Pleas in law and main arguments

The appeal is directed against the judgment of the Civil Service Tribunal delivered on 8 July 2008 in Case F-76/07 annulling the decision of the Settlements Office, in the form of a decision on a complaint, not to reimburse the costs of acquiring a new wheelchair two years after the last acquisition, on the grounds of lack of necessity.

The appellant submits in support of its appeal that, first, contrary to the applicable provisions of Community law, the judgment redefines the margin of discretion of the Medical Officer and of the Medical Council in that, according to the judgment, only independent medical bodies may have such a margin of discretion.

Second, the judgment disavows any significance in the opinions of the Medical Council — which, in practice, are important in the examination of the necessity of costs — by stating that it is merely an advisory body whose opinions are not published. This is contrary to settled case-law on the Joint Rules on sickness insurance for officials of the European Communities, as applicable on 22 March 2004. Furthermore, those opinions have the status of a rebuttable presumption in relation to the necessity of costs.

In addition, the appellant alleges a distortion of the facts or errors in the legal characterisation of the facts and of the subject-matter of the dispute, and an infringement of the obligation to state the reasons for the judgment, since an essential part of the decision on the complaint was declared to be non-existent.

Action brought on 15 September 2008 — Ellinika Nafpigia v Commission

(Case T-391/08)

(2008/C 327/55)

Language of the case: Greek

Parties

Applicant: Ellinika Nafpigia (Skaramagkas, Greece) (represented by: I. Drosos, K. Loukopoulos, A. Khiotellis, K. Panagoulea, P. Tzioumas, A. Balla, B. Voutsakis and X. Gkousta, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Articles 1(2), 2, 3, 5, 6, 8(2), 9, 11 to 16, 18 and 19 of the contested decision of 2 July 2008 concerning Aid C 16/2004 (formerly NN 29/2004, CP 71/2002 and CP 133/2005) granted by Greece to the undertaking Ellinika Nafpigia A.E.;

— order the Commission to pay the applicant's costs in the present proceedings.

Pleas in law and main arguments

The applicant, Ellinika Nafpigia A.E (Hellenic Shipyards; 'ENAE'), challenges 12 of the 16 measures imposed in Commission Decision C(2008) 3118 final of 2 July 2008 concerning Aid C 16/2004 (formerly NN 29/2004, CP 71/2002 and CP 133/2005), and puts forward nine pleas in law in support of its claim for annulment.

By its first plea, the applicant submits that the Commission did not apply Article 298 EC notwithstanding the acceptance in the contested decision that ENAE is a military shipyard.

By its second plea, the applicant contends that the contested decision failed to apply, or misapplied, Article 296 EC.

By its third plea, the applicant asserts that the contested decision contains a manifest error of assessment, or otherwise an insufficient statement of reasons, in finding that ENAE's creditworthiness standing was reduced from 1997 to June 1999 and thereafter non-existent. In particular, the contested decision (a) did not assess ENAE's creditworthiness in relation to the specific feature that it is a military industrial unit, (b) disputed without justification ENAE's economic parameters and also the entirely acceptable guarantees which it was in a position to provide in order to be financed by any private bank and (c) ignored without justification and misappraised the interest of Elliniki Trapeza Viomikhanikis Anaptixis (Hellenic Industrial Development Bank; 'ETVA') as majority shareholder in ENAE, in the value of, and return from, that commercial stake held by it.

By its fourth plea, relating to the wrongful implementation of the aid which took the form of the writing-off of debts of EUR 160 million, the applicant submits that approval decision C 10/1994 did not lay down conditions and was not wrongly implemented, and in the alternative that ENAE was not granted the whole of the foregoing amount and, therefore, that sums not granted cannot be recovered. The applicant further submits that Article 296 EC must be applied both when assessing the possible existence of aid and when calculating any recoverable benefit. Finally, recovery of the aid infringes the principle of proportionality, the principle of legal certainty and the principle that the legitimate expectations of a recipient of aid should be protected.

By its fifth plea, relating to wrongful implementation of the aid approved in 2002 of EUR 29,5 million for the closure of facilities, by reason of a supposed failure to observe the countervailing condition restricting the applicant's repair capacity, the applicant submits that approval decision N 513/2001 was misapplied.

