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Information and Notices

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COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 290/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

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These texts are available on:

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Action brought on 12 July 2011 — European Commission v Kingdom of Belgium

(Case C-370/11)

(2011/C 290/02)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Mölls, Agent)

Defendant: Kingdom of Belgium

Form of order sought

— find that, by maintaining rules according to which the capital gains obtained on the buying back of shares of undertakings for collective investment which are not authorised in accordance with Directive 85/611/EEC [1] are not taxable, where those undertakings are established in Belgium, whereas the capital gains obtained on the buying back of shares of such undertakings established in Norway or Iceland are taxable, the Kingdom of Belgium has failed to fulfil its obligations under Articles 36 and 40 of the Agreement on the European Economic Area;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission criticises the national provisions at issue in so far as they have the effect of deterring Belgian residents from investing in undertakings for collective investment established in Norway or Iceland, because capital gains obtained on the buying back of shares of those undertakings cannot benefit from the tax exemption applicable to capital gains obtained on the buying back of shares of undertakings for collective investment established in Belgium.

The Commission claims that such a difference of treatment restricts the free movement of capital guaranteed by Article 40 of the EEA Agreement. Similarly, it hinders the freedom to provide services which amounts to an infringement of Article 36 of the EEA Agreement.

In response to the objections raised by the Belgian authorities, the Commission states, first, that the distinction made by Belgian legislation within the category of undertakings for collective investment established in the European Union, that is, whether they are authorised or not in accordance with Directive 85/611/EEC, is not the subject of the present action. Second and third, the Commission rejects the arguments that the abovementioned measures are justified by reasons linked to the effectiveness of fiscal controls or the absence of measures for the exchange of information. In that context, the Commission notes that Belgium, Norway and Iceland have ratified the Convention on mutual administrative assistance in tax matters drafted under the auspices of the OECD and the Council of Europe and that the double taxation conventions concluded between Belgium, and Norway and Iceland respectively, provide for the exchange of information among those countries.

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[1] Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ 1985 L 375, p. 3.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain) lodged on 18 July 2011 — International Bingo Technology, S.A. v Tribunal Económico Administrativo Regional de Cataluña (TEARC)

(Case C-377/11)

(2011/C 290/03)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: International Bingo Technology, S.A.

Defendant: Tribunal Económico Administrativo Regional de Cataluña (TEARC)

Questions referred

1. For the purposes of constituting the chargeable event giving rise to the tax, does the fact that bingo players pay the portion of the card price corresponding to the winnings amount to genuine consumption of goods and services?

2. For the purposes of the rules governing the denominator used in the calculation of the percentage of the deductible proportion, is Article 11A(1)(a), in conjunction with Articles 17(5) and 19(1), of the Sixth Directive [1] to be interpreted as requiring such a degree of harmonisation that it precludes the adoption in the Member States of different solutions in legislation or case-law with regard to the inclusion in the taxable amount for VAT of the portion of the card price allocated to the payment of winnings?

3. For the purposes of constituting the denominator used in the calculation of the percentage of the deductible proportion, is Article 11A(1)(a), in conjunction with Articles 17(5) and 19(1), of the Sixth Directive to be interpreted as precluding national case-law which, in the case of the game of bingo, includes in the taxable amount for VAT the amount corresponding to winnings that is paid by players through the purchase of cards?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

Reference for a preliminary ruling from the Juzgado Mercantil de Barcelona (Spain) lodged on 18 July 2011 — Manuel Mesa Bertrán and Cristina Farrán Morenilla v Novacaixagalicia

(Case C-381/11)

(2011/C 290/04)

Language of the case: Spanish

Referring court

Juzgado Mercantil de Barcelona

Parties to the main proceedings

Applicants: Manuel Mesa Bertrán and Cristina Farrán Morenilla

Defendant: Novacaixagalicia

Questions referred

1. If a credit institution offers a client with whom it has previously signed a mortgage loan contract an interest rate swap arrangement to cover the risk of variations of interest rates on that loan, must this be regarded as investment advice within the meaning of point [(4)] of Article 4(1) of the MiFID Directive [Directive 2004/39/EC] [1]?

2. Must omission of the suitability test provided for in Article 19(4) of the MiFID Directive with regard to a retail investor give rise to fundamental nullity of the interest rate swap arrangement entered into between the investor and the advising credit institution?

3. In the event that the service provided in the terms described is not regarded as investment advice, does the mere fact of purchasing a complex financial instrument, into which category falls an interest rate swap arrangement, without the appropriateness test provided for in Article 19(5) of the MiFID Directive being carried out, for reasons imputable to the investment institution, give rise to fundamental nullity of the purchase contract concluded with the same credit institution?

4. Under Article 19(9) of the MiFID Directive, does the mere fact that a credit institution offers a complex financial instrument linked to a mortgage loan constitute sufficient cause to exclude application of the obligation to carry out the suitability and appropriateness tests provided for by the said Article 19 which the investment institution must undertake in the case of a retail investor?

5. In order to enable the obligations laid down in Article 19 of the MiFID Directive to be excluded, is it necessary for the financial product to which the financial instrument offered is linked to be subject to statutory investor-protection standards similar to those laid down in that directive?

[1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

Reference for a preliminary ruling from the Juzgado de lo Social de Barcelona (Spain) lodged on 19 July 2011 — Isabel Elbal Moreno v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

(Case C-385/11)

(2011/C 290/05)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Barcelona

Parties to the main proceedings

Applicant: Isabel Elbal Moreno

Defendants: Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Does a contributory retirement pension such as the one provided for under the Spanish Social Security system on the basis of the contributions made by and on behalf of the worker during his working life fall within the concept of 'employment conditions' to which the prohibition of discrimination in Clause 4 of [the Framework Agreement annexed to] Directive 97/81 ([1]) refers?

2. If the first question were to be answered in the affirmative and a contributory retirement pension such as that governed by the Spanish Social Security system were to be regarded as falling within the concept of 'employment conditions' referred to in Clause 4 of [the Framework Agreement annexed to] Directive 97/81, is the prohibition of discrimination laid down in that clause to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from a part-time worker than from a full-time worker for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of his work?

3. As a supplementary question to the previous ones, may rules such as the Spanish rules (contained in the 7th Additional Provision of the General Law on Social Security) governing the method of contribution, access and quantification with regard to the contributory retirement pension for part-time workers be considered to be among the 'aspects and conditions of remuneration' to which the prohibition of discrimination in Article 4 of Directive 2006/54 ([2]), and Article 157 TFEU (formerly Article 141 EC), refer?

