

Action brought by Alsen AG against the Commission of the European Communities on 31 January 2003

(Case T-28/03)

(2003/C 124/39)

(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 31 January 2003 by Alsen AG, Hamburg (Germany), represented by K. Moosecker and F. Weimer, lawyers.

The applicant claims that the Court should:

- order the Commission to pay to the applicant the sum of EUR 139 002,21 together with interest at an overall rate of 5,75 % for the period from 15 April 2000 until payment has been made in full;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks an order that the Commission pay the costs of a guarantee. According to the applicant, those costs arose because the Commission imposed a fine on the applicant, by decision ⁽¹⁾, for an alleged infringement of Article 81 EC. By judgment of 15 March 2000 ⁽²⁾ that decision was annulled by the Court of First Instance in so far as it concerned the applicant. During the procedure before the Court the applicant had to lodge securities in the form of two bank guarantees for the fine during the period April/May 1995 to May 2000, for which the issuing banks' charged commission of the abovementioned amount.

The applicant claims that under Article 233 EC it has a right to require the Commission to repay the costs of the guarantees. The Commission is obliged to adopt the measures that follow from the judgment of 15 March 2000 and those measures include the payment of the guarantee costs of the successful party. The Court of First Instance itself stated in the judgment that the refund of the cost of guarantees is one of the measures which the Commission must take under Article 233 EC.

Furthermore, the applicant claims that the Commission's obligation to refund the guarantee costs also follows from Article 288(2) EC in conjunction with Article 235 EC. In no

event should guarantee costs be imposed upon the applicant that were necessary for it to pay in pursuing its rights.

⁽¹⁾ Decision 94/815/EC of 30 November 1994 in Cases IV/33.126 and 33.122 (Cement).

⁽²⁾ Judgment of 15 March 2000 in Joined Cases T-25/95 and Others [2000] ECR II-491.

Action brought on 13 February 2003 by Knauf Westdeutsche Gipswerke KG against the Commission of the European Communities

(Case T-52/03)

(2003/C 124/40)

(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 13 February 2003 by Knauf Westdeutsche Gipswerke KG, Iphofen (Germany), represented by M. Klusmann and F. Wiemer, lawyers.

The applicant claims that the Court should:

- annul Commission Decision C(2002)4570 final of 27 November 2002 in so far as it concerns the applicant;
- in the alternative, reduce appropriately the fine imposed on the applicant in the contested decision;
- order the defendant to pay the costs.

Pleas in law and main arguments

In the contested decision the Commission found that the applicant and three other undertakings had infringed Article 81(1) by participating in a body of agreements and concerted practices in the plasterboard sector. A fine of EUR 85,8 million was imposed on the applicant.

The applicant contests that decision and claims that it infringes the applicant's rights of defence and the principle of the right to due process of law. It submits, inter alia, that in essence the decision is based on evidence against it which has never been made available to the applicant despite its requests to that