

Action brought on 26 March 2004 by Henri Boquien and 12 other applicants against the Council of the European Union and the Commission of the European Communities

(Case T-121/04)

(2004/C 118/103)

(Language of the Case: French)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 March 2004 by Henri Boquien and 12 other applicants, all resident in France, represented by Jean-François Péricaud, lawyer.

The applicants claim that the Court should:

- order the Council of the European Union and the Commission of the European Communities jointly to pay to each applicant damages corresponding to the harm suffered plus interest at the legal rate from the date on which this application was filed;
- order the Council of the European Union and the Commission of the European Communities to pay the costs

Pleas in law and main arguments:

The pleas in law and main arguments are those advanced in Case T-440/03 *Arizmendi and Others v Council and Commission* ⁽¹⁾.

⁽¹⁾ OJ C 59 of 6.3.2004, p. 31.

Action brought on 29 March 2004 by Outokumpu OYJ and Outokumpu Copper Products OY against the Commission of the European Communities

(Case T-122/04)

(2004/C 118/104)

(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 29 March 2004 by Outokumpu OYJ and Outokumpu Copper Products OY, Espoo (Finland), represented by J. Ratliff, Barrister, and F. Distefano and J. Louostarinen, lawyers.

The applicant claims that the Court should:

- annul Article 2 of the Commission's Decision dated 16 December 2003 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-1/38.240-Industrial tubes), insofar as it imposes a fine of 18.13 million euros on the applicant.
- reduce the fine imposed on the applicant in the said Decision under the Court's jurisdiction provided for in Article 17 of Council Regulation 17/62 and Article 230 of the EC Treaty.
- require the Commission to pay the costs of the proceedings, including those of the applicant.

Pleas in law and main arguments:

In support of its application, the applicant claims that the Commission erred in law when it increased the fine imposed on the applicant for recidivism, based on the decision of the Commission of 18 July 1990 in cold-rolled stainless steel flat products ⁽¹⁾. The applicant invokes a violation of Article 15(2) of Regulation 17/62 ⁽²⁾, the 1998 Fining Guidelines ⁽³⁾, the principles of proportionality and equal treatment and of the obligation to state reasons. It also claims that the Commission made a manifest error of assessment.

Furthermore, the applicant claims that the Commission erred in law by increasing the fine for deterrence. According to the applicant, it has only become larger than the other companies involved at the very end or after the infringement and therefore did not have, at that time, the increased resources or greater economic power the Commission claims the applicant had. The applicant also invokes an infringement of fundamental principles limiting the Commission's discretion by considering only the turnover when assessing deterrent effect.

Finally, the applicant claims that the Commission erred in law by taking into account the full price including the price for the metal, namely, not only the producers' conversion margin for processing copper metal into industrial tubes, but also the underlying copper metal turnover which was not part of any unlawful cooperation.

⁽¹⁾ 90/417/ECSC: Commission Decision of 18 July 1990 relating to a proceeding under Article 65 of the ECSC Treaty concerning an agreement and concerted practices engaged in by European producers of cold-rolled stainless steel flat products (OJ L 220, p. 28)

⁽²⁾ EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ English special edition: Series I Chapter 1959-1962, p. 87)

⁽³⁾ Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ C 9, p. 3)