4. As an alternative question to the previous ones, in the event that the Spanish contributory retirement pension were not regarded either as a 'condition of employment' or as 'pay': Is the prohibition of discrimination on ground of sex, either directly or indirectly, laid down in Article 4 of Directive 79/7 ([3]) to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from part-time workers (the vast majority of whom are women) than from full-time workers for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of their work?

([1]) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — Annex: Framework agreement on part-time work (OJ 1998 L 14, p. 9).

([2]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

([3]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

Appeal brought on 22 July 2011 by Région Nord-Pas-de-Calais against the judgment of the General Court (Eighth Chamber) delivered on 12 May 2011 in Joined Cases T-267/08 and T-279/08 Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis v Commission.

(Case C-389/11 P)

(2011/C 290/06)

Language of the case: French

Parties

Appellant: Région Nord-Pas-de-Calais (represented by: M. Cliquennois and F. Cavedon, avocats)

Other parties to the proceedings: Communauté d'Agglomération du Douaisis, European Commission

Form of order sought

— Set aside the judgment of the General Court of the European Union of 12 May 2011 in Joined Cases T-267/08 and T-279/08;

— grant the forms of order sought at first instance by the Région Nord-Pas-de-Calais;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The appellant relies on two grounds in support of its appeal.

First, the Région Nord-Pas-de-Calais claims that the General Court erred in refusing to examine the grounds of complaint against Commission Decision C(2008) 1089 final of 2 April 2008, withdrawn and replaced by Commission Decision C(2010) 4112 final of 23 June 2010, both decisions relating to the same State aid, C 38/2007 (ex NN 45/2007). According to the appellant, the further decision was in fact a response to the written pleadings which the appellant had submitted in its initial action before the General Court, and the appellant was given no opportunity to be heard within a further prior administrative procedure.

Second, the appellant claims an infringement of the rights of the defence and the principle of the right to be heard within the administrative procedure in that the Commission adopted a further decision while absolving itself of the obligation to comply with the essential procedural requirements of that adoption. The Commission altered its analysis on the nature of the State measure at issue and revised the method for the calculation of the reference rates applicable when the State aid in favour of Arbel Fauvet Rail SA was granted.

Reference for a preliminary ruling from High Court of Ireland made on 27 July 2011 — Thomas Hogan, Jonh Burns, John Dooley, Alfred Ryan, Michael Cunningham, Michael Dooley, Denis Hayes, Marion Walsh, Joan Power, Walter Walsh v Minister for Social and Family Affairs, Attorney General

(Case C-398/11)

(2011/C 290/07)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: Thomas Hogan, Jonh Burns, John Dooley, Alfred Ryan, Michael Cunningham, Michael Dooley, Denis Hayes, Marion Walsh, Joan Power, Walter Walsh

Defendants: Minister for Social and Family Affairs, Attorney General

Questions referred

1. Whether Directive 2008/94/EC [1] applies to the Plaintiffs' situation having regard to Article 1(1) of the Directive and to the fact that the loss of the pension benefits claimed by the Plaintiffs are not, in Irish law, a debt against their employer which would be recognised in the receivership or any winding up of the Plaintiffs' employer, and which does not otherwise provide a legal basis for a claim against their employer in the circumstances of this case.

2. Whether, in assessing whether or not the State has complied with its obligations under Article 8, the national Court is entitled to take into account the State contributory pension which will be received by the Plaintiffs (receipt of which is not affected by a link with the occupational pension scheme) and to compare (a) the total of the State pension and the value of the pension the Plaintiffs will or are likely to ***actually*** receive from the relevant occupational pension scheme with (b) the total of the State contributory pension and the value of the accrued pension benefits of each of the Plaintiffs at the date of winding up of the scheme where the State pension was taken into account in designing the level of pension benefit claimed by the Plaintiffs?

3. If the answer to question 2 is yes, whether any of the amounts likely to be actually received by the Plaintiffs amount to compliance by the State with its obligations under Article 8?

4. Whether, in order for Article 8 of the Directive to apply, it is necessary to establish any causal link between the Plaintiffs' loss of their pension benefits and the insolvency of their employer apart from the facts that (i) the pension scheme is under-funded as of the date of the employer's insolvency and (ii) the employer's insolvency means that the employer does not have the resources to contribute sufficient money to the pension scheme to enable the members' pension benefits to be satisfied in full (the employer being under no obligation to do so once the scheme is wound up).

5. Whether the measures adopted by Ireland as referred to above fulfil the obligations imposed by the Directive having regard to the social, commercial and economic factors considered by Ireland in the review of pension protection following the decision in Robins (as set out in the Witness Statement of Orlaigh Quinn) and, in particular, having regard to the 'need for balanced economic and social development in the Community' referred to in Recital 3 of the Directive?

6. Whether the economic situation (as set out in the Witness Statements of Colm McCarthy, Phillip Lane and Kevin Cardiff) constitutes a sufficiently exceptional situation to justify a lower level of protection of the Plaintiffs' interests than might otherwise have been required and if so, what is that lower level of protection?

7. Assuming the answer to question 2 is no, whether the fact that the measures taken by the State subsequent to the Robins case have not brought about the result that the Plaintiffs would receive in excess of 49 % of the value of their accrued pension benefits under their occupational pension scheme is in itself a serious breach of the State's obligations such as to entitle the Plaintiffs to damages (i.e. without separately showing that the State's actions subsequent to the Robins judgment amounted to a grave and manifest disregard of the State's obligations under Article 8 of the Directive).

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[1] Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer
OJ L 283, p. 36

Reference for a preliminary ruling from the Tribunal Constitucional, Madrid (Spain) lodged on 28 July 2011 — Criminal proceedings against Stefano Melloni — other party: Ministerio Fiscal

(Case C-399/11)

(2011/C 290/08)

Language of the case: Spanish

Referring court

Tribunal Constitucional

Parties to the main proceedings

Criminal proceedings against: Stefano Melloni

Other party: Ministerio Fiscal

Questions referred

1. Must Article 4a(1) of Framework Decision 2002/584/JHA [1], as inserted by Council Framework Decision 2009/299/JHA [2], be interpreted as precluding national judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant conditional upon the conviction in question being open to review, in order to guarantee the rights of defence of the person requested under the warrant?

2. In the event of the first question being answered in the affirmative, is Article 4a(1) of Framework Decision 2002/584/JHA compatible with the requirements deriving from the right to an effective judicial remedy and to a fair trial, provided for in Article 47 of the Charter of Fundamental Rights of the European Union, and from the rights of defence guaranteed under Article 48(2) of the Charter?

3. In the event of the second question being answered in the affirmative, does Article 53, interpreted systematically in conjunction with the rights recognised under Articles 47 and 48 of the Charter, allow a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the requesting State, thus affording those rights a greater level of protection than that deriving from European Union law, in order to avoid an interpretation which restricts or adversely affects a fundamental right recognised by the Constitution of the first-mentioned Member State?

