

Pleas in law and main arguments

The applicant seeks annulment in part of Commission Decision C(2009) 203 final⁽¹⁾ of 28 January 2009, by which the Commission declared incompatible with the common market State aids granted by the French Republic to producers of fruit and vegetables under the 'contingency plans' aimed at facilitating the marketing of agricultural products harvested in France.

The applicant seeks annulment of the contested decision, to the extent that the Commission found that the measures taken in favour of the producers of fruit and vegetables constituted State aid, whereas those measures were in part financed by voluntary contributions from the producers which do not, according to the applicant, amount to State resources or resources attributable to the State.

In support of its action, the applicant relies on two pleas based on:

- breach of the obligation to state reasons, to the extent that the Commission did not justify the extension of the finding of State aid to measures financed by voluntary contributions from the producers in the sector concerned;
- an error of law, since the Commission regarded as State aid measures financed by private resources paid voluntarily and without State intervention. Those measures cannot be regarded as advantages granted through State resources.

⁽¹⁾ That is the number stated in the contested decision, whereas the applicant consistently refers to the number C(2009) 2003 final.

Action brought on 7 April 2009 — Prysmian, Prysmian Cavi and Sistemi Energia v Commission

(Case T-140/09)

(2009/C 141/104)

Language of the case: Italian

Parties

Applicants: Prysmian (Milan, Italy), Prysmian Cavi and Sistemi Energia (Milan, Italy) (represented by: A. Pappalardo, lawyer, F. Russo, lawyer, M.L. Stasi, lawyer, C. Tesauero, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Decision of 9 January 2009 by which the Commission ordered the inspection (Case COMP/39610 — Surge);
- Declare the Commission's decision to extract a copy of the entire contents of the hard disks of some of the directors of Prysmian and to analyse the content thereof in its own offices in Brussels to be unlawful and contrary to Article 20(2) of Regulation No 1/2003;
- In the alternative, declare the conduct of the inspectors to be abusive in that, in interpreting incorrectly the powers of

inspection conferred on them by the Decision, they acquired copies of the entire content of hard disks in order to inspect the content thereof in the Commission's offices in Brussels;

- Order the Commission to return to Prysmian all documents obtained unlawfully in the inspections at its Milan head office or extracts from the hard disks analysed in its own offices in Brussels;
- Order the Commission to refrain from using in any manner the documents unlawfully obtained and, in particular, from using them in proceedings initiated for investigating alleged anti-competitive conduct in the electrical cable sector contrary to Article 81 EC;
- Order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought in relation to the Commission Decision of 9 January 2009 concerning the investigation into possible anti-competitive conduct in the electrical cable sector contrary to Article 81 EC, by which the applicants were ordered to submit to an inspection pursuant to Article 20(4) of 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.⁽¹⁾

It is stated in that regard that, during the implementation phase of the abovementioned decision, the representatives of the applicants were informed that the defendant had decided to produce forensic images of the hard disks of some computers, in order to continue the investigation in the Commission's offices in Brussels.

The applicants put forward the following in support of its action:

- Regulation No 1/2003 provides expressly that the powers of inspection are to be exercised at the premises of the undertaking, providing for the possibility that those premises may be sealed should the inspection extend over a number of days, and no legislative provision authorises the Commission to make copies of entire hard disks, transport them outside the premises of the undertaking and analyse those documents in its own offices;
- The defendant unduly prolonged the duration of the inspection by roughly one month, placing the applicants in a situation of uncertainty as to the actual scope of the investigation;
- The Commission also prevented them, for some weeks, from making a fully-informed assessment as to whether it might avail itself of the Leniency Notice;
- The defendant's conduct complained of constitutes a clear infringement of the limits the Community legislature placed on its powers of inspection, such as to significantly jeopardise the possibility for the undertakings subject to the inspections to prepare their defence.

⁽¹⁾ OJ 2003 L 1, p. 1.