

As a result, the applicant claims that a *prima facie* infringement of competition law existed and that the unreasonable long period of 9 to 21 months which elapsed, depending on the subject-matter of the complaint, between the Commission's receipt of the letter of formal notice and the Commission's inaction constitutes failure to act within the meaning of Article 232 EC.

- (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 L 83, p. 1).
- (²) 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 (Text with EEA relevance) (OJ L 1, p. 1).
- (³) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance) (OJ L 123, p. 18).

Action brought on 5 December 2007 — Centre de Promotion de l'Emploi par la Micro-Entreprise v Commission

(Case T-444/07)

(2008/C 37/45)

Language of the case: French

Parties

Applicant: Centre de Promotion de l'Emploi par la Micro-Entreprise (CPEM) (Marseilles, France) (represented by: C. Bonnefoi, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annulment of Commission Decision C(2007) 4645 of 4 October 2007, cancelling the assistance granted by the European Social Fund (ESF) to finance an ESF subsidy in France (CPEM) by Decision No C(1999) 2645 of 17 August 1999;
- acknowledgement of a right to damages for public detriment to the reputation of a body acting in the context of a task of general interest (estimated at EUR 100 000);
- acknowledgement of the right of CPEM's staff to individual symbolic damages of one Euro for interference with their peace of mind at work (threat to the future of their employment structure and thus to their jobs, since to pay EUR 1 000 000 would mean the closure of the CPEM and the MSD);

- repayment of lawyers' fees and the costs of legal assistance made necessary, proof of which can be provided.

Pleas in law and main arguments

By this action, the applicant seeks annulment of Commission Decision C(2007) 4645 of 4 October 2007, cancelling, following an OLAF report, the assistance granted by the European Social Fund (¹) to finance, by way of a global subsidy, a pilot project carried out by the applicant.

In support of its action, the applicant relies on two groups of pleas in law, the first concerning the way in which OLAF carried out the investigation and enquiry procedure leading to the contested decision and alleging breach of the rights of the defence and the other pleas in law concerning the substance of the contested decision.

First, the applicant claims that the form of the enquiry which OLAF carried out was in breach of a number of principles of Community law and of a dispassionate investigation, such as the presumption of innocence and the right to know the actual and specific content of the accusations contained in the complaints on which the proceedings were based. It claims, moreover, that OLAF confused the procedures laid down by Regulation No 2185/96 (²) with those concerning enquiries under Regulation No 2988/95 (³). Second, the applicant alleges that OLAF based the conclusions for which it was responsible on the different and changing editions of the 'Promoter's Guide'.

As to substance, the applicant alleges that the Commission based its decision on the conclusions of the OLAF report, which seriously infringed the French law concepts of 'non-profit making organisations' and 'secondment'. Moreover, it claims that OLAF asserted against it the superiority of the 'Promoter's Guide' to the content of a Community regulation. It also claims that the Commission was aware of this and even authorised the facts which were alleged against the applicant by OLAF and in the contested decision. Lastly, the applicant relies on a plea in law alleging that Regulation No 1605/2002 (⁴), on which part of OLAF's reasoning and the contested decision are based, is inapplicable and not capable of being relied on against it.

(¹) Commission Decision C (1999) 2645 of 17 August 1999 amended by Decision C (2001) 2144 of 18 September 2001.

(²) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2).

(³) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

(⁴) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).