[1] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

[2] Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24).

Action brought on 27 July 2011 — European Commission v Kingdom of Spain

(Case C-403/11)

(2011/C 290/09)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: G. Valero Jordana and I. Hadjiyiannis, Agents)

Defendant: Kingdom of Spain

Form of order sought

The Commission claims that the Court should:

— Declare that the Kingdom of Spain has failed to fulfil its obligations under Article 13(1), (2), (3) and (6) (with the exception of the river basin district of Catalonia), Article 14(1)(c) (with the exception of the river basin management plans for the river basin district of Catalonia, the Balearic Islands, Tenerife, Guadiana, Guadalquivir, Andalusian Mediterranean basin, Tinto-Odiel-Piedras, Guadalete-Barbate, Galicia-Costa, Miño-Sil, Duero, Cantábrico Occidental and Cantábrico Oriental), and Article 15(1) (with the exception of the river basin district of Catalonia) of Directive 2000/60/EC [1] of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ('the directive').

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Infringement of Articles 13 and 15 of the directive:

Since Spain has not adopted or published national river basin management plans (with the exception of the management plan for the river basin district of Catalonia), the Commission did not receive a copy of these plans either by 22 March 2010, the time-limit laid down in the directive, and has not received them to date. Consequently, the Commission considers that Spain has failed to fulfil its obligations under Article 15(1) of the directive (with the exception of the management plan for the river basin district of Catalonia).

Infringement of Article 14 of the directive:

With regard to Article 14(1)(c) of the framework directive, in conjunction with Article 13(6) of that directive, the Commission considers that, in addition to the river basin district of Catalonia whose plan has already been adopted, the public information and consultation process in relation to the draft river basin management plans has already begun in twelve other river basin districts: the Balearic Islands, Tenerife, Guadiana, Guadalquivir, Andalusian Mediterranean basin, Tinto-Odiel-Piedras, Guadalete-Barbate, Galicia-Costa, Miño-Sil, Duero, Cantábrico Occidental and Cantábrico Oriental.

The Commission concludes that, with the exception of those thirteen river basin districts, Spain has failed to fulfil its obligations under Article 14(1)(c) of the directive.

[1] OJ 2000 L 327, p. 1.

Appeal brought on 1 August 2011 by Government of Gibraltar against the order of the General Court (Seventh Chamber) delivered on 24 May 2011 in Case T-176/09: Government of Gibraltar v European Commission

(Case C-407/11 P)

(2011/C 290/10)

Language of the case: English

Parties

Appellant: Government of Gibraltar (represented by: D. Vaughan QC, M. Llamas, Barrister)

Other parties to the proceedings: European Commission, United Kingdom of Great Britain and Northern Ireland, Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

(a) set aside the Order of the General Court dated 24 May 2011 in Case T-176/09;

(b) declare the Government's application in Case T-176/09 admissible;

(c) refer the case back to the General Court for a decision on the Government's Application on the merits;

(d) in the alternative to (b) and (c), refer the case back to the General Court with an order that the General Court now deals with any remaining issue of admissibility at the same time as its consideration of the merits of the case;

(e) order the Commission and Spain to pay the Government's costs and expenses before the Court of Justice and in the proceedings before the General Court.

Pleas in law and main arguments

The appellant contests the judgment of the General Court on the following grounds:

1. the General Court committed an infringement of European Union law by applying or misapplying the law on partial annulment and severance in the circumstances of this case in that this case is equivalent to rectification of a register of the extent of a property and not of true partial annulment or severance; parts of Site ES6120032 were clearly wrongly designated or clearly based on erroneous and misleading information given by Spain. The area covered by the Site should be rectified by appropriate and proportionate annulment;

2. the General Court committed an infringement of European Union law by finding that the partial annulment of Decision 2009/95 ([1]) in the way sought by the Government (1) would involve the Court redefining the geographical limits of Site ES6120032 and altering Site ES6120032 entirely and (2) would, therefore, alter the substance of Decision 2009/95 and would manifestly not be severable from the remainder of Decision 2009/95;

3. the General Court committed an infringement of European Union law by holding that there was no evidence that a new delimitation of Site ES6120032 in the way sought by the Government would satisfy the criteria laid down in Annex III to the Habitats Directive for classification as a Site of Community Importance when there was abundant evidence in fact and in law that it would so qualify and the contrary had never been suggested by any of the parties hereto, and in so finding the General Court distorted the evidence and/or made a wrong legal characterisation of the facts and drew the wrong legal conclusions from them and/or made a manifest error in its assessment of the facts and furthermore applied the wrong legal test and, in the circumstances, adopted inappropriate procedures;

4. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by acting in breach of the rights of the defence in that it did not allow the Government an opportunity to comment on documents submitted by the other parties to the case and by not showing to the Government one document lodged by Spain that was important to the issue on which the Court would base its Order and by adopting, in the circumstances, inappropriate procedures;

5. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by failing to provide any reasoning to support its finding that there was no evidence that a new delimitation of Site ES6120032 as contended by the Government would satisfy the criteria laid down in Annex HI to the Habitats Directive for classification as a site of Community importance and/or for disregarding or rejecting the substantive evidence to the contrary.

([1]) 2009/95/EC: Commission Decision of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) OJ L 43, p. 393

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 1 August 2011 — Pedro Espada Sánchez and Others v Iberia Líneas Aéreas de España S.A.

(Case C-410/11)

(2011/C 290/11)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicants: Pedro Espada Sánchez and Others

Defendant: Iberia Líneas Aéreas de España S.A.

Questions referred

1. Must the limit of 1 000 Special Drawing Rights per passenger, laid down in Article 22 of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, concerning the liability of the carrier in the case of destruction, loss or damage of baggage, considered in conjunction with Article 3(3) of that convention, be interpreted as a maximum limit for each individual passenger where a number of passengers travelling check in their shared baggage together, regardless of whether there are fewer pieces of checked baggage than there are actual travellers?

2. Or, on the contrary, must the limit to damages laid down in Article 22 of the Montreal Convention be interpreted as meaning that, for each piece of checked baggage, only one passenger may be entitled to claim compensation and that, accordingly, the maximum limit applied must be that fixed for a single passenger even if it is proved that the lost baggage identified by a single tag belongs to more than one passenger?

GENERAL COURT

Action brought on 8 July 2011 — Poland v Commission

(Case T-370/11)

(2011/C 290/12)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, Undersecretary of State)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety Commission Decision 2011/278/EU of 27 April 2011 (notified under document C(2011) 2772) determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1);

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law

   — Infringement of the second subparagraph of Article 194(2) TFEU, in conjunction with Article 192(2)(c) TFEU, by failing to take account of the particular characteristics of individual Member States concerning fuel and by calculating benchmarks on the basis of the reference efficiency of natural gas and taking that fuel as the reference fuel.

