

— infringement of the principle of legality of administrative action and of the first subparagraph of Article 4(1) of Regulation No 1073/1999 of the European Parliament and of the Council⁽³⁾, in that the investigations of the European Anti-Fraud Office were opened or reopened on the basis of information obtained in breach of the secrecy of the proceedings of the Disciplinary Board which is to be observed under the second paragraph of Article 6 of Annex II to the Staff Regulations, in conjunction with a breach of the obligation of discretion laid down for officials by the second paragraph of Article 17 of the Staff Regulations and for members of the Commission by Article 287 of the EC Treaty.

(1) Decision of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ 1999 L 149, p. 57).

(2) That case was brought to a close by an order of removal from the register of 3 July 2000 (OJ 2000 C 259, p. 31).

(3) Regulation of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1).

Action brought on 22 July 2002 by Ter Lembeek International N.V. against the Commission of the European Communities

(Case T-217/02)

(2002/C 247/24)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 July 2002 by Ter Lembeek International N.V., having its registered office in Wielsbeke (Belgium), represented by Jean-Pierre Vande Maele, Frank Wijckmans and Filip Tuyschaever.

The applicant claims that the Court should:

1. Annul Articles 1 and 2 of the Commission decision of 24 April 2002 concerning State aid granted by Belgium to the Beaulieu Group (Ter Lembeek International);
2. Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant was involved as a shareholder in three companies under the name Verlipack. When it became a shareholder in those companies it assumed responsibility for repurchasing a specified number of shares from the public authorities. In 1991 the authorities concerned insisted on compliance with this obligation of repurchase and the applicant accordingly found itself obliged to buy back the shares. Repurchase was spread over several years.

In 1996 the Regional Authority for Wallonia pressed for accelerated repurchase of those shares by the applicant. The latter thereupon took over the shares from the Regional Authority for Wallonia, which thereby obtained an outstanding claim against the applicant. According to the applicant, the purchase had no economic significance for it and the shares were of no value to it. The shares, however, had to be bought for a fixed price. The applicant also derived no advantage whatever from the shares as they were shortly afterwards brought into a separate company over which the applicant had no control.

In 1998 the Regional Authority for Wallonia reached agreement with the applicant that it would transfer its shares in Verlipack Holding II to that Authority. In exchange, the claim which that Authority held against the applicant would lapse.

The decision under challenge treats this latter agreement as constituting State aid and as being incompatible with the Common Market. That decision states that the shares given in payment were at that moment in fact worthless. The Regional Authority for Wallonia thus permitted its claim against the applicant to lapse without receiving any consideration. The decision accordingly also takes the view that the applicant obtained free of cost the shares which it was required to purchase from the Regional Authority for Wallonia in 1996.

According to the applicant, the decision under challenge breaches Article 87(1) EC and Articles 7 and 13 of Regulation No 659/1999. (1) It argues that no benefit was obtained. In its view, the economic value of the shares when they were repurchased in 1996 was nil, or even negative, and it also derived no advantage from those shares. Moreover, according to the applicant, it was not the beneficiary of any aid measure, as it held the shares only for a very short period of time. It goes on to submit that there was no distortion of competition. According to the decision under challenge, competition was distorted within the textiles sector, whereas the alleged aid measure was granted within the glass sector.

The applicant pleads, second, an infringement of the proportionality principle and Article 14 of Regulation No 659/1999. In its opinion, the requested repayment of the aid bears no relation to the advantage allegedly enjoyed.

The applicant further claims that there has been an infringement of the principle of equal treatment and argues that two separate valuation methods are applied in the decision under challenge. For the valuation of the shares which it was forced to purchase, the decision applies a nominal price, which, however, according to the applicant, was much higher than the true value of the shares. For the valuation of the shares which the applicant transferred to the Regional Authority for Wallonia by way of payment, however, the decision applies the real value of the shares, which at that time was considered to be zero.

In conclusion, the applicant argues that there has been an infringement of the principle that reasons must be given.

(¹) 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 of 27.3.1999, pp 1 to 9).

Action brought on 18 July 2002 by Daniela Napoli Buzzanca against the Commission of the European Communities

(Case T-218/02)

(2002/C 247/25)

(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 18 July 2002 by Daniela Napoli Buzzanca, residing in Brussels, represented by Georges Vander-sanden and Laure Levi, lawyers.

The applicant claims that the Court should:

- annul the decisions of the appointing authority, probably adopted on 30 January 2002, appointing Ms S. as director, in grade A 2, of Directorate B (Multilateral relations and human rights) of the External Relations Directorate-General (RELEX) and rejecting the application of the applicant for that post;
- order the defendant to pay damages assessed, as at the date of the action and subject to possible increase, in the sum of 23 213,96 euros;
- order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, a grade A 3 official working in the External Relations Directorate-General, is contesting the rejection by the appointing authority of her application for the post of director of Directorate B (Multilateral relations and human rights).

In support of her claims, the applicant pleads:

- infringement of Articles 7, 27, 29(1)(a) and 45 of the Staff Regulations, breach of the principle that officials should have reasonable career prospects and of the principle of non-discrimination, and non-compliance with the terms of the vacancy notice. She considers in that regard that, by omitting to carry out an examination of the comparative merits of the candidates, the appointing authority ultimately took into consideration an application for the post which manifestly failed to fulfil the conditions laid down by the vacancy notice;
- non-compliance with the obligation to provide a statement of reasons.

Action brought on 22 July 2002 by Antonio Silva against Commission of the European Communities

(Case T-220/02)

(2002/C 247/26)

(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 22 July 2002 by Antonio Silva, residing in Brussels, represented by Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers.

The applicant claims that the Court should:

- annul the decision of the Commission not to promote the applicant to Grade A 4 in the 2001 promotions procedure, as evidenced by the publication in Administrative Information No 72/2001 of 14 August 2001 of the list of officials promoted to that grade;
- order the defendant to pay the costs.