

Action brought on 1 October 2004 by Sumitomo Chemical (UK) PLC against the Commission of the European Communities

(Case T-403/04)

(2005/C 19/61)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 October 2004 by Sumitomo Chemical (UK) PLC, London, (United Kingdom), represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

- Order the defendant to respond to the applicant's request;
- Or, in the alternative, order the annulment of the European Commission's act D 341571(04);
- Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;
- Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/Commission.

Action brought on 1 October 2004 by Troy Chemical Company BV against the Commission of the European Communities

(Case T-404/04)

(2005/C 19/62)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 1 October 2004 by Troy Chemical Company BV, Maassluis, the Netherlands, represented by K. Van Maldegem and C. Mereu, lawyers.

The applicant claims that the Court should:

- Order the defendant to respond to the applicant's request;
- Or, in the alternative, order the annulment of the European Commission's act D 341571(04);
- Order the defendant to compensate the applicant in the provisional amount of 1 euro for damages suffered as a result of the defendant's failure to comply with its obligations under Community law by failing to respond to the applicant, or, in the alternative, as a result of the European Commission's act D 341571(04), as well as any applicable interests, pending the exact calculation and determination of the exact amount;
- Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The pleas in law invoked are similar to those invoked in Case T-400/04, Arch Chemicals and Arch Timber Protection/Commission.

Action brought on 4 October 2004 by the Italian Republic against the Commission of the European Communities

(Case T-410/04)

(2005/C 19/63)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 October 2004 by the Italian Republic, represented by Danilo Del Gaizo, Avvocato dello Stato.

The applicant claims that the Court should:

- declare the contested decision void ab initio;
- in the alternative, declare the contested decision void ab initio in so far as it reduces the Italian Republic's total allocation for the years 2000 to 2006 on the basis of Decision 1999/659, as amended by Decision 2000/426;
- order the Commission to pay the costs.

Pleas in law and main arguments:

The contested decision in this case is Commission Decision 2004/592/EC of 23 July 2004 [C(2004) 2837 final] amending Decision 1999/659/EC fixing an indicative allocation by Member State of the allocations under the European Agricultural Guidance and Guarantee Fund-Guarantee section for rural development measures for the period 2000 to 2006. ⁽¹⁾

According to the applicant, the amendment contained in the contested decision not only adapts the allocation of Community funds to the Italian Republic for 2004 in respect of the expenditure forecasts submitted by the latter, but redetermines the total allocation of funds for the Italian Republic, reducing by about EUR 40 million – by setting a total allocation of EUR 4 473.2 million – the amount available under the ‘Berlin envelope’ (EUR 4 512.3 million).

In support of its claims, the applicant pleads infringement of the principle of non-retroactivity. It argues that Regulation No 817/2004 ⁽²⁾ was adopted on 20 April 2004 and entered into force on 7 May 2004, long after expiry of the time-limit of 30 September laid down in Article 47(1) of Regulation No 445/2002 for the Member States to forward to the Commission the statement of expenditure incurred in 2003 and expenditure remaining to be disbursed by the end of that year, and the forecasts for 2004 and subsequent years. The Commission should therefore have determined the budget appropriations for 2004 on the basis of the provisions of Article 49 of Regulation No 445/2002, which was still in force on 30 September 2003, and not on the basis of Article 57 of Regulation No 817/2004. Accordingly, in 2004 the Commission was not entitled to adopt the contested decision, which relies on the new implementing rules of Regulation No 1257/1999 ⁽³⁾ as its legal basis, or make the relevant adjustment of the initial allocations by Member State defined in Decision 659/1999, as amended by Decision 426/2000, provided for by Article 57, cited above.

In the alternative, even if it is held that Regulation 817/2004, and in particular Article 57 thereof in its entirety, was correctly applicable also to the forecasts provided by the Member States by 30 September, under Regulation No 445/2002, the applicant disputes that the Commission is authorised to revise the allocations laid down by Decision 1999/659, as amended by Decision 2000/426, by reducing the total allocation under the ‘Berlin envelope’ and, in any event, contends that that reduction could not include the Italian Republic. In that connection, the applicant alleges infringement of Article 46 of Regulation No 1257/1999 and of Article 57 of Regulation No 817/2004. The

applicant maintains that the complete absence of any legal basis which would allow the reduction made in the contested decision shows that, in adopting that decision, the defendant completely disregarded the purpose of the Regulation underlying the measure, thereby also misusing its powers.

In the further alternative, the applicant pleads infringement of the principle of the protection of legitimate expectations and of the duty to give a statement of the reasons on which a measure is based.

⁽¹⁾ OJ L 263 of 10.8.2004, p. 24.

⁽²⁾ Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 153 of 30.4.2004, p. 30).

⁽³⁾ Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 160 of 26.6.1999, p. 80).

Action brought on 13 October 2004 by French Republic against Commission of the European Communities

(Case T-425/04)

(2005/C 19/64)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 October 2004 by the French Republic, represented by its Agents Ronny Abraham, Géraud de Bergues and Stéphanie Ramet, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul in its entirety Commission Decision No C(2004)360 of 2 August 2004 concerning State aid paid by France to France Télécom;
- order the Commission to pay the costs.