

**Action brought on 13 July 2010 — European Commission
v Hellenic Republic**

(Case C-354/10)

(2010/C 246/57)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafyllou and B. Stromsky)

Defendant: Hellenic Republic

Form of order sought

— declare that, since it did not take within the prescribed period all the measures necessary for the refund of the aid that was found to be unlawful and incompatible with the common market, under Article 1(1) (except as referred to in Article 1(2) and Articles 2 and 3) of the Commission decision of 18 July 2007 (C(2007) 3251) concerning the tax-exempt reserve fund (aid number C 37/2005), or in any event has not informed the Commission sufficiently of the measures which it has taken under the article, the Hellenic Republic has failed to fulfil its obligations under Articles 4, 5 and 6 of that decision and under the Treaty on the Functioning of the European Union;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Greek authorities have not pleaded an absolute inability to implement the Commission decision and, three years on, have not demonstrated exactly what they have checked, in which instances recovery has been sought and in which instances recovery has taken place. More specifically:

they have not explained for every recipient what sort of expenditure it carried out so as to be entitled to aid on the basis of a regulation concerning a general exemption;

they have not calculated the extent of the aid in respect of each recipient;

they have extended the exemption from the obligation to refund aid to instances beyond those provided for in the decision;

they have miscalculated the amount of 'de minimis' aid which is exempt from refund;

they have not examined any cumulation with other aid;

they have not calculated correctly the amount to be recovered, proceeding from a mistaken basis;

they have not produced documentation for those refunds which have been effected.

**Action brought on 14 July 2010 — European Parliament v
Council of the European Union**

(Case C-355/10)

(2010/C 246/58)

Language of the case: English

Parties

Applicant: European Parliament (represented by: M. Dean, A. Auersperger Matić, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Decision 2010/252/EU ⁽¹⁾ of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;

— Order that the effects of the Council Decision be maintained until it is replaced;

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

Pleas in law and main arguments

Parliament seeks the annulment of the contested Decision on the grounds that it exceeds the scope of the implementing power in Article 12(5) of the Schengen Borders Code ⁽²⁾ in that it introduces rules on 'interception', 'search and rescue' and 'disembarkation' which cannot be considered to be within the scope of 'surveillance' as defined by Article 12 of the Schengen Borders Code and which cannot be considered to be non-essential elements, and modifies the essential elements of the Schengen Borders Code which are reserved to the legislator. Moreover, the contested Decision modifies the obligations of the EU Member States relating to Frontex operations, which are laid down in the Frontex Regulation ⁽³⁾.

Should the Court annul the contested Decision, Parliament nonetheless considers it would be desirable that the Court exercise its discretion to maintain the effects of the contested Decision, in accordance with Article 264 (2) TFEU, until such time as it is replaced.

-
- (¹) Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
OJ L 111, p. 20
- (²) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
OJ L 105, p. 1
- (³) Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
OJ L 349, p. 1

Action brought on 16 July 2010 — European Commission v Ireland

(Case C-356/10)

(2010/C 246/59)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Walker, D. Kukovec, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— Declare that, in the context of the award procedure by the Department of Agriculture and Food for a public supply contract for animal identification tags, concerning the application of criteria relating to tenderers' ability to perform the contract in question as award criteria, instead of selection criteria, Ireland has failed to fulfil its obligations under Article 53 of Directive 2004/18/EC (¹) of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that the award criteria applied by the Department of Agriculture and Food included criteria reserved for the selection stage, namely criteria relating to tenderers' ability to perform the contract in question and that, consequently, Ireland has failed to fulfil its obligations under Article 53 of Directive 2004/18/EC.

(¹) OJ L 134, p. 114

Action brought on 27 July 2010 — European Commission v Kingdom of Sweden

(Case C-374/10)

(2010/C 246/60)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: G. Braun and M. Sundén, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (¹) or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the Directive expired on 3 August 2009.

(¹) OJ 2007 L 184, p. 17.