

Third plea in law. Contravention of the authority of *res iudicata*. In the view of the Italian Republic, the judgments of the General Court and of the Court of Justice regarding the earlier aid have the authority of *res iudicata* in relation to the fact that the aid does not facilitate exports but rather eases the cost burden of business penetration of third markets, and the fact that simple generalised references to the principles governing State aid which has a direct impact on the internal market are not enough by way of reasons to substantiate a decision on aid which has a direct impact on a third market and, what is more, a market of scant importance. As it is, in the new decision the Commission has ignored the *res iudicata* and paid no more than lip service to those principles.

Fourth plea in law. Breach of the principle of *audi alteram partem* and infringement of Article 20 of Regulation (EC) No 659/99. Lack of a preliminary investigation. The Italian Republic states in this connection that the 'preliminary investigation' on the basis of which the new decision was adopted took the form of a 2009 university research paper on the recipient undertaking, which the Commission neither sent to the interested parties nor discussed with them before adopting the new decision.

Fifth plea in law. Infringement of Article 107(1) TFEU and Articles 1(1)(d) and 2 of Regulation (EC) No 1998/2006. Contravention of *res iudicata*. Logical inconsistency in the decision. According to the Italian Republic, the aid in question fell within the scope of Regulation No 1998/2006 on 'de minimis' aid, in that it was worth less than EUR 200 000 over three years. For that reason, the aid did not constitute State aid and did not need to be notified. Regulation No 1998/2006 applied because it was a matter of *res iudicata* that the aid was not export aid.

Sixth plea in law. Infringement of Article 107(3)(c) and (e) TFEU and Article 4(1) and (2) of Regulation (EC) No 70/2001. In any event, the aid was compatible with the common market pursuant to Article 107(3)(c) TFEU because it was intended to promote the internationalisation of Community undertakings. The decision failed to consider that point.

Seventh plea in law. Infringement of Article 14 of Regulation (EC) No 659/99 and breach of the principle of proportionality. In any event, the aid to be recovered has been over-estimated: the actual aid is equal to the difference between the preferential rate and the reference rate at the time of the individual payments of the instalments, not to the difference between the preferential rate and the reference rate in effect at the (much earlier) time at which the financing was granted.

The Italian Republic also alleges breach of the duty to state reasons and of the principle of the protection of legitimate expectations.

⁽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).

Action brought on 7 June 2010 — Microban International and Microban (Europe) v Commission

(Case T-262/10)

(2010/C 221/82)

Language of the case: English

Parties

Applicants: Microban International Ltd. (Huntersville, United States) and Microban (Europe) Ltd. (Heath Hayes, United Kingdom) (represented by: M. S. Rydelski, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision No 2010/169 of 19 March 2010 concerning the non-inclusion of 2,4,4'-trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC (OJ 2010 L 75, p. 25); and

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By means of its application, the applicants seek, pursuant to Article 263 TFEU, the annulment of Commission Decision No 2010/169 of 19 March 2010 concerning the non-inclusion of 2,4,4'-trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC ⁽¹⁾ (OJ 2010 L 75, p. 25), notified under document C(2010) 1613.

In support of its submissions, the applicants put forward the following pleas in law:

Firstly, that the contested Decision is not in accordance with the authorisation procedure under the framework Regulation ⁽²⁾ as it lacks an adequate legal basis for its adoption.

Secondly, the Decision adopted by the defendant not to include the product concerned in the Union list of additives without a risk management decision, solely based on the withdrawal of the original application for authorisation, is in breach of the authorisation procedure for the product concerned.

Thirdly, the defendant violated the applicants' legitimate expectations by not providing for the opportunity to replace the original applicant for the product concerned.

Finally, the procedure leading up to the contested Decision was not in compliance with general principles of EU law, such as the principles of sound administration, transparency and legal certainty.

⁽¹⁾ Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs (OJ 2002 L 220, p. 18)

⁽²⁾ Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ 2004 L 338, p. 4).

Action brought on 16 June 2010 — Spain v Commission

(Case T-263/10)

(2010/C 221/83)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 8 April 2010 declaring the suspension of the interim payment application submitted by the Kingdom of Spain on 17 December 2009 on the grounds stated in Section I of the legal reasoning set out in the originating application;

— uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is directed against the decision of the Commission to interrupt the payment deadline of the interim payment application submitted by the Kingdom of Spain on 17 December 2009. That interim payment application, for a total amount of EUR 2 717 227,26, relates to the Operational Programme for Community Assistance from the European Social Fund in the framework of the Regional Competitiveness and Employment Objective for the Autonomous Community of the Balearics (CCI 2007ES052PO005).

In support of its claims the applicant relies on the following pleas in law:

— Infringement of Article 91(1)(a) of Council Regulation (EC) No 1083/2006 ⁽¹⁾ of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, since the Commission, without any report from a national or Community audit body to suggest the existence of a significant deficiency in the functioning of the management and control systems, and in the absence of any such deficiency, by means of the contested decision interrupted the payment deadline of the interim payment application submitted by the Kingdom of Spain.

— Infringement of the control strategy approved by the Commission, in as much as the Commission interrupted the payment deadline for that interim payment on the ground that the absence of systems audits constitutes a significant delay in the implementation of the strategy, when that strategy enabled the Kingdom of Spain to submit those systems audits until 30 June 2010.

— Infringement of the principle of legal certainty, since the Commission claims that the Kingdom of Spain failed to produce the systems audits in advance of the timetable agreed with the Commission itself, a requirement which therefore the Spanish authorities could not have foreseen.