

The applicant claims that the Court should:

- annul the Council's decision refusing to allow the applicant access to his medical file;
- order the Council to pay the costs.

Pleas in law and main arguments

According to the applicant, the documents contained in an official's medical file are directly connected with his administrative and legal situation and must therefore be included in his personal file, whilst observing the guarantees provided for in Article 26 of the Staff Regulations, in particular the right of access to those documents. The applicant disputes the assertion that the possibility of consulting his medical file through the intermediary of his doctor constitutes adequate access to the documents or a necessary measure in accordance with the principle of medical confidentiality. He maintains that he must be given the chance to consult in person any document in his medical file.

Action brought on 21 February 2002 by Britannia Alloys and Chemicals Limited against the Commission of the European Communities

(Case T-33/02)

(2002/C 109/108)

(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 21 February 2002 by Britannia Alloys and Chemicals Limited, represented by Ms Samantha Mobley and Ms Helen Bardell of Baker & McKenzie, London (United Kingdom).

The applicant claims that the Court should:

- annul Article 3 of the Commission Decision of 12 December 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.027 — Zinc Phosphate) insofar as it pertains to the applicant;
- in the alternative, modify Article 3 of the Decision insofar as it pertains to the applicant, so as to annul or substantially reduce the fine imposed on the applicant therein; and
- order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant contests the above-mentioned Decision in which the Commission found that the applicant and five other undertakings had infringed the provisions of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating in continuing agreement and/or concerted practices in the zinc phosphate sector. A fine of EUR 3.37 million was imposed on the applicant following a reduction of 10 % of the fine pursuant to Section D(2) of the Leniency Notice.

The applicant submits that the Commission infringed Article 15(2) of Regulation No. 17/62 by referring in the Decision to the applicant's turnover for the business year ending 30 June 1996 when applying the limit fixed at 10 % of turnover, instead of referring to its business year preceding the adoption of the Decision, and by thus determining that a fine of EUR 3.75 million did not exceed the upper limit of the fine that could be imposed. By referring to a business year other than the business year preceding the Decision for the mentioned calculation, the Commission departed from its previous practice and thus infringed the general principle of equal treatment.

The applicant alleges that by referring to the last entire year of 'normal economic activity' instead of the business year preceding the Decision, the Decision discriminated between undertakings in essentially the same situation and thus breached the general principle of equal treatment. It also breached the general principle of proportionality by imposing a fine on the applicant which does not reflect the applicant's financial standing at the time of the Decision.

Furthermore, the applicant submits that, insofar as the Decision relates to the applicant, the Commission infringed the general principle of legal certainty by referring to a business year other than the financial year preceding the Decision for the purposes of calculating the limit fixed at 10 % of turnover. Such a way of proceeding makes it impossible for undertakings to predict the way in which penalties might be imposed on them with sufficient certainty. In accordance with the above-mentioned principle, Article 15(2) of Regulation No. 17/62 must be interpreted strictly so that the 10 % limit is always applied to the business year immediately prior to the adoption of the Decision.