

Action brought on 20 October 2004 by Tramarin s.n.c. di Tramarin Andrea e Sergio against the Commission of the European Communities

(Case T-426/04)

(2004/C 314/60)

(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 20 October 2004 by Tramarin s.n.c. di Tramarin Andrea e Sergio, represented by Michele Arcangelo Calabrese, lawyer.

The applicant claims that the Court should:

- annul the part of Commission letter D/53186, D/(00)PI D/672, of 29 May 2000, described in the previous action;
- annul the decision of the Commission of 12 July 2000, granting authorisation without raising objections to State aid scheme No 715/99 — Italy — Measures in support of business in depressed areas of the country;
- order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant in the present case, in the same way as in Case T-98/04 S.I.M.S.A. and Others v Commission ⁽¹⁾, challenges, in addition to the decision authorising State aid scheme No N 715/99, also challenged in that case, the decision contained in that part of the letter from the defendant of 29 May 2000, in reply to a proposal put forward by the Italian authorities to the Commission at a meeting in Brussels on 16 May 2000 that a transitional rule intended to prevent a lack of continuity between the preceding scheme and the new scheme be included in the State aid scheme constituted by Italian Law No 488/92 and by its implementing provisions, because of the expectation of initiatives taken by the category of undertakings which had not yet submitted the application in the first notice to be instituted under the new scheme, but which had already embarked upon an investment project, by which it requested those Italian authorities to withdraw that proposal.

In support of its claims, the applicant alleges an infringement of:

- essential procedural requirements, in failing to open the formal inquiry procedure laid down by Article 88(2) EC;
- Article 4(4) and 7(5) and the second and third paragraphs of Council Regulation (EC) No 659/1999 of 22 March

1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾;

- the procedural guarantees in favour of persons interested in a State aid.

In particular, the applicant submits that the request to withdraw a proposal or the part of a proposal for a State aid scheme, if upheld by the Member State, has the same legal effect as a negative decision under Article 7(5) of Regulation (EC) No 659/99, with the significant difference that, whilst a negative decision is adopted at the end of a procedure full of procedural guarantees for the parties concerned, the request to withdraw, followed by the acquiescence by the Member State, allows the Commission to adopt decisions not to raise objections which in fact have the content of negative decisions, without however having the substantive form of negative decisions. Further, it allows the Commission to deal with those decisions pursuant to the publication rules laid down for decisions not to raise objections, thereby treating publication on its web site as sufficient, instead of applying the rules which would apply to a decision to open a formal inquiry: publication in full in the Official Journal of the European Communities, a request to submit observations and the duty to take account of those observations before adopting a reasoned negative decision.

As for the decision of 12 July 2000, it is alleged to be invalid for the same reasons as the letter of 29 May 2000, since it is the decision by which, if that letter is annulled, the infringements of the abovementioned guarantees take effect.

⁽¹⁾ OJ C 106 of 30.4.2004, p. 83.

⁽²⁾ OJ L 83 of 27.3.1999, p. 1.

Action brought on 19 October 2004 by the Italian Republic against the Commission of the European Communities

(Case T-431/04)

(2004/C 314/61)

(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 19 October 2004 by the Italian Republic, represented by Maurizio Fiorilli, Avvocato dello Stato.