2. Second plea in law

   — Infringement of the principle of equal treatment and of Article 191(2) TFEU in conjunction with Article 191(3) TFEU by failing to take account, when drawing up the contested decision, of the diversity of the situations in individual regions of the European Union.

3. Third plea in law

   — Infringement of Article 5(4) TEU (principle of proportionality) by setting the benchmarks in the contested decision at a more restrictive level than attainment of the objectives of Directive 2003/87/EC requires.

4. Fourth plea in law

   — Infringement of Article 10a, in conjunction with Article 1, of Directive 2003/87/EC and lack of competence for the European Commission to adopt the contested measure.

Action brought on 22 July 2011 — Iran Transfo v Council

(Case T-392/11)

(2011/C 290/13)

Language of the case: German

Parties

Applicant: Iran Transfo (Teheran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns the applicant;

— adopt a measure of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, requiring the defendant to submit all documents in connection with the contested decision, in so far as they concern the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of rights guaranteed by the Charter of Fundamental Rights of the European Union

   The applicant's rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter') have been infringed. Article 16 of the Charter guarantees the freedom to conduct a business in the European Union and Article 17 guarantees the right to use and, in particular, to dispose of lawfully acquired possessions in the European Union. Articles 20 and 21 of the Charter guarantee the applicant the right to equal treatment and the right not to be discriminated against.

   The applicant is excluded from participation in trade in the European Union by the contested decision. The economic survival of the applicant is thereby threatened. The applicant is dependent on deliveries from the economic territory of the European Union.

There is no public interest in the restriction of the applicant's freedom to conduct a business, its property rights, its right to equal treatment and its right not to be discriminated against. In particular, there is no evidence to justify the defendant's decision and the related interference with the applicant's fundamental rights. The applicant is, in particular, not engaged in proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

2. Second plea in law, alleging manifestly incorrect appraisal of the facts on which the contested decision was based

The applicant is not engaged in proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

3. Third plea in law, alleging breach of the principle of proportionality

The defendant did not respect the principle of proportionality in its decision. The applicant cannot however exclude the possibility that an energy supplier to whom it delivers sold transformers to the Iranian Atomic Energy Agency, in breach of contract and without its knowledge. The Iranian Atomic Energy Agency could also have easily obtained corresponding transformers on the world market or on the European Union market. The medium voltage transformers at issue are produced and marketed, worldwide, also in Iran, by all important producers. In addition there is extensive worldwide trade in second-hand transformers, which have features corresponding to those transformers produced by the applicant.

4. Fourth plea in law, alleging infringement of the rights of the defence

The statement of reasons set out in Section 16 of the Annex to the contested decision is incomprehensible to the applicant and verifiable reasons were not communicated to the applicant by the defendant, with the result that the applicant's rights of defence and right to a genuine redress have been infringed.

Appeal brought on 25 July 2011 by Yvette Barthel and Others against the order of the Civil Service Tribunal of 10 May 2011 in Case F-59/10 *Barthel and Others v Court of Justice*

(Case T-398/11 P)

(2011/C 290/14)

Language of the case: French

Parties

Appellants: Yvette Barthel (Arlon, Belgium), Marianne Reiffers (Olm, Luxembourg) and Lieven Massez (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Other party to the proceedings: Court of Justice of the European Union

Form of order sought by the appellants

— Annulment of the order of 10 May 2011 of the Civil Service Tribunal in Case F-59/10 *Barthel and Others* v *Court of Justice* dismissing the appellants' action as inadmissible;

— A declaration that the action is admissible;

— Referral of the case back to the CST for judgment on the merits in accordance with law;

— Reservation of the costs.

Pleas in law and main arguments

In support of the appeal, the appellants rely on two grounds of appeal:

1. The first ground of appeal alleges breach of the obligation to state the reasons for its order, on the ground that in dismissing the appellants' action as inadmissible the Civil Service Tribunal infringed Article 296 TFEU and the first sentence of Article 36 of the Statute of the Court of Justice of the European Union, as well as Article 7(1) of Annex 1 thereto, by not examining all the breaches of law alleged before it and by not enabling the appellants to ascertain its grounds for rejecting their pleas in law alleging that it was unlawful to interpret Article 90(2) of the Staff Regulations of officials of the European Union by contrary inference from Article 91 thereof and relying on the right of officials to submit to the appointing authority of their instituton a complaint against any act adversely affecting them within, under the second indent of Article 90(2), a period of three months starting on the date of notification of the decision to the person concerned. By failing to refute all the pleas in law and arguments deployed by the appellants in their action for annulment, the Civil Service Tribunal thereby infringed its obligation to state the reasons for its order.

2. The second ground of appeal alleges error of law, on the ground that the Civil Service Tribunal held that the decision of 29 October 2009 rejecting the appellants' request constituted a decision purely confirmatory of a failure to reply which was deemed to be an implied decision rejecting the request, although the lateness of the express decision was explained by the wait for an internal opinion sought from one of the Court of Justice's services to enable it to examine whether the appellants fulfilled the conditions for entitlement to the allowance for shiftwork under Article 56a of the Staff Regulations of officials of the European Union.

Action brought on 25 July 2011 — Turbo v Council

(Case T-404/11)

(2011/C 290/15)

Language of the case: German

Parties

Applicant: Turbo Compressor Manufacturer (Tehran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns the applicant;

— adopt a measure of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, requiring the defendant to submit all documents in connection with the contested decision, in so far as they concern the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of rights guaranteed by the Charter of Fundamental Rights of the European Union

   The applicant's rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter') have been infringed. Article 16 of the Charter guarantees the freedom to conduct a business in the European Union and Article 17 guarantees the right to use and, in particular, to dispose of lawfully acquired possessions in the European Union. Articles 20 and 21 of the Charter guarantee the applicant the right to equal treatment and the right not to be discriminated against.

   The applicant is excluded from participation in trade in the European Union by the contested decision. The economic survival of the applicant is thereby threatened. The applicant is dependent on deliveries from the economic territory of the European Union.

   There is no public interest in the restriction of the applicant's freedom to conduct a business, its property rights, its right to equal treatment and its right not to be discriminated against. In particular, there is no evidence to justify the defendant's decision and the related interference with the applicant's fundamental rights. The applicant is, in particular, not engaged in proliferation-sensitive nuclear activities and/or the development of nuclear weapon delivery systems.

