

the recitals to the contested decision is inadequate. The publication of the standards in the *Official Journal* is likewise defective as no reference is made to the fact that the standards, for the most part, and their annexes (with the exception of Annex ZA) are not binding and that thermal installation products only need to comply with Annex ZA in order to bear the EC mark. As regards the substance, the applicants are of the opinion that the standards in question are incomplete, unclear, imprecise and contradictory and that the system of standards is incoherent. Moreover, the use of the EC mark is misleading since it does not prove that the product complies with all European standards but rather only with Annex ZA to those standards. The contested decision thus fails to meet the requirements of Directive 89/106, the principle of proportionality (third paragraph of Article 5 EC) and the requirements of consumer protection (Article 95(3) EC).

(¹) OJ C 358 of 15 December 2001, p. 9.

(²) Council Directive 89/106/EEC of 21 December 1989 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ L 40 of 11 February 1989, p. 12) as amended by Directive 93/68/EEC (OJ L 220 of 30 August 1993, p. 1).

Action brought on 23 July 2003 by Helm Düngemittel GmbH against the Commission of the European Communities

(Case T-265/03)

(2003/C 239/43)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 July 2003 by Helm Düngemittel GmbH, Hamburg (Germany), represented by Dr W.P. Waschmann, lawyer.

The applicant claims that the Court should:

- annul the Decision of the Commission of the European Communities of 23 May 2003 concerning retention of a sum of EUR 346 221,20;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In the context of an invitation to tender for the supply of artificial fertiliser to North Korea, the applicant was awarded the contract by the Commission. Since the artificial fertiliser supplied by the applicant was late in reaching its destination, the Commission withheld from the applicant a sum of EUR 346 221,20 and refused, finally by letter of 23 May 2003, to pay the sum concerned to the applicant.

The applicant submits that the delay in delivering the fertiliser can be attributed to restrictions on the export of fertiliser from China, where it intended to procure the fertiliser for export. As those restrictions were wholly unforeseeable, they may be regarded as a case of *force majeure* and, consequently, in accordance with Article 22(4) of Regulation No 2519/97 (¹), no sum may be retained. The applicant also submits that no loss was suffered as a result of the late delivery and that retention of the amount is therefore disproportionate to the failure to observe the delivery period and is in breach of the Community-law principle of proportionality. The retention also infringes provisions of the Belgian Civil Code, since the Commission did not previously expressly call on the applicant to fulfil that contractual obligation.

(¹) Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid (OJ L 346 of 17.12.1997, p. 23).

Action brought on 24 July 2003 by Anna Maria Roccato (Mrs Pinson) against the Commission of the European Communities

(Case T-267/03)

(2003/C 239/44)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 July 2003 by Anna Maria Roccato, residing in Brussels, represented by Georges Vandersanden and Laure Levi, lawyers.