

- the award (i) of damages with '*intérêts de retard*', as compensation for the prejudice to the applicant's career, and (ii) other damages in form of a legal and regular pay, notably the application of the transitional provision contained in Article 21 of Annex XIII of the Staff Regulation in force as of 1 May 2004 or, alternatively, the lowering of contributions to the pension scheme based on the principle of equal pay. These rights will have to be duly evaluated at a later stage and are now evaluated, provisionally and *ex aequo et bono*, at a minimum of EUR 5 000 per year;
- order that the European Parliament shall pay all costs.

Pleas in law and main arguments

The applicant, an official appointed after the entry into force of the new Staff Regulations on 1 May 2004, but from a reserve list drawn up on the basis of a competition organised before that date, contests her appointment grade, fixed by the Parliament in accordance with the new regulations at A*5. She invokes the same pleas and arguments invoked by the applicants in Case T-58/05 ⁽¹⁾.

⁽¹⁾ OJ C 93, 16/04/05, p. 38

Action brought on 21 September 2005 — Nuovo Agricast v Commission of the European Communities

(Case T-362/05)

(2005/C 296/69)

Language of the case: Italian

Parties

Applicant(s): Nuovo Agricast s.r.l. (Cerignola, Italy) (represented by Michele Arcangelo Calabrese)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims, subject to all procedural reservations, that the Court should declare that, by having acted unlawfully as set out in the application, the Commission has seriously and manifestly infringed Community law, and has caused the applicant

financial damage, and must therefore be ordered to pay to the applicant:

- (a) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the first part of the aid;
- (b) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the second part of the aid;
- (c) compensation of EUR 701 692,77 by way of indemnifying the damage consisting of failure to obtain the third part of the aid;
- (d) interest on those sums as revalued;
- (e) EUR 1 453 387,03, or whatever greater or lesser sum may be determined — possibly in agreement with the Commission — during the proceedings, as compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2002 compared with the income it would have had if the investment programme had been completed;
- (f) interest on the sum under (e) as revalued;
- (g) the costs of the proceedings, including those of the party's technical consultancy.

Pleas in law and main arguments

The applicant in this case, as in Cases T-139/03 ⁽¹⁾, T-151/03 ⁽²⁾ and T-98/04 ⁽³⁾, charges the Commission with having acted unlawfully in the preliminary investigation in respect of State aid N 715/99, the result of which was a decision to grant authorisation without objections. That authorisation extended, for the six-year period 2000-2006, the State aid scheme referred to by Law No 488/92, which had previously in 1997 been authorised until 31 December 1999.

It is in this regard to be borne in mind that in accordance with the special administrative procedure for the obtaining of aid the Italian Government ought every six months to have issued invitations to tender, in which the undertakings concerned might have taken part. The financial resources used to fund the tender procedure would have been allocated to the undertakings in order of classification until exhausted. Having taken part in the third tender procedure, the applicant could not obtain aid because the resources intended for funding of its classification level had been exhausted.

The Italian Government, in proposing the investigation into aid No 715/99, asked the Commission to agree, in the first tender procedure under the new scheme, to the reformulation of applications submitted under the third and fourth notices to tender. The Commission, however, restricted its authorisation to the fourth invitation to tender.

In support of its claims, the applicant argues that the Commission:

- by having failed to initiate the formal investigation procedure when, once it had received the Italian Government's proposal for reformulation of the applications in respect of the third invitation to tender under the previous scheme, it considered that proposal incompatible with the common market, has infringed Article 88(2) of the Treaty and the principle of protection of the right to a fair hearing;
- has breached the principle of legal certainty;
- has committed an error of assessment.

According to the applicant, by making the compatibility with the common market of the proposal to allow undertakings taking part in the third tender procedure to reformulate their tender and by concluding, without the least discussion with the parties concerned, that the proposal was incompatible, the Commission has altered its decision to approve the 1997 scheme, which presupposed a previous investigation under Article 87 of the Treaty.

Furthermore, the applicant alleges that, by affecting and putting an end to pre-existing legal situations, the defendant has in fact revoked the authorisation decision of 1997, without observing the procedural guarantees provided by Regulation EC No 659/99 for cases of revocation of aid.

⁽¹⁾ Order of the Court of First Instance of 8 June 2005, not published.

⁽²⁾ Order of the Court of First Instance of 8 June 2005, not yet published in the ECR.

⁽³⁾ Order of the Court of First Instance of 15 June 2005, not published.

Action brought on 21 September 2005 — COFRA s.r.l. v Commission of the European Communities

(Case T-363/05)

(2005/C 296/70)

Language of the case: Italian

Parties

Applicant(s): COFRA s.r.l. (Barletta (Italy)) (represented by Michele Arcangelo Calabrese, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims, subject to all procedural reservations, that the Court should declare that, by having acted unlawfully as set out in the application, the Commission has seriously and manifestly infringed Community law, and has caused the applicant financial damage and must therefore be ordered to pay the applicant compensation:

- (a) of EUR 387 700,00, revalued in accordance with the ISTAT (Italian Central Statistical Office) indices of 26 June 2001 until the date of judgment;
- (b) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2002 until the date of judgment;
- (c) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2003 until the date of judgment;
- (d) interest on those revalued sums,

and that the Court should order the defendant to pay the costs, including those of the party's technical consultancy.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-362/05 *Nuova Agricast v Commission*.

Action brought on 26 September 2005 — Austria v Commission

(Case T-368/05)

(2005/C 296/71)

Language of the case: German

Parties

Applicant(s): Republic of Austria (represented by: H. Dossi)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

- annul Commission Decision C(2005)2685 of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), and order the Commission to bear the costs of the proceedings;