By its sixth and seventh pleas, relating to wrongful implementation of the investment aid of EUR 22,9 million and the alleged unlawful participation of ETVA in the increases in share capital to bring about that investment, the applicant submits that approval decision N 401/1997 was misapplied, that Article 87(1) EC was infringed as the Commission wrongly found that measure E10 constituted unlawful State aid, that the principle of the protection of legitimate expectations was infringed and that Article 296 EC was not applied.

By its eighth plea, relating to the loans and guarantees which the applicant received in the relevant period of 1997 to 2001 — which is in addition to the third plea which applies to the loans and guarantees as regards the misappraisal of the applicant's creditworthiness — the applicant pleads: (a) misapplication of the test of a private investor in a market economy; (b) misapplication of Article 87(2) EC, Article 3 of Regulation (EC) No 1540/1998 ([1]) and Article 4 of Directive 90/684/EEC ([2]); (c) infringement of the principle of proportionality and manifest error of assessment as regards ENAE's creditworthiness after its complete privatisation in June 2002, in relation to calculation of the amounts to be recovered in respect of the measures under examination, since the contested decision did not reduce the applicable reference interest rate; and (d) a mistake of fact in relation to the loans and guarantees which ETVA granted the applicant, since the contested decision did not take into account that following ETVA's privatisation the measures under examination did not include elements of State aid.

By its ninth plea, relating to unlawful financing of ENAE's non-military business by its military business, the applicant pleads: (a) infringement of Articles 296, 298 and 88(1) EC; (b) misapplication of the private investor test with regard to military contracts and (c) a failure to state reasons and misappraisal as regards determination of the sums to be recovered.

([1]) Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding (OJ 1998 L 202, p. 1).
([2]) Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ 1990 L 380, p. 27).

Action brought on 15 September 2008 — Freistaat Sachsen and Land Sachsen-Anhalt v Commission

(Case T-396/08)

(2008/C 327/56)

Language of the case: German

Parties

Applicants: Freistaat Sachsen and Land Sachsen-Anhalt (represented by: T. Müller-Ibold and T. Graf, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the first paragraph of Article 1 of Commission Decision C(2008) 3178 final of 2 July 2008 in State aid case C 18/2007; and

— order the Commission to pay the costs.

Pleas in law and main arguments

This application for annulment relates to Commission Decision C(2008) 3178 final of 2 July 2008 in State aid case C 18/2007, in so far as a large part of the training aid notified, which the Freistaat Sachsen and the Land Sachsen-Anhalt intended to grant to the express courier services company, DHL, is declared to be incompatible with the common market.

In particular, the Freistaat Sachsen and the Land Sachsen-Anhalt rely on the following pleas in law in support of their claims.

First, the applicants object to the Commission's refusal to approve a large part of the notified aid, since the training aid is not 'necessary' for the training measures in question to be implemented. By introducing a general test of necessity in individual cases as a prerequisite for approval of the notified aid, the Commission contravenes the binding effect of Regulation (EC) No 68/2001 ([1]) and infringes the principles of equal treatment and the protection of legitimate expectations. The assessment criteria laid down by the Regulation are binding also in respect of aid above the exemption threshold.

Second, the Commission's approach, which makes approval of the notified training aid dependent on its necessity, is also wrong in law because it unlawfully ignores the positive market externalities of the training measures supported by the notified training aid. Such market externalities are in themselves sufficient to justify the compatibility of the notified training aid with the common market.

Third, the Commission wrongly concludes that the necessary incentive effect of the aid for the chosen location is lacking. In fact the training aid is necessary because it was a contributory factor in DHL's decision on Leipzig/Halle as its choice of location and DHL would not otherwise have undertaken any training there. Moreover, the Commission's assertion that comparable training costs would also have arisen in alternative locations is unfounded.

Fourth, the Commission relied on inappropriate criteria in its assessment of necessity. In particular, the Commission relies on subjective criteria, which go beyond objective necessity. Moreover, the Commission carries out its assessment on the basis of statutory provisions on training measures, which significantly disadvantages those Member States in which training content is regulated by law.