In the grounds for its application, the applicant claims that the Commission adopted the contested Decision in breach of the provisions of European Union law applicable in this area and Article 56(4) of Regulation (EC) No 1083/2006 [1] and Article 3 of Regulation (EC) No 1084/2006, [2] in particular.

The applicant considers that Article 3(e) of Regulation No 1084/2006 clearly establishes that recoverable value added tax is not eligible for support in the form of a contribution from the Cohesion Fund. In the opinion of the applicant it follows unequivocally from that provision, on the other hand, that non-recoverable value added tax is eligible for support. Accordingly, having regard to the fact that, under European Union or national law on value added tax the beneficiary of the major project which is the subject of the contested Decision (Nemzeti Infrastruktúra Fejlesztő Zrt.) is not a taxable person, so that it cannot claim back the input value added tax charged to it, the applicant argues that, in the contested Decision, it is not open to the Commission to exclude expenditure arising from that tax.

Furthermore, the applicant complains that, given that the Commission did not consider to be eligible expenditure which Regulation No 1084/2006 did not include under expenditure which was not eligible and which the equivalent national legislation expressly described as eligible expenditure, by the contested Decision, the Commission was depriving the Member States of the powers devolved on them by Article 56(4) of Regulation No 1083/2006.

The applicant also alleges that the Commission's assertion that the value added tax charged to the beneficiary will be 'recoverable' through the value added tax paid on the fee collected by the management of the infrastructure built by the beneficiary is a very wide interpretation of the concept of 'recoverable value added tax' used in Article 3(e) of Regulation No 1084/2006, which the wording of that provision does not support, and is, moreover, contrary to the legislation of the European Union on value added tax. According to the applicant, the beneficiary which carries out the construction work and the bodies managing the built infrastructure are independent of one another and have only an indirect relationship, as a result of the relevant legal provisions and, therefore, not through commercial transactions. In those circumstances, the applicant claims that the beneficiary is in fact obliged to bear the final burden of the VAT charged.

Finally, the applicant states that neither Regulation No 1083/2006 nor Regulation No 1084/2006 allows an interpretation to the effect that the Commission, when assessing eligible expenditure, including eligible value added tax, could base its decision on the fact that the Member State could have opted for a different legal solution as regards the organisation of the project and the management of the infrastructure. In that regard, the applicant takes the view that running the administration of national infrastructures and related public services is, essentially, the task of the Member States. Similarly, the applicant considers that, provided that they comply with the requirements laid down by European Union law, the Commission has to accept the option chosen by the Member State, together with the consequences for the assessment of eligible expenditure entailed by the beneficiary's status as a taxable person or non-taxable person.

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[1] Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

[2] Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94 (OJ 2006 210, p. 79).

Action brought on 15 September 2010 — Socitrel v Commission

(Case T-413/10)

(2010/C 317/62)

Language of the case: Portuguese

Parties

Applicant: Sociedade Industrial de Trefilaria, SA (São Romão de Coronado, Portugal) (represented by: F. Proença de Carvalho and T. de Faria, lawyers)

Defendant: European Commission.

Form of order sought

— partially annul Article 1 and Article 2 of the Commission decision of 30 June 2010 relating to a proceeding under the terms of Article 101 of the TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing Steel) with regard to the Applicant;

— reduce the fine;

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision contested by the applicant is the same decision contested in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

The applicant submits to the Court:

(i) Serious failure to state reasons in the contested decision, in breach of Article 296 of the TFEU, and breach of the principle of legitimate expectation in the application of the fine, infringing the rights of defence of the applicant when calculating the fine imposed on it.

(ii) Breach of the rights of defence of SOCITREL by virtue of the excessive duration of the administrative procedure of the European Commission, undermining the right to a hearing within a reasonable time, pursuant to Article 6(1) of the European Convention on Human Rights.

Alternatively,

(iii) Breach of Article 101 of the TFEU and manifest error of assessment in finding that SOCITREL was not operating autonomously in the market.

(iv) The applicant also submits that the European Commission committed a manifest error by considering in the turnover, for the purposes of determining the 10 % limit of turnover applied to the calculation of fines, the combined turnover of the companies Emesa, Galycas and ITC, which did not form part of the PREVIDENTE Group at the time when the infringement was committed.

(v) Breach of the principle of proportionality, non-discrimination and legitimate expectation when fixing the fine.

Action brought on 15 September 2010 — Companhia Previdente v Commission

(Case T-414/10)

(2010/C 317/63)

Language of the case: Portuguese

Parties

Applicant: Companhia Previdente — Sociedade De Controle de Participações Financeiras, SA (Lisbon, Portugal) (represented by: D. Proença de Carvalho and J. Caimoto Duarte, lawyers)

Defendant: European Commission

Form of order sought

— Annul in part Article 1 and Article 2 of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel) in so far as they relate to the applicant;

— Declare that any reduction in the fine imposed on Socitrel, in the context of other actions concerning infringements for which Companhia Previdente may be jointly and severally liable, automatically gives rise to an equivalent reduction in the fine for which Companhia Previdente is jointly and severally liable.

Pleas in law and main arguments

The decision contested by the applicant is the same as that contested in Case T-385/10 *ArcelorMittal Wire France and Others* v *Commission*.

The applicant alleges:

(i) Infringement of Article 101 TFEU and of the principle of individual responsibility for infringements, in relation to Article 6 of the European Convention on Human Rights, and of Article 23(2) 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] A manifest error of assessment was made in the Decision, in determining that COMPANHIA PREVIDENTE was jointly and severally liable for the infringements committed by SOCITREL, and exceeding the maximum amount of fine under Article 23(2) of Regulation 1/2003.

(ii) Infringement of Article 296 TFEU, since the applicant's arguments were not refuted and the presumption that COMPANHIA PREVIDENTE exercised decisive influence over SOCITREL, for the purposes of attributing joint and several liability and calculating the fine during the period between 1998 and 2002, was not rebutted in a reasoned manner, and the grounds on which it was concluded that there was a decisive influence during the previous period, between 1994 and 1998, in which the presumption did not appear to apply, were not properly set out.

Alternatively,

(iii) Infringement of Article 101(1) TFEU, Article 53 of the EEA Agreement, Article 23(2) of Regulation (EC) No 1/2003 and of the principle of proportionality, since the maximum amount of fine that could have been imposed on COMPANHIA PREVIDENTE was exceeded.

(iv) Infringement of the principles of proportionality and of non-discrimination, since no account was taken of the economic context of the current crisis and the inability of COMPANHIA PREVIDENTE to pay.

[1] OJ 2003 L 1, p. 1.

Action brought on 15 September 2010 — Emme v Commission

(Case T-422/10)

(2010/C 317/64)

Language of the case: Italian

Parties

Applicant: Emme Holding SpA (Pescara, Italy) (represented by: G. Visconti, E. Vassallo di Castiglione, M. Siragusa, M. Beretta and P. Ferrari, lawyers)