

**Operative part of the order**

1. *The action is dismissed as inadmissible;*
2. *Prezes Urzędu Komunikacji Elektronicznej is ordered to pay the costs.*

(<sup>1</sup>) OJ C 209, 31.7.2010.

**Action brought on 18 April 2011 — Staelen v Ombudsman**

(Case T-217/11)

(2011/C 204/44)

*Language of the case: French*

**Parties**

*Applicant:* Claire Staelen (Bridel, Luxembourg) (represented by: L. Levi and M. Vandenbussche, lawyers)

*Defendant:* European Ombudsman

**Form of order sought**

— The applicant requests the Court to:

- order the Ombudsman to pay to the applicant the net amount of EUR 559 382,13 as compensation for past material damage, plus default interest calculated at the rate of two points above the European Central Bank rate;
- order the Ombudsman to pay to the Community pension fund the pension contributions in favour of the applicant corresponding to the basic salaries calculated for the period from June 2005 to April 2011, that is, on the basis of a total amount of EUR 482 225,97;
- order the Ombudsman to pay to the applicant on a monthly basis from May 2011 to March 2026 the net amounts corresponding to the fixed salaries for AD officials from grade AD 9, step 2, second year, taking account of the normal career path of an official of the same grade, together with corresponding contributions to the pension fund in favour of the applicant as well as sickness fund contributions;
- order the Ombudsman to pay to the applicant the amount of EUR 50 000 as compensation for non-pecuniary damage;
- order the Ombudsman to pay all the costs.

**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 a failure to carry out all the inquiries warranted to clarify any possible case of improper administration in the management of the applicant's file by the European Parliament. The applicant alleges that the defendant's actions were wrongful and, consequently, in breach of Article 3(1) of Decision 94/262/ECSC, EC, Euratom, on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ 1994 L 113, p. 15).

2. Second plea in law, alleging a manifest error of assessment, insofar as the defendant exceeded the powers of assessment at his disposal to examine the merits of the complaint and erred in the exercise of his tasks so as to cause harm to the applicant.
3. Third plea in law, alleging a lack of impartiality, objectivity and independence, bad faith and misuse of powers, insofar as the defendant, firstly, entered into a cooperation agreement with the European Parliament and, secondly, evaded, without justification, the central questions concerning the complaint lodged.
4. Fourth plea in law, alleging a breach of the principles of the duty of care and proper administration. The applicant alleges that the defendant, firstly, did not take into consideration all the elements capable of influencing the decision taken at the time of the examination of the applicant's situation, secondly, refused to produce the documents upon which the defendant based his decision and, thirdly, breached the principle that the procedure must take place within a reasonable time.

**Action brought on 28 April 2011 — Hellenic Republic v Commission**

(Case T-233/11)

(2011/C 204/45)

*Language of the case: Greek*

**Parties**

*Applicant:* Hellenic Republic (represented by: V. Asimakopoulos, G. Kanellopoulos, A. Iosifidou and P. Milonopoulos)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the contested decision and
- order the Commission to pay the costs.

**Pleas in law and main arguments**

By this action the applicant seeks the annulment of the decision of the European Commission of 23 February 2011, E(2011) 1006 final, on the State Aid No C 48/2008 (ex NN 61/2008) implemented by Greece in favour of Ellinikos Xrysos SA.

The applicant relies on the following grounds for annulment:

The applicant claims, first, that the defendant infringed the provisions of the Treaties (Articles 107(1) and 108(2) TFEU, formerly Articles 87(1) and 88(2) EC) by interpreting and applying them erroneously, due to error as to the combination and assessment of the facts of the case in relation to the definition of State Aid.

In support of the first part of that ground, in connection with the first measure of State Aid (sale of the Cassandra mines at a price lower than their market value) the applicant claims that there was: (a) an erroneous assessment in relation to the existence of State aid, caused by the manifest error in relation to the role of the Greek State as a mere intermediary and the absence of involvement of State resources in the transfer at issue, (b) (further) an erroneous assessment in relation to the application of the private investor test, (c) (further) an erroneous assessment in relation to the granting of an advantage, caused by the manifestly erroneous estimate of the value of the mines, the land and the stock of concentrates, as well as of the supposedly real, at the time of the sale, operation of the mines, (d) (further) an erroneous assessment in relation to the distortion of competition and the effect on trade between Member States.

In support of the second part of that ground, in connection with the second measure of State Aid (waiver of taxes on the transfer) the applicant claims that there was an erroneous assessment of the alleged advantage, as well as of the alleged distortion of competition and effect on trade between Member States.

In support of the second ground for annulment, the applicant claims that the defendant infringed the provisions of Article 14(1)(b) of Regulation (EC) No 659/1999 <sup>(1)</sup> in relation to the demand for recovery of the aid, contrary to the principles of proportionality, sincere cooperation, legal certainty and the protection of legitimate expectations.

In support of that ground the applicant claims that in the light of those principles the defendant erred in the exercise of balancing the threatened distortion of competition and the benefit from the continued activity of the mines at issue.

Lastly, in support of the third ground for annulment, the applicant claims that the defendant infringed the rules relating to stating reasons (Article 296 TFEU, formerly Article 253 EC) in connection with the existence of State Aid, and in relation to its compatibility with the internal market.

In support of that ground, the applicant claims that the defendant did not explain why the price for the sale of the Cassandra mines deriving entirely from private resources constitutes the direct or indirect loss of State resources which can be attributed to the Greek State, nor why it regarded as payable in the present case both taxes on the transfer of the

mines and on the transfer of land, and not only the tax on the mines. Moreover, in relation to the value of the mines, the land and the stock of minerals, the defendant did not explain the granting of an advantage, relying selectively partly on the Behre Dolbear report and partly on its own arbitrary arguments which it also applied inconsistently in connection with the negative value of the idle mines.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

**Action brought on 4 May 2011 — Lidl Stiftung v OHIM — Lactimilk (BELLRAM)**

(Case T-237/11)

(2011/C 204/46)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: T. Träger, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Lactimilk, SA (Madrid, Spain)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 March 2011 in case R 1154/2009-4; and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'BELLRAM', for goods in class 29 — Community trade mark application No 5074281

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited in opposition:* Spanish trade mark registration No 2414439 of the figurative mark 'RAM', for goods in class 29; Spanish trade mark registration No 98550 of the figurative mark 'Ram', for goods in class 29; Spanish trade mark registration No 151890 of the word mark 'RAM', for goods in class 29