   There is a misunderstanding. The company named in the contested decision SATAK is not identical to the applicant. It is a third party which is external to the applicant. The applicant can only explain the fact that in the contested decision it was included in the list in Annex II to Decision 2010/413/CFSP concerning restrictive measures against Iran, by that fact that there was confusion with another company which controls 'SATAK' or a similarly named company.

2. Second plea in law, alleging manifestly incorrect appraisal of the facts on which the contested decision was based

   The applicant is not engaged in proliferation-sensitive nuclear activities, trade and/or the development of nuclear weapon delivery systems or other weapon system.

3. Third plea in law, alleging breach of the principle of proportionality

   The defendant did not respect the principle of proportionality in its decision. The applicant can only assume on the basis of searches made on the Internet for the keywords 'SATAK' and 'Iran's nuclear programme', that the delivery identified in Point 31 of Annex IB to Decision 2011/299/CFSP involves 6 Soviet-type KH-55(SM) airborne cruise missiles, which Iran allegedly acquired from the Ukraine in 2001 or 2002.

   The applicant has no business dealings with the Ukrainian public enterprise UkrSpetzExport, nor does it import Soviet-type KH-55(SM) airborne cruise missiles or other weapons or weapon delivery systems.

   The applicant is not the company named 'SATAK' in Point 31 of Annex 1B to the contested decision.

4. Fourth plea in law, alleging infringement of the rights of the defence

   The statement of reasons set out in Point 31 of Annex 1B to the contested decision is incomprehensible to the applicant and verifiable reasons were not communicated to the applicant by the defendant, with the result that the applicant's rights of defence and right to a genuine redress have been infringed.

Action brought on 31 July 2011 — Ocean Capital Administration and Others v Council

(Case T-420/11)

(2011/C 290/16)

Language of the case: English

Parties

Applicants: Ocean Capital Administration GmbH (Hamburg, Germany), First Ocean Administration GmbH (Hamburg, Germany), First Ocean GmbH & Co. KG (Hamburg, Germany), Second Ocean Administration GmbH (Hamburg, Germany), Second Ocean GmbH & Co. KG (Hamburg, Germany), Third Ocean Administration GmbH (Hamburg, Germany), Third Ocean GmbH & Co. KG (Hamburg, Germany), Fourth Ocean Administration GmbH (Hamburg, Germany), Fourth Ocean GmbH & Co. KG (Hamburg, Germany), Fifth Ocean Administration GmbH (Hamburg, Germany), Fifth Ocean GmbH & Co. KG (Hamburg, Germany), Sixth Ocean Administration GmbH (Hamburg, Germany), Sixth Ocean GmbH & Co. KG (Hamburg, Germany), Seventh Ocean Administration GmbH (Hamburg, Germany), Seventh Ocean GmbH & Co. KG (Hamburg, Germany), Eighth Ocean Administration GmbH (Hamburg, Germany), Eighth Ocean GmbH & Co. KG (Hamburg, Germany), Ninth Ocean Administration GmbH (Hamburg, Germany), Ninth Ocean GmbH & Co. KG (Hamburg, Germany), Tenth Ocean Administration GmbH (Hamburg, Germany), Tenth Ocean GmbH & Co. KG (Hamburg, Germany), Eleventh Ocean Administration GmbH (Hamburg, Germany), Eleventh Ocean GmbH & Co. KG (Hamburg, Germany), Twelfth Ocean Administration GmbH (Hamburg, Germany), Twelfth Ocean GmbH & Co. KG (Hamburg, Germany), Thirteenth Ocean Administration GmbH (Hamburg, Germany), Fourteenth Ocean Administration GmbH (Hamburg, Germany), Fifteenth Ocean Administration GmbH (Hamburg, Germany), Sixteenth Ocean Administration GmbH (Hamburg, Germany), Kerman Shipping Co. Ltd (Valletta, Republic of Malta), Woking Shipping Investments Ltd (Valletta, Republic of Malta), Shere Shipping Co. Ltd (Valletta, Republic of Malta), Tongham Shipping Co. Ltd (Valletta, Republic of Malta), Uppercourt Shipping Co. Ltd (Valletta, Republic of Malta), Vobster Shipping Co. Ltd (Valletta, Republic of Malta), Lancelin Shipping Co. Ltd (Limassol, Republic of Cyprus) (represented by: F. Randolph, Barrister, M. Lester, Barrister, and M. Taher, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 [1] and Council Decision 2011/299/CFSP of 23 May 2011 [2], in so far as the measures contained therein relate to the applicants;

— Order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging that the defendant has manifestly erred in deciding that the applicants meet the criteria for listing, as:

   — The only basis on which the defendant has decided to include the applicants are allegations that they are 'owned' or 'controlled' by the Islamic Republic of Iran Shipping Lines ('IRISL') or that they are a 'subsidiary' or 'holding company' of IRISL; and

   — The defendant has failed to carry out (or has erred if it did so) a case by case evaluation of the facts concerning each applicant, to determine whether it is likely that each one of them may be prompted to circumvent the restrictive measures against IRISL by reason of influence IRISL is said to wield over each applicant.

2. Second plea in law, alleging that the contested measures violate the applicants' right to a fair hearing and to effective judicial protection, as:

   — Such measures provide no procedure for communicating to the applicants the evidence on which the decision to freeze their assets was based, or for enabling them to comment meaningfully on that evidence;

   — The reasons given in the contested measures are only general and unsupported; and

   — The defendant has not given sufficient information to enable the applicants effectively to make known their views in response.

3. Third plea in law, alleging the defendant failed to provide sufficient reasons for their inclusion in the contested measures, in violation of its obligation to give a clear statement of the actual and specific reasons justifying its decision.

4. Fourth plea in law, alleging that the contested measures constitute an unjustified and disproportionate restriction on the applicants' right to property and freedom to conduct their business, as:

   — The asset freezing measures have a marked and long-lasting impact on their fundamental rights;

   — The applicants' inclusion is not rationally connected with the objective of the contested measures, namely to prevent circumvention of the restrictive measures; and

   — The defendant has not demonstrated that a total asset freeze is the least onerous means of ensuring such an objective, nor that the very significant harm to the applicants is justified and proportionate.

[1] Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26)

[2] Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65)

Action brought on 5 August 2011 — Computer Resources v Publications Office

(Case T-422/11)

(2011/C 290/17)

Language of the case: English

Parties

Applicant: Computer Resources International (Dommeldange, Luxembourg) (represented by: S. Pappas, lawyer)

Defendant: Publications Office of the European Union

Form of order sought

— Annul the decision of the Publications Office of the European Union of 22 July 2011, to reject the offers submitted by the applicant in the framework of the open tender No AO 10340 'Computing services — software development, maintenance, consultancy and assistance for different types of IT applications' (OJ 2011/S 66-106099); and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant disregarded an essential formal requirement, as the contested decision does not contain any reasoning as far as the particular grounds that the awarding authority took into account when concluding that the offer of the applicant was abnormally low.

