

Action brought on 27 October 2015 — Ertico — Its Europe/Commission**(Case T-604/15)**

(2015/C 414/49)

*Language of the case: English***Parties**

Applicant: European Road Transport Telematics Implementation Coordination Organisation — Intelligent Transport Systems & Services Europe (Ertico — Its Europe) (Brussels, Belgium) (represented by: M. Wellinger and K. T'Syen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision of the validation panel of the European Commission, of 18 August 2015, finding that the applicant does not qualify as a micro, small and medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36); and
- order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law.

1. First plea in law, alleging that the contested decision violates Article 22(1), indent 3 of Regulation No 58/2003 ⁽¹⁾ because the validation panel adopted the contested decision more than 2 months after the date on which proceedings were instituted with the validation panel.
2. Second plea in law, alleging the contested decision breaches (i) Article 22(1) of Regulation No 58/2003; (ii) the applicant's rights of defence; and (iii) the principle of sound administration because the validation panel failed to hear the arguments of the applicant before taking the contested decision.
3. Third plea in law, alleging that the contested decision breaches the principles of (i) legal certainty, (ii) sound administration, (iii) the protection of the applicant's legitimate expectations; and (iv) 'res judicata' because the validation panel, while admitting that the arguments raised by the applicant on 7 February 2014 are correct, nevertheless substituted an entirely new statement of reasons for its initial statement of reasons, without there being any new and material facts.
4. Fourth plea in law, alleging that the contested decision violates the Commission Recommendation 2003/361/EC (the 'SME Recommendation') in that its conclusion that the applicant does not qualify as an enterprise is based on criteria which are not foreseen in the SME Recommendation but, instead, in section 1.1.3.1(6)(c) of Commission decision 2012/838/EU ⁽²⁾.
5. Fifth plea in law, alleging that the contested decision conclusion that the applicant would not qualify as an SME sets aside and ignores the clear and unequivocal wording of the SME Recommendation and is based on an arbitrary and purely subjective interpretation of the SME Recommendation.

6. Sixth plea in law, alleging that the contested decision erroneously concludes that the applicant would not qualify as an SME within the meaning of the SME Recommendation: the applicant is an 'enterprise' and the applicant is 'autonomous' within the meaning of the Annex to the SME Recommendation.
7. Seventh plea in law, alleging that the contested decision breaches the most favourable treatment principle under Commission Decision 2012/838/EU, as well as the equivalent provision under the Horizon 2020 programme.
8. Eighth plea in law, alleging that the contested decision is vitiated by a contradictory and inadequate statement of reasons, the validation panel having failed to comply with its duty to duly motivate its decision.

⁽¹⁾ Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2003 L 11, p. 1)

⁽²⁾ Commission Decision of 18 December 2012 on the adoption of the Rules to ensure consistent verification of the existence and legal status of participants, as well as their operational and financial capacities, in indirect actions supported through the form of a grant under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities and under the Seventh Framework Programme of the European Atomic Energy Community for nuclear research and training activities (OJ 2012 L 359, p. 45).