

The applicant also submits that, by increasing the basic amount of the fine by a deterrence factor of 100 %, the Commission infringed Article 23(1) of Regulation No 1/2003 ⁽¹⁾ and the guidelines for setting fines based thereon ⁽²⁾, as well as the principles of proportionality and equality. The applicant contends further that, contrary to Article 23(1) of Regulation No 1/2003 and the guidelines on fines, the Commission imposed a 50 % increase in the fine in respect of repeat offences.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

⁽²⁾ Commission notice: 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 1998 C 9, p. 3).

Action brought on 7 May 2007 — COFAC v Commission

(Case T-158/07)

(2007/C 155/65)

Language of the case: Portuguese

Parties

Applicant: COFAC — Cooperativa de Formação e Animação Cultural, crl (Lisbon, Portugal) (represented by: Luís Gomes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment, pursuant to Article 230 EC, of Commission Decision D(2004) 24253 of 9 November 2004, reducing the amount of the financial assistance granted by the European Social Fund ('the ESF') to the applicant by Decision C(87) 0860 of 30 April 1987 (file No 880707 P1);

— an order that the Commission should pay the costs.

Pleas in law and main arguments

On 1 March 2007 the applicant was notified of the Commission's decision to reduce by EUR 25 291,75 the financial assistance granted to it by Decision C(87) 0860 of 30 April 1987, on the ground that 'evidence has come to light of irregularities in the performance of certain vocational training actions co-financed by the ESF, ... after the conclusion of the criminal prosecutions relating to the management and specific applica-

tion of the aid granted ... and after the adjustments to the costs and funding structures relating to the file in accordance with the judicial decisions or the audits/re-examinations carried out in respect of the bodies in question.'

None the less, the Portuguese legal proceedings brought against the applicant ended in an inconclusive verdict that the prosecution was time-barred, from which of course no inference may be drawn as to any reduction.

That having been said, the applicant has never been notified by the national authorities of any final preparation arising out of the audit or re-assessment, in the conclusions of which it played no part, and it has never been able to defend itself against the charges of failing to observe the criteria for costs and funding in the file.

According to the settled case-law of the Court of First Instance, a Commission decision reducing or cancelling financial assistance granted by the ESF is capable of affecting the beneficiaries of that assistance directly and individually.

The applicant has never been given the chance effectively to make known its views to the Commission on the reduction of the assistance, with the result that the Commission's contested decision is vitiated by unlawfulness and must, accordingly, be annulled.

That decision was adopted in breach of the rights of the defence, which constitute a fundamental principle of Community law, according to which all addressees in respect of whom decisions may be adopted adversely affecting their interests to an appreciable extent must be placed in a position in which they can effectively make known their views on the matters on which the decision at issue was based.

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