

The European Commission has failed to observe the principle *audi alteram partem* inasmuch as it was only in the contested decision that it raised the issue of the alleged failure to show deficiencies in the market for the financing of the small and medium-sized undertakings supported by the FIIT, and that it criticised the national authorities for supposedly failing to analyse sufficiently the economic viability of those undertakings, doing no more than refinance their debts.

The contested decision fails to observe the principle of the protection of legitimate expectations, by concluding that the FIIT project was ineligible for ERDF cofinancing, for the European Commission, while monitoring the programme, acted in such a way as to engender in the Portuguese authorities the firm and legitimate conviction that the financing of the FIIT would not be called in question, especially because the Community legal framework then in force being in no way unequivocal as to its being permissible or not did not make it possible to determine whether there existed a manifest error of assessment with regard to the lawfulness of that financial instrument.

(¹) Council Regulation (EEC) No 2083/93 of 20 July 1993 amending Regulation (EEC) No 4254/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund (OJ 1993 L 193, p. 34).

Action brought on 1 March 2010 — Prionics v Commission and EFSA

(Case T-112/10)

(2010/C 113/107)

Language of the case: German

Parties

Applicant: Prionics AG (represented by: H. Janssen and M. Franz, lawyers)

Defendant: European Commission and European Food Safety Authority (EFSA)

Form of order sought

— annul the ‘Scientific Opinion on Analytical sensitivity of approved TSE rapid tests’ of EFSA and the Commission, in

so far as that opinion does not currently recommend the use of two tests manufactured by the applicant, the Prionics-Check LIA and the Prionics-Check PrioSTRIP, for monitoring BSE;

— order EFSA and the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging EFSA’s Scientific Opinion of 10 December 2009 on Analytical sensitivity of approved TSE rapid tests (‘the EFSA Opinion’). That opinion recommends *inter alia* that the analytical sensitivity of two test systems manufactured by the applicant for BSE (Prionics®-Check LIA and Prionics®-Check PrioSTRIP) be re-assessed by appropriate experiments.

The applicant puts forward four pleas in law in support of its action.

In its first plea, the applicant alleges infringement of the principle of sound administration on the ground that the defendants base their recommendation in the EFSA Opinion on an incorrect assessment of the facts and on contradictory data.

In its second plea, the applicant alleges an infringement of the principle that the right to be heard must be granted in procedures which may result in measures having an adverse effect on a party. In that connection, the applicant furthermore alleges an infringement of the general legal principles of equal treatment and protection of legitimate expectations on the ground that, contrary to its own published administrative provisions, EFSA did not grant the applicant the right to be heard prior to publication of the EFSA Opinion.

In its third plea, the applicant alleges infringement of the general legal principles of equal treatment and protection of legitimate expectations on the ground that, contrary to its own published administrative provisions, EFSA provided no information in its opinion on the possibility of lodging an appeal against that opinion.

In its final plea, the applicant alleges infringement of the fundamental right of freedom to pursue a professional activity and the fundamental right of freedom to conduct a business on the ground that the EFSA Opinion was published without any consideration of the harmful consequences for the applicant.