 2006, in so far as that decision considers that non-payment of the old ESF debts at issue generates interest and, in consequence, order the European Commission to repay the applicant the interest paid by the latter on the debts at issue, that is to say, the sum of EUR 37 772 499, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;
- in the further alternative, annul the Commission's decision of 18 October 2006 as regards the rate of the interest claimed and, accordingly, rule that that interest rate changes according to the rate of interest applied by the ECB to its principal refinancing operations, as published in the Official Journal and, in consequence, order the Commission to repay the applicant the excess interest paid by it on the debts at issue, together with default interest applied from 21 December 2004 and calculated at the ECB base rate increased by three and a half points;
- in any case, order the Commission to pay the costs of these proceedings.

### Pleas in law and main arguments

By the present application, Belgium seeks annulment of the Commission's decision, set out in the letter of 18 October 2006, refusing to repay Belgium a sum that it had paid in settlement of old debts owed to the European Social Fund, which Belgium claims should be reimbursed on the ground that those debts are subject to a limitation period and, in the alternative, on the ground that there is no legal basis for requiring the payment of interest.

During the period from 1987 to 1992, the Commission asked Belgium, by decisions adopted on the basis of Regulation No 2950/83/EEC <sup>(1)</sup> and Decision 83/673/EEC <sup>(2)</sup>, to repay sums that had been granted in the form of assistance to various Belgian bodies (promoters) and that they had not used. Belgium passed on the debit notes issued by the Commission to the promoters concerned. Although some of the promoters reimbursed the Commission directly, others entered into correspondence with the Commission concerning the lawfulness of the requests for reimbursement. At the initiative of the Commission, fresh discussions were opened in 2003. In 2004, the Commission took steps to offset the amounts owed by way of the old ESF debts at issue (debit notes issued between 15 January 1987 and 31 December 1991) — plus default interest applied from the date of issue of the debit notes — using Belgium's debts to the Commission in the framework of management of the ESF funds. Belgium contested that offsetting, as well as the interest applied by the Commission, on the grounds that the debt was

subject to a limitation period, and that there was no legal basis for the application of default interest. Nevertheless, in order to stop interest from running, Belgium paid a sum representing the balance of the amounts due by way of ESF debts that had not been offset. At the same time, Belgium made it clear that it was not abandoning the arguments put forward in its correspondence and that it reserved the right to claim reimbursement of those sums in so far as its arguments were well founded. The Commission replied by letter of 19 January 2005 in which it stated its views on Belgium's contentions. That letter was the subject of an application for annulment brought by the Kingdom of Belgium before the Court of First Instance. By order of 2 May 2006, the Court of First Instance dismissed the application as inadmissible on the ground that the letter at issue was not an act open to challenge for the purposes of Article 230 EC. <sup>(3)</sup>

On 29 June 2006, Belgium addressed another letter to the Commission requesting reimbursement of the sum representing the balance of the amounts due by way of ESF debts that had not been offset — which it had paid in order to stop interest from running — on the basis of the arguments relied upon beforehand relating to the limitation period for the debt, as well as those relating to the lack of a legal basis for requiring interest. By letter of 18 October 2006 the Commission stated its refusal to effect the reimbursement sought. That letter is the contested act for the purposes of the present proceedings.

In support of the main forms of order sought, Belgium maintains that the only European legislation that fully addresses the recovery by the Commission of unused monies in accordance with the materially relevant provisions of European law is Regulation No 2988/95/EC, Euratom <sup>(4)</sup>. According to Belgium, Article 3 of that Regulation, which lays down the limitation periods for proceedings, must be applied in the present case. Belgium also argues that if the Court of First Instance is obliged to find that Belgium cannot challenge the Commission on the basis of the limitation periods provided for in Article 3 of Regulation No 2988/95/EC, Euratom, it would be appropriate to refer to Article 2(4) of that Regulation, and to apply the Belgian law governing the length of limitation periods for 'personal' actions.

In support of the forms of order sought in the alternative, relating to the inappropriateness of the legal basis for the Commission's claim for default interest from Belgium, the latter submits that the Commission is committing an error by applying Article 86(2)(b) of Regulation No 2342/2002/EC, Euratom laying down the detailed rules for implementation of the Financial Regulation <sup>(5)</sup>. Belgium argues that there are special rules which derogate from that Regulation and that, by virtue of those special rules, the Commission may take as a basis only the rules governing the operation of the ESF — the source of the debts in respect of which the Commission is requesting payment — in order to determine how much interest, if any, is payable. On that point, Belgium submits that the Commission may claim interest only if interest was provided for, and, according to Belgium, that was not the case at the material time.

In the further alternative, Belgium submits that, contrary to the conclusion reached by the Commission, the rate of the interest claimed is variable. In consequence, it claims that the Court should order the Commission to reimburse the excess interest that Belgium has paid on the debts at issue.

- 
- (<sup>1</sup>) Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC the tasks of the European Social Fund (OJ L 289, 22.10.1983, p. 1).  
 (<sup>2</sup>) Commission Decision 83/673/EEC of 22 December 1983 on the management of the European Social Fund (ESF) (OJ L 377, 31.12.1983, p. 1).  
 (<sup>3</sup>) Order of the Court of First Instance in Case T-134/05 *Belgium v Commission* [2006] ECR II-0000.  
 (<sup>4</sup>) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).  
 (<sup>5</sup>) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).
- 

#### **Action brought on 2 January 2007 — Galderma v OHIM — Lelas (Nanolat)**

(Case T-6/07)

(2007/C 56/64)

*Language in which the application was lodged: German*

#### **Parties**

*Applicant:* Galderma SA (Cham, Switzerland) (represented by N. Hebeis, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Tihomir Lelas

#### **Form of order sought**

- annul the decision of the Fourth Board of Appeal of 25 October 2006 in Case R 0146/2006-4 in so far as the opposition against the goods 'Pharmaceuticals; pharmaceutical and veterinary products and preparations for health care; soaps; cosmetics and hair lotions' was rejected;
- refuse Community trade mark application 003088986 NANOLAT for the goods mentioned above;
- order OHIM to pay the costs.

#### **Pleas in law and main arguments**

*Applicant for a Community trade mark:* Tihomir Lelas

*Community trade mark concerned:* Word mark Nanolat for goods in Classes 1, 3 and 5 (application No 3 088 986)

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* German word mark TANNOLACT for goods in Class 5

*Decision of the Opposition Division:* Opposition rejected

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94, (<sup>1</sup>) as there is a likelihood of confusion between the opposing marks

---

(<sup>1</sup>) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 1994, p. 1).

#### **Action brought on 4 January 2007 — Torres v OHIM— Gala-Salvador Dalí (TG Torre Galatea)**

(Case T-8/07)

(2007/C 56/65)

*Language in which the application was lodged: Spanish*

#### **Parties**

*Applicant:* Miguel Torres S.A. (Barcelona, Spain) (represented by: E. Armijo Chávarri, M.A Baz de San Ceferino, and A. Castán Pérez-Gómez, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Fundación Gala-Salvador Dalí

#### **Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office of 24 October 2006 in case R 168/2006-2
- Order expressly that the Office pay the costs

#### **Pleas in law and main arguments**

*Applicant for a Community trade mark:* Fundación Gala-Salvador Dalí

*Community trade mark concerned:* The figurative mark 'TG Torre Galatea' for goods in Class 33 (application No 2730513)