2. Second plea in law, alleging that the defendant violated the applicable procedure, as enshrined in Article 139 of Commission Regulation (EC, Euratom) No 2342/2002 ([1]).

3. Third plea in law, alleging that the defendant has made a misuse of procedure or issued its decision with no proper legal basis or at least erred as far as its reasoning is concerned, as the clarifications given by the applicant were not understood and remained unanswered.

([1]) 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 2002 L 357, p. 1).

Action brought on 2 August 2011 — Makhlouf v Council

(Case T-432/11)

(2011/C 290/18)

Language of the case: French

Parties

Applicant: Rami Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the applicant's application admissible and well-founded;

— annul Council Decision 2011/273/CFSP of 9 May 2011 and the subsequent measures implementing that decision which keep the applicant on the list of persons covered by the restrictive measures, and Council Regulation (EU) No 442/2011 of 9 May 2011 and the subsequent measures implementing it, in so far as they relate to the applicant;

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: infringement of the rights of the defence and of the right to effective judicial protection provided for in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') and in Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law: infringement of the obligation to state reasons, in so far as the applicant complains that the Council's reasoning does not meet the obligation on the institutions of the European Union laid down in Article 6 of the ECHR, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law: the contested measures restrict the applicant's fundamental rights in an unjustified and disproportionate manner, in particular his right to property, provided for in Article 1 of the First Additional Protocol to the ECHR and Article 17 of the Charter of Fundamental Rights of the European Union, his right to respect for his good name and reputation, provided for in Articles 8 and 10 of the ECHR and, lastly, the principle of the presumption of innocence provided for in Article 6 of the ECHR and Article 48 of the Charter of Fundamental Rights of the European Union.

Action brought on 2 August 2011 — Makhlouf v Council

(Case T-433/11)

(2011/C 290/19)

Language of the case: French

Parties

Applicant: Ehab Makhlouf (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the applicant's application admissible and well-founded;

— annul Council Decision 2011/273/CFSP of 9 May 2011 and the subsequent measures implementing that decision (and, in particular, Council Decision 2011/302/CFSP of 23 May 2011, which provides for the applicant to be included on the list of persons covered by the restrictive measures provided for in Decision 2011/273/CFSP, and Council Regulation (EU) No 442/2011 of 9 May 2011 and the subsequent measures implementing it (namely, Council Implementing Regulation (EU) No 504/2011 of 23 May 2011 and the corrigendum thereto), in so far as they relate to the applicant;

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: infringement of the rights of the defence and of the right to effective judicial protection provided for in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), and by Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law: infringement of the obligation to state reasons, in so far as the applicant complains that the Council's reasoning does not meet the obligation on the institutions of the European Union laid down in Article 6 of the ECHR, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law: the contested measures restrict the applicant's fundamental rights in an unjustified and disproportionate manner, in particular his right to property, provided for in Article 1 of the First Additional Protocol to the ECHR and Article 17 of the Charter of Fundamental Rights of the European Union, his right to respect for his good name and reputation, provided for in Articles 8 and 10 of the ECHR, his freedom to engage in work and conduct his business provided for in Articles 15 and 16 of the Charter of Fundamental Rights of the European Union and, lastly, the principle of the presumption of innocence provided for in Article 6 of the ECHR and Article 48 of the Charter of Fundamental Rights of the European Union

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Action brought on 3 August 2011 — Afriqiyah Airways v Council

(Case T-436/11)

(2011/C 290/20)

Language of the case: French

Parties

Applicant: Afriqiyah Airways (Tripoli, Libya) (represented by: B. Sarfati, lawyer)

Defendant: Council of the European Union

Form of order sought

Annulment of Council Implementing Decision 2011/300/CFSP of 23 May 2011 implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2011 L 136, p. 85), together with Annex II to that decision;

Order that the Council pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the procedure for adopting the measure was irregular. The applicant pleads that the procedure concerning the adoption of the contested decision provided for by Article 8(2) of Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53) was irregular, and relies on breach of the provisions of the second paragraph of Article 296 TFEU.

2. Second plea in law, alleging infringement of the obligation to state the reasons for the decision. The applicant criticises the Council for providing a stereotype statement of reasons, which did not enable the addressee of the decision to understand the reasons for its adoption, nor the General Court to exercise its judicial review of the measure's legality. The ground that the applicant is a subsidiary of and owned by the Libyan African Investment Portfolio, an entity itself covered by the restrictive measures, is insufficient.

3. Third plea in law, alleging infringement of the rights of the defence on the ground that it was not established that the rights of the defence were respected or that the applicant was put in a position to assert its rights prior to its inclusion on the list.

4. Fourth plea in law, alleging breach of Article 27 TEU. The applicant claims that Decision 2011/137/CFSP referred to in paragraph 2 and Council Decision 2011/178/CFSP of 23 March 2011 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2011 L 78, p. 24), were adopted in breach of Article 27(1) TEU.

5. Fifth plea in law, alleging error of law and manifest error of assessment on the ground that the applicant is a civil airline carrying passengers and freight, whereas the contested decision has the effect of freezing the applicant's assets on the sole ground that it is the property of the Libyan State, through an investment fund.

Action brought on 12 August 2011 — BelTechExport v Council

(Case T-438/11)

(2011/C 290/21)

Language of the case: English

Parties

Applicant: BelTechExport ZAO (Minsk, Belarus) (represented by: V. Vaitkute Pavan, A. Smaliukas and E. Matulionyte, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 588/2011 of 20 June 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 161, p. 1), to the extent that it concerns the applicant;

— Annul Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 161, p. 25), to the extent that it concerns the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached the obligation to provide adequate reasoning for inclusion of the applicant in the lists of the persons to whom restrictive measures apply.

2. Second plea in law, alleging that the defendant infringed the right of defence and the right to a fair hearing provided for in Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as:

   — at no time it provided for the communication of detailed reasons for the inclusion of the applicant in the lists of persons subject to the restrictive measures; and

   — it did not provide the applicant with the possibility to effectively exercise its' rights of defence, in particular the right to be heard and the right to the benefit of a procedure allowing it to effectively request its removal from the lists of persons covered by the restrictive measures.

3. Third plea in law, alleging that the defendant committed manifest errors of assessment in that it held in the contested measures that the applicant is the largest export/import company of defence products in Belarus, hence it is in some way linked to or associated with the violations of electoral standards and of human rights or crackdown on civil society in Belarus.

