

Action brought on 20 February 2002 by EURL Le Levant 001 and Others against the Commission of the European Communities

(Case T-34/02)

(2002/C 109/109)

(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 20 February 2002 by the company EURL Le Levant 001 and Others, represented by Pierre Kirch, lawyer, with an address for service in Luxembourg.

The applicants claim that the Court should:

- annul the Commission's decision of 25 July 2001 on the State aid implemented by France in the form of development assistance for the cruise vessel 'Le Levant', built by Alstom Leroux Naval for operation in Saint-Pierre-et-Miquelon (State aid C 74/99 — France), published in OJ L 327 of 12 December 2001, p. 37;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicants in this case are one-man undertakings with limited liability and the persons who formed those undertakings. Those persons have invested, through a one-man limited liability undertaking (EURL), in the vessel 'Le Levant'. The investment could be inferred from their taxable income, in accordance with the French 'Loi Pons'⁽¹⁾. The applicants are contesting the Commission's decision declaring those companies to be recipients of State aid in consequence of the construction of the vessel 'Le Levant'.

In support of their action, the applicants assert that the Commission has exceeded its powers by adopting a decision the effect of which is to require a Member State to recover from private individuals, and not from undertakings within the meaning of Community law, the amount of the State aid.

The applicants further maintain that the Commission has infringed their rights of defence and their right to a fair hearing, by not allowing them effectively to submit their observations prior to the adoption of the decision.

Next, the applicants deny that they are undertakings within the meaning of Article 87(1) of the EC Treaty. In the applicants' view, they are merely private investors who have made a

financial investment exclusively in order to benefit from a tax break. The applicants also maintain that the Commission has infringed Council Directive 90/684/EEC on aid to shipbuilding. They submit that Article 4(7) of that directive can apply only to shipyards or ship operators, and in no circumstances to private investors.

In addition, the applicants plead infringement of the principles of the protection of legitimate expectations and legal certainty and failure to comply with the obligation to provide a statement of reasons. Moreover, by ordering the recovery of the alleged aid when that is contrary to the abovementioned general principles of law, the Commission has infringed Article 14 of Council Regulation No 659/1999⁽²⁾.

According to the applicants, the contested decision also contains manifest errors of assessment and is based on material inaccuracies.

In addition, the applicants plead infringement of Article 153(2) of the EC Treaty, in that the Commission does not take into account the interests of the applicants, who are consumers of financial services. Lastly, they claim that the Commission has infringed Article 2 of Regulation No 69/2001⁽³⁾ by failing to apply the *de minimis* rule.

⁽¹⁾ Rectifying Finance Law No 86-824 of 11 July 1986, published in JORF (Official Journal of the French Republic) of 12 July 1986, p. 8688.

⁽²⁾ 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 L 83 of 27.3.1999, p. 1).

⁽³⁾ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10 of 13.1.2001, p. 30).

Action brought on 13 February 2002 by ALITALIA against the Commission of the European Communities

(Case T-35/02)

(2002/C 109/110)

(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 13 February 2002 by ALITALIA, represented by Guido Alpa, Mario Siragusa, Gian Michele Roberti, Giuseppe Scassellati and Francesca Maria Moretti, lawyers.