

With regard to the claim for compensation, the applicant considers that the European Parliament exceeded a reasonable period in responding to her requests for clarification and for a review of her situation and, furthermore, that such conduct is inconsistent with the requirements of the European Code of good administrative conduct. The applicant seeks an order that the defendant pay the token sum of one euro as compensation for the non-material damage thus caused. The applicant also seeks default interest on the sums due to her under the 2002, 2004 and 2005 rules on SNEs.

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**Action brought on 4 September 2006 — Nederlandse Omroep Stichting v Commission of the European Communities**

(Case T-237/06)

(2006/C 294/106)

*Language of the case: Dutch*

**Parties**

*Applicant:* Nederlandse Omroep Stichting (represented by: J.J. Feenstra and H.M.H. Speyart, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul the Commission's decision, in particular Article 1(1) and (2) and Articles 2 and 3 and the recitals on which they are based;
- order the Commission to pay the costs

**Pleas in law and main arguments**

By its application the Nederlandse Omroep Stichting (NOS) seeks the annulment of the Commission's decision of 22 June 2006 on ad hoc financing of the Dutch public broadcasters (State aid C 2/2004 [ex NN 170/2003]).

In support of its application the applicant alleges, first, breach of Article 88(1), (2) and (3) EC and of Regulation No 659/1999<sup>(1)</sup>. It submits that the Commission has incorrectly interpreted and applied the distinction between new and existing aid. The ad hoc aid which is the subject of the contested decision was merely a part of the total system of public financing of Dutch public broadcasters. The general system has been recognised by the Commission as existing aid. The cash flows, which the Commission refers to as ad hoc financing, are provided on the same lines and should, according to the applicant, therefore be regarded as existing aid.

Secondly, the applicant alleges breach of Articles 87 and 88 EC as result of the Commission's incorrect interpretation and application of the judgment in *Altmark*<sup>(2)</sup>. According to the applicant, the Commission found, wrongly and on the basis of an unfair criterion, that the ad hoc financing should be regarded as State aid. The applicant submits that the criteria developed in *Altmark* by the Court of Justice cannot be applied in the present situation. Instead, the Amsterdam Protocol on the financing of public broadcasting<sup>(3)</sup> should be the point of departure.

Thirdly, the applicant alleges breach of Articles 87 and 88 EC, Article 253 EC and Regulation No 659/1999 as result of the lack of connection between the provision of the ad hoc financing and the overcompensation found by the Commission. According to the applicant, the overcompensation connected with the creation of reserves in the case of the broadcasting institutions is not sufficiently attributable to the allocation of the funds which the Commission refers to as ad hoc financing.

Fourthly, the applicant alleges breach of Articles 87 and 88 EC as result of the fact that the Commission wrongly regards copy-right royalties as State aid. Moreover, the ad hoc financing is not favouring the applicant as an undertaking within the meaning of Article 87(1) EC and the public financing awarded does not lead to a distortion of competition within the meaning of Article 87(1) EC.

Fifthly, the applicant alleges breach of Article 86(2) EC owing to a lack of proportionality. Also when viewed in the light of the Amsterdam Protocol on the financing of public broadcasting, the Commission wrongly failed, after finding that there was no distortion of competition, to balance the lack of negative effects of overcompensation against the interest of the performance of a public task and the Community's interest in general. The applicant submits that the Commission should have also taken into account the limited nature of the Dutch language area and the fact that the reserves that had arisen would have led to expenditure in the foreseeable future and would thus have disappeared.

Finally, the applicant alleges breach of the rules of procedure in Article 88(2) EC and the rights of the defence as result of the fact that the Commission extended the scope of the investigation in various respects.

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<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 (OJ 1999 L 83, p. 1).

<sup>(2)</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

<sup>(3)</sup> Protocol annexed to the Treaty establishing the European Community concerning the system of public broadcasting in the Member States.