4. Fourth plea in law, alleging that the defendant infringed fundamental right to property provided for in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of the Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in an unjustified and disproportionate manner without compelling evidence.

5. Fifth plea in law, alleging that the defendant infringes the principle of proportionality in that it imposed a disproportionate restriction on the fundamental rights of the applicant without providing adequate procedural guarantees and compelling evidence.

Action brought on 12 August 2011 — Sport-pari v Council

(Case T-439/11)

(2011/C 290/22)

Language of the case: English

Parties

Applicant: Sport-pari ZAO (Minsk, Belarus) (represented by: V. Vaitkute Pavan, A. Smaliukas and E. Matulionyte, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 588/2011 of 20 June 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 161, p. 1), to the extent that it concerns the applicant;

— Annul Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 161, p. 25), to the extent that it concerns the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant puts forward as the main argument the manifest errors of assessment that the contested Council measures are tainted with. It alleges, in particular, that the Council erred in holding that the applicant is (a) controlled by Mr Vladimir Peftiev; (b) an operator of a national lottery; (c) linked to, or associated with the violations of electoral standards and human rights, or the crackdown on civil society in Belarus, or the import to Belarus of the equipment, which might be used for internal repression.

Furthermore, in support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the defendant breached the obligation to provide adequate reasoning for inclusion of the applicant in the lists of the persons to whom restrictive measures apply.

2. Second plea in law, alleging that the defendant infringed the right of defence and the right to a fair hearing provided for in Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as:

   — at no time it provided for the communication of detailed reasons for the inclusion of the applicant in the lists of persons subject to the restrictive measures; and

   — it did not provide the applicant with the possibility to effectively exercise its' rights of defence, in particular the right to be heard and the right to the benefit of a procedure allowing it to effectively request its removal from the lists of persons covered by the restrictive measures.

3. Third plea in law, alleging that the defendant infringed fundamental right to property provided for in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of the Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in an unjustified and disproportionate manner without compelling evidence.

4. Fourth plea in law, alleging that the defendant infringes the principle of proportionality in that it imposed a disproportionate restriction on the fundamental rights of the applicant without providing adequate procedural guarantees and compelling evidence.

Action brought on 12 August 2011 — BT Telecommunications v Council

(Case T-440/11)

(2011/C 290/23)

Language of the case: English

Parties

Applicant: BT Telecommunications PUE (Minsk, Belarus) (represented by: V. Vaitkute Pavan, A. Smaliukas and E. Matulionyte, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 588/2011 of 20 June 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 161, p. 1), to the extent that it concerns the applicant;

— Annul Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 161, p. 25), to the extent that it concerns the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached the obligation to provide adequate reasoning for inclusion of the applicant in the lists of the persons to whom restrictive measures apply.

2. Second plea in law, alleging that the defendant infringed the right of defence and the right to a fair hearing provided for in Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as:

   — at no time it provided for the communication of detailed reasons for the inclusion of the applicant in the lists of persons subject to the restrictive measures; and

   — it did not provide the applicant with the possibility to effectively exercise its rights of defence, in particular the right to be heard and the right to the benefit of a procedure allowing it to effectively request its removal from the lists of persons covered by the restrictive measures.

3. Third plea in law, alleging that the defendant committed manifest errors of assessment in that it held in the contested measures that the applicant is in some way associated with and sponsoring the Lukashenko regime, or in some way participating in violations of international electoral standards or crackdown on civil society and democratic opposition, or in the importation into Belarus of equipment which might be used for internal repression.

4. Fourth plea in law, alleging that the defendant infringed fundamental the right to property provided for in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of the Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in an unjustified and disproportionate manner without compelling evidence.

5. Fifth plea in law, alleging that the defendant infringes the principle of proportionality in that it imposed a disproportionate restriction on the fundamental rights of the applicant without providing adequate procedural guarantees and compelling evidence.

Action brought on 12 August 2011 — Peftiev v Council

(Case T-441/11)

(2011/C 290/24)

Language of the case: English

Parties

Applicant: Vladimir Peftiev (Minsk, Belarus) (represented by: V. Vaitkute Pavan, A. Smaliukas and E. Matulionyte, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 588/2011 of 20 June 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 161, p. 1), to the extent that it concerns the applicant;

— Annul Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 161, p. 25), to the extent that it concerns the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached the obligation to provide adequate reasoning for inclusion of the applicant in the lists of the persons to whom restrictive measures apply.

2. Second plea in law, alleging that the defendant infringed the right of defence and the right to a fair hearing provided for in Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as:

   — at no time it provided for the communication of detailed reasons for the inclusion of the applicant in the lists of persons subject to the restrictive measures; and

   — it did not provide the applicant with the possibility to effectively exercise his rights of defence, in particular the right to be heard and the right to the benefit of a procedure allowing him to effectively request his removal from the lists of persons covered by the restrictive measures.

3. Third plea in law, alleging that the defendant committed manifest errors of assessment in that it held that the applicant is a person associated with President Lukashenko and his family, that he is chief economic advisor of President Lukashenko, that he is a key financial sponsor of the Lukashenko regime and that BelTechExport is a company chaired by the applicant and is the largest export/import company of defence products in Belarus.

4. Fourth plea in law, alleging that the defendant infringed fundamental the right to property provided for in Article 17 of the Charter of Fundamental Rights of the European Union and Article 1 of the Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in an unjustified and disproportionate manner without compelling evidence.

5. Fifth plea in law, alleging that the defendant infringes the principle of proportionality in that it imposed a disproportionate restriction on the fundamental rights of the applicant without providing adequate procedural guarantees and compelling evidence.

Action brought on 5 August 2011 — Evropaïki Dynamiki v Commission

(Case T-442/11)

(2011/C 290/25)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Decision of the Commission of 27 May 2011, not to take any remedial action after the European Ombudsman came to the conclusion that the Decision taken by the Commission in November 2006, to select the products and services of a third company, was not in conformity with the applicable EU public procurement legislation;

— Order the Commission to pay the applicant's damages in order to neutralise the impact it suffered on account of its decision of November 2006;

— Order the Commission to pay the applicant 1 million EURO for a loss of opportunity to participate in the call for tenders which it decided to cancel;

— Order the Commission to pay the applicant 1 million EURO for an authorised use of intellectual property rights;

— Order the Commission to pay the applicant the amount of 10 million EURO for a non-pecuniary loss, consisting of its reputation and credibility being undermined;

— Order the Commission to issue a public notice, informing the market and all users interested in CIRCA (an IT tool which enables the electronic collaboration among employees or groups of individuals located in different locations), that such is not an obsolete platform, that the platform developed by Alfresco Software Ltd. is not a privileged platform and that the users are free to select as a substitute for CIRCA the platform of their choice; and

— Order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the obligation arising from Articles 27, 88, 89 and 91 of the financial regulation [1], as well as of Articles 116, 122 and 124 of the implementing rules [2], to conduct an open or restricted call for tenders.

