

on Irish Sugar plc. The applicant would point out in this regard that, as a result of the judgment of the Court of First Instance of 7 October 1999 in Case T-228/97 *Irish Sugar -v- Commission*⁽¹⁾, the fine imposed on Irish Sugar by Commission Decision 97/624/EC of 14 May 1997, relating to a proceeding pursuant to Article 86 of the EC Treaty, was reduced by 916 674 Euros. The defendant refused to pay interest on this amount.

According to the Commission, the implied Decision not to pay interest, i.e. the payment of the principal sum without interest on 4 January 2000, has become definitive, the applicant not having contested it within the two month time limit, as provided by Article 230 of the EC Treaty.

The applicant submits in this regard that this reasoning is materially wrong. Firstly, the initial request was not for actual payment but for confirmation that interest would be paid; for advice as to the amount thereof and for assistance in this matter. Secondly, there is no rule in EC Law according to which silence must be taken to mean a refusal, unless provision is specifically made for this. Thirdly, not only is payment of the refund of 916 674 Euros not a refusal of the initial request for confirmation regarding interest, it is also, within the meaning of Article 230 EC, not an actionable act. It follows that the Commission's contention that the applicant should have challenged it at the time is legally erroneous.

⁽¹⁾ [1999] ECR II-2969.

Action brought on 29 April 2002 by Pollmeier Malchow GmbH & Co. KG against the Commission of the European Communities

(Case T-137/02)

(2002/C 169/69)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 April 2002 by Pollmeier Malchow GmbH & Co., Malchow (Germany), represented by S. Völcker and J. Heithecker, lawyers.

The applicant claims that the Court should:

- annul in its entirety Decision C (2001) 4447 final of the Commission of the European Communities of 15 January 2002;

- in the alternative, partially annul Decision C (2001) 4447 final of the Commission of the European Communities of 15 January 2002 to the extent that the claim for repayment established by the Commission in Article 1 exceeds EUR 2 808 319,95;
- order the defendant to pay all the costs.

Pleas in law and main arguments

In Article 1 of the contested decision, the Commission found that the aid amounting to EUR 3 650 860 granted by Germany to Pollmeier GmbH, Malchow, was incompatible with the common market. The applicant is challenging that decision and claims that the declaration of partial incompatibility with the common market of the aid granted to it infringes Community law. All the grounds on which the decision is founded are based on errors of law or on a manifestly incorrect assessment of the facts.

The applicant claims that it satisfied the SME criteria defined in the Commission's Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽¹⁾ at the time when the aid was granted. Moreover, the applicant did not circumvent those criteria.

Furthermore, the applicant submits that a review of the economic integration in individual cases which is not based on the SME criteria is illegal because it is precisely those criteria which must be used to determine whether or not there is economic integration. In any event, there is no economic integration.

Alternatively, the applicant submits that the claim for repayment is too high and that its calculation is unclear.

⁽¹⁾ OJ 1996 L 107, p. 4.

Action brought on 26 April 2002 by Nanjing Metalink International Co. Ltd. against the Council of the European Union

(Case T-138/02)

(2002/C 169/70)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European