

According to the Polish authorities, apart from obstacles of a purely technical nature, the reason for the significant delay in recovering the aid lies in the provisions of the Polish law on insolvency. The Polish authorities explained that the State aid referred to in the decision took the form of exemption for TB from its liabilities, even though its subsidiaries were the actual beneficiaries of the aid. In that situation TB was formally accountable for all liabilities, including the amounts to be recovered from HB and BA. The provisions of Polish law allegedly make it impossible for such claims to be written off, with the exception of cases involving 'complete impossibility'. In addition, if these claims are submitted, the official receiver dealing with the insolvency of TB is obliged to pay out the amounts owing, which may include the amounts to be recovered from the subsidiaries. Furthermore, if those amounts are recovered there will no longer be any legal basis on which recovery of those same amounts may be sought from HB and BA.

The Commission, however, takes the view that it is not sufficient that the Republic of Poland availed itself of all measures open to it. The application of those measures must result in the effective and immediate implementation of the decision, as otherwise it will be necessary to assume that the Republic of Poland has not complied with its obligations. Breach of the obligation on a Member State to recover arises when the steps taken by that Member State have had no influence on the actual recovery of a particular amount.

Action brought on 1 September 2009 — Commission of the European Communities v Republic of Poland

(Case C-349/09)

(2009/C 312/18)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: K. Herrmann and M. Simerdova, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not implementing in full Commission Directive 2005/28/EC of 8 April 2005 laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products, ⁽¹⁾ or in any event by not informing the Commission of the provisions adopted to that end, the Republic of Poland has failed to fulfil its obligations under Article 31 of that directive;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which Directive 2005/28/EC had to be transposed expired on 29 January 2006.

⁽¹⁾ OJ 2005 L 91, p. 13.

Appeal brought on 2 September 2009 by Centre de Promotion de l'Emploi par la Micro-Entreprise (CPEM) against the judgment delivered on 30 June 2009 in Case T-444/07 Centre de Promotion de l'Emploi par la Micro-Entreprise (CPEM) v Commission of the European Communities

(Case C-350/09 P)

(2009/C 312/19)

Language of the case: French

Parties

Appellant: Centre de Promotion de l'Emploi par la Micro-Entreprise (CPEM) (represented by C. Bonnefoi, avocate)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the judgment of the Court of First Instance;

— grant, in whole or in part, the form of order sought at first instance;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellant puts forward thirteen grounds of appeal relating to the dismissal by the Court of First Instance of its action for annulment of the Commission's decision of 4 October 2007 cancelling the assistance granted by the European Social Fund (ESF) by Decision C(1999) 2645 of 17 August 1999.

By its first ground of appeal, CPEM submits that the Court of First Instance breached the principle of equal treatment in that it did not comply with the requirements of a fair balance between the arguments of the parties. By confining itself to stating, on several occasions, that the Commission rejected or rebutted CPEM's arguments, the Court of First Instance did not specify the Commission's arguments or the way in which they rejected or rebutted those of CPEM, which created an imbalance in the presentation of the arguments and consequently in their treatment in the judgment.