2. Second plea in law, alleging that the Commission infringed the principles of non discrimination and equal treatment.

3. Third plea in law, alleging that the Commission infringed the principle of good administration and the obligation to state reasons.

4. Fourth plea in law, alleging that the Commission misused its powers.

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[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

[2] 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 2002 L 357, p. 1)

Action brought on 12 August 2011 — Charron Inox and Almet v Commission

(Case T-445/11)

(2011/C 290/26)

Language of the case: French

Parties

Applicants: Charron Inox (Marseille, France) and Almet (Satolas-et-Bonce, France) (represented by: P.-O. Koubi-Flotte, lawyer)

Defendant: European Commission

Form of order sought

— first, annul Commission Regulation (EU) No 627/2011 of 27 June 2011;

— in the alternative, acknowledge the fault of the Commission which did not provide for a sufficient period of time between the publication of Commission Regulation (EU) No 627/2011 of 27 June 2011 and its entry into force, and award the following sums in damages to the applicant companies:

  — with regard to the damage caused:

    — for the company CHARRON: EUR 123 297,69;

    — for the company ALMET: EUR 384 210;

  — with regard to the indemnifiable loss of profit:

    — for the company CHARRON, with regard to the contract concluded with the company SURAJ, the sum of USD 78 051,76, or EUR 55 221,57;

    — for the company ALMET, with regard to the contract concluded with the company SURAJ, the sum of USD 69 059,18 or EUR 48 827,61 as at the current rate;

— in the further alternative, acknowledge the no-fault liability of the Commission which did not provide for a sufficient period of time between the publication of Commission Regulation (EU) No 627/2011 of 27 June 2011 and its entry into force, and award the following sums in damages to the applicant companies:

  — with regard to the damage caused:

    — for the company CHARRON: EUR 123 297,69;

    — for the company ALMET: EUR 384 210;

  — with regard to the indemnifiable loss of profit:

    — for the company CHARRON, with regard to the contract concluded with the company SURAJ, the sum of USD 78 051,76, or EUR 55 221,57;

    — for the company ALMET, with regard to the contract concluded with the company SURAJ, the sum of USD 69 059,18 or EUR 48 827,61 as at the current rate;

— in any case, order the European Commission to pay the costs and the sum of EUR 10 000 as a contribution to the applicant companies' defence costs.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea, alleging serious inadequacies in the findings of the Commission before adoption of its decision such as to call into question the reliability of the facts established.

2. Second plea, alleging the failure to respect the principle of legitimate expectations, in so far as the immediate entry into force of the contested regulation meant that the applicants could not adapt their practices.

Appeal brought on 11 August 2011 by Europol against the judgment of the Civil Service Tribunal of 26 May 2011 in Case F-83/09 Kalmár v Europol

(Case T-455/11 P)

(2011/C 290/27)

Language of the case: Dutch

Parties

Appellant: Europol (represented by: D. Neumann, D. El Khoury and J. Arnould, Agents, and by D. Waelbroeck and E. Antypas, lawyers)

Other party to the proceedings: Andreas Kalmár (The Hague, Netherlands)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment under appeal and give a ruling on the substance of this case, in so far as the Civil Service Tribunal

  (a) annulled Europol's decision of 4 February 2009 whereby the Director of Europol terminated Mr Kalmár's fixed-term contract, the decision of 24 February 2009 whereby the Director of Europol relieved him of the duty to serve his period of notice, and the decision of 18 July 2009 rejecting his complaint;

  (b) ordered Europol to pay damages of EUR 5 000 to Mr Kalmár; and

  (c) ordered Europol to pay all the costs;

— order the respondent to pay all the costs of the proceedings at first instance and the costs incurred by him on appeal;

Pleas in law and main arguments

In support of the appeal, the appellant relies on six pleas in law.

1. First plea in law, alleging infringement of the prohibition on ruling *ultra petita* and of the rights of the defence. In the appellant's submission, the Civil Service Tribunal carried out an examination on the basis of complaints other than those put forward by the respondent.

2. Second plea in law, alleging an error of law in the assessment of the lawfulness of the contested decisions. The Civil Service Tribunal erred in its application inter alia of the duty of care and of the obligation to state reasons.

3. Third plea in law, alleging an error of law by the Civil Service Tribunal as regards the subject of the application for annulment. In the appellant's submission, the Civil Service Tribunal ought to have classified the decision of 18 July 2009 as a decision having an adverse effect which is also subject to judicial review.

4. Fourth plea in law, alleging numerous errors in the judgment of the Civil Service Tribunal according to which Europol 'did not' or 'did not carefully' take account of certain 'relevant and non-negligible facts' when taking the dismissal decision.

5. Fifth plea in law, alleging that the contested decision was insufficiently reasoned.

6. Sixth plea in law, alleging incorrect award of damages.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 22 July 2011 — ZZ and Others v Commission

(Case F-72/11)

(2011/C 290/28)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

First, annulment of the decisions setting the promotion thresholds for the 2010 and 2011 exercises as regards grades AD13 and AD14 and, secondly, annulment of the list of officials promoted to grades AD13 and AD14 for the 2010 exercise and annulment of the Commission's implied decision not to promote a larger number of other officials to grades AD12 or AD13.

Form of order sought by the applicants

— Annul the decisions setting the promotion thresholds for the 2010 and 2011 exercises at grades AD13 and AD14 which were published in *Administrative Notices* Nos 3-2010, 65-2010 and 76-2010;

— annul the list of officials promoted to grades AD13 and AD14 for the 2010 exercise which was published in *Administrative Notices* No 65-2010 in so far as that list was drawn up on the basis of unlawful promotion thresholds, and annul the Commission's implied decision not to promote a larger number of other officials to grades AD12 or AD13;

— annul, to the appropriate extent, the decisions dismissing the applicants' complaint;

— order the European Commission to pay the costs.

Action brought on 28 July 2011 — ZZ v Commission

(Case F-74/11)

(2011/C 290/29)

Language of the case: English

Parties

Applicant: ZZ (represented by: S. Rodriguez, A. Blot and C. Bernard-Glanz, lawyers)

Defendant: European Commission

The subject matter and description of the proceedings

The annulment of the Authority Authorised to Conclude Contracts of the Commission terminating the contract of employment of indefinite duration of the applicant.

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Authority Authorised to Conclude Contracts of the Commission, terminating her contract of employment of indefinite duration and, so far as necessary, annul the decision rejecting the complaint;

— order the Commission to pay the costs.

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