

— the European Commission is ordered to pay all procedural costs, including the costs of the claimant.

Defendant: Commission of the European Communities

Pleas in law and main arguments

In 2004 the applicant filed a complaint with the Commission claiming that different aspects of the financing of a new power plant under construction in Finland amounted to state aid that had not been notified. The state aid aspects of the complaint were registered by the Commission under case number CP 238/04 and in 2006 the Commission decided to split the file into two separate cases numbered NN 62/A/2006 and NN 62/B/2006.

In the present case, the applicant seeks annulment of Commission Decision C(2007) 4323 final of 25 September 2007 concerning case NN 62/A/2006, notified to it on 14 November 2007, by which the Commission concluded that the export guarantee provided by the French export credit agency ('COFACE') granting a credit for the financing of the new power plant unit 'Olkiluoto 3' purchased by the Finnish electricity generation company Teollisuuden Voima Oy ('TVO') did not constitute illegal state aid and thus, decided to close the investigation.

The applicant claims that the export guarantee or credit insurance of EUR 570 000 provided by COFACE to TVO constitutes illegal intercommunity aid due to its financial impact on the overall financing package of the project concerned. The applicant contends that the guarantee constituted unlawful state aid in so far as it was provided by COFACE acting as a public agency on the account of France which undertook responsibility to cover repayment of the credit to the bank consortium in case TVO was unable to pay and in so far as it conferred an unfair economic advantage to TVO, facilitating its access to the market and securing its future financing potential. In addition, the applicant submits that such a secured loan will enable TVO to produce electricity at a considerably lower cost.

Further, it asserts that the splitting of the file into two separate cases violates essential procedural rules and leads to incorrect assessments.

Action brought on 24 January 2008 — Shetland Islands Council v Commission

(Case T-44/08)

(2008/C 107/46)

Language of the case: English

Parties

Applicant: Shetland Islands Council (Lerwick, United Kingdom) (represented by: E. Whiteford, Barrister, R. Murray, Solicitor, and R. Thompson QC)

Form of order sought

- Annulment of Articles 1(2), 3, 4 and 5 of the decision; and
- the costs of this application.

Pleas in law and main arguments

The applicant is a public authority that made payments to the fisheries sector under the scope of two general aid measures, named 'Aid to the Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry', consisting of different types of aid schemes. One of these schemes was the First Time Shareholders Scheme. The Commission found that the aid which the United Kingdom implemented on the basis of this scheme was incompatible with the common market, in so far as it concerned aid granted for the first time acquisition of a share in a second-hand fishing vessel.

By means of its application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C 39/2006 (ex NN 94/2005) of 13 November 2007 concerning the First Time Shareholders Scheme implemented in the United Kingdom. In particular, the applicant seeks annulment of Article 1(2), 3, 4, and 5 of the contested decision on the following grounds:

- (1) The Commission erred in law in finding that *all* payments made for the first time acquisition of a share in a second-hand fishing vessel were incompatible with the common market and had to be paid back;
- (2) The Commission erred in law in finding that recovery of these payments would be compatible with:
 - (a) Article 14(1) of Council Regulation (EC) No 659/1999⁽¹⁾; and
 - (b) the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).