

In support of its action the applicant submits, in essence, that the Commission was not entitled to deny the applicant access to the documents applied for on the basis of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001⁽¹⁾ concerning protection of the decision-making process and protection of the privacy and integrity of the individual. The applicant further submits in this connection that there is an overriding public interest in release of the documents which have not yet been made available.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 19 July 2010 — Wam v Commission

(Case T-303/10)

(2010/C 246/65)

Language of the case: Italian

Parties

Applicant: Wam SpA (Modena, Italy) (represented by: G. Roberti, lawyer, I. Perego, lawyer)

Defendant: European Commission

Form of order sought

— annul, in whole or in part, the contested decision insofar as:

- it declares that WAM has benefited from unlawful State aid, for the purpose of Article 107(1) TFEU, under the 1995 financing contract and the 2000 financing contract, both of which were entered into pursuant to Article 2 of Italian Law 394/1981;
- it declares that the aid under the 1995 and 2000 financing contracts is incompatible with the common market;
- it orders the incompatible aid to be recovered as assessed, providing also that interest calculated from the date on which the aid was granted to WAM is payable on the amounts to be recovered;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The contested decision is the same as that in Case T-257/10 *Italy v Commission*.⁽¹⁾

WAM raises seven pleas in law, submitting that the European Commission:

- misapplied Article 107(1) TFEU to the facts and, in any event, incorrectly assessed the facts and failed to state sufficient reasons, in so far as it found that the interest-rate subsidies received by WAM for trade-penetration programmes in non-member States were liable to affect intra-Community trade and to distort competition, failing to have regard to the findings already set out in that regard by the Court of Justice in Case C-94/06 P,⁽²⁾ and by the General Court in Case T-316/04,⁽³⁾ in breach of Article 266 TFEU;
- incorrectly found, without reasoning, that Article 107(1) TFEU was applicable to the financing in question, without taking into consideration the principles and rules applied by itself to similar support measures for trade-penetration programmes in non-member States. The Commission did not find that that financing had been granted in the context of the scheme provided for under Law 394/1981, and also infringed Article 108(1) TFEU and Article 1(b) of Regulation 659/99;
- incorrectly found, while failing to provide adequate reasons, that the aid from which WAM benefited was in part incompatible with the common market, thereby infringing Article 107(3)(c) TFEU, the *de minimis* regulation and the relevant block exemption regulations;
- incorrectly calculated the grant equivalent of the aid in the form of subsidised interest received by WAM;
- failed to initiate the procedure under Article 108(2) TFEU, in order to re-adopt the decision already annulled by the Court of Justice and the General Court, thereby breaching WAM's rights of defence.
- breached the principles of sound administration and diligence owing, in particular, to the excessive duration of the administrative procedure.

⁽¹⁾ Not yet published in the Official Journal of the European Union.

⁽²⁾ Case C-494/06 P *Commission v Italy and Wam* [2009] ECR I-3639.

⁽³⁾ Case T-316/04 R *Italy and Wam v Commission* [2009] ECR II-3197.