

Order of the Court of First Instance of 25 November 2009 — Andersen v Commission

(Case T-87/09) ⁽¹⁾

(State aid — Measures in favour of Danske Statsbaner — Public service obligations — Decision to initiate the procedure provided for in Article 88(2) EC — Inadmissibility)

(2010/C 24/96)

Language of the case: English

Parties

Applicant: Jørgen Andersen (Ballerup, Denmark) (represented by: M. Nissen, J. Rivas de Andrés and J. Gutiérrez Gisbert, lawyers)

Defendant: Commission of the European Communities (represented by: B. Martenczuk and C. Urraca Caviedes, acting as Agents)

Re:

Action for annulment of Commission Decision C(2008) 4776 final of 10 September 2008 to initiate the procedure provided for in Article 88(2) EC in respect of State aid C 41/2008 (ex NN 35/2008), implemented by the Kingdom of Denmark in favour of Danske Statsbaner.

Operative part of the order

1. *The application is dismissed as inadmissible.*
2. *Mr Jørgen Andersen is ordered to pay the costs.*

⁽¹⁾ OJ C 113, 16.5.2009.

Action brought on 4 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-445/09)

(2010/C 24/97)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 17 August 2009 in so far as it relates to the set-off between the applicant's claim on the Community under the *Role of Skin* contract, and the Community's alleged claim on the applicant under the EURO-THYMAIDE contract;

— order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) seeks the annulment of the set-off measure contained in Decision BUDG/C3 D(2009) 10.5 — 1232 of 17 August 2009, by which the Commission recovered sums paid to the applicant pursuant to the EURO-THYMAIDE contract No LSHB-CT-2003-503410 relating to a project under the Sixth Framework Programme for Research and Technological Development.

The applicant puts forward five pleas in law in support of its application, alleging:

- infringement of the rights of the defence, in that the decision was taken without the Commission having considered the information in the applicant's detailed response to the final audit report;
- breach of the duty to state the reasons for the decision, as provided for under Article 253 EC, given the absence of essential information enabling the Commission's reasoning in the decision to be understood;
- errors of law and manifest errors of assessment of the facts inasmuch as the Commission refused eligible costs by adjusting the eligibility criteria for expenditure incurred pursuant to the contract, and erroneously dismissed conclusive evidence of such expenditure;
- infringement of Article 73(1) of the Financial Regulation, in that the claim at issue could not be regarded as 'certain, of a fixed amount and due', owing to the serious nature of the challenge mounted against it;
- infringement of the principle of legal certainty on account of the fact that the decision was taken on the basis of expenditure eligibility criteria which did not exist when the contract was signed.