

- Adopt any other measure which the Court of First Instance may consider appropriate to ensure that the Commission fulfils its obligations under Article 223 EC and, in particular, re-examines the complaint lodged on 27 October 1997;
- Order the Commission to pay the costs.

*Pleas and principal arguments adduced in support*

The contested decision rejected the complaint lodged on 27 October 1997 under Article 3 of Regulation No 17/62 by the company then named Alenia Difesa, the business arm of FINMECCANICA SpA, in connection with the supposed absence of the preconditions for the applicability to Eurocontrol of the Community competition provisions and the absence of sufficient evidence to prove the alleged abuses to which the complaint related. In particular, the applicant had complained of abuses of a dominant position engaged in by Eurocontrol and the distorting effects on competition of the management methods used in respect of the contracts, for the development of prototypes and of intellectual property rights, with reference to the contracts for the supply of air-traffic management equipment, and in the provision of assistance to national administrations.

In the first place, the decision is challenged on the ground of infringement of Article 82 of the EC Treaty, particularly to the extent to which, although recognising in principle the applicability of Article 82 to Eurocontrol, with respect to the present case it held it not to be relevant, in so far as it denies the economic nature of the activities of standardisation and assistance to national administrations carried out by that body.

In addition to the infringement mentioned above, the decision is allegedly vitiated by the fact that the Commission:

- (a) failed to examine from the substantive point of view the abusive nature of the conduct complained of in relation to the activity of standardisation, regulation and validation, or the activity of providing assistance to national administrations;
- (b) decided, when considering from the substantive point of view, albeit briefly, the conduct of Eurocontrol relating to the purchasing of prototypes and the management of related intellectual property rights, that there was no abuse within the meaning of Article 82 of the EC Treaty.

Finally, the contested decision is, it is alleged, vitiated by the total lack of any adequate statement of reasons such as to prove the non-economic nature of certain activities of Eurocontrol and the lack of any abuse on the part of Eurocontrol within the meaning of Article 82 of the EC Treaty.

**Action brought on 27 April 2004 by Electricité de France (EDF) against Commission of the European Communities**

**(Case T-156/04)**

(2004/C 179/24)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 April 2004 by Electricité de France (EDF), established in Paris, represented by Michel Debroux, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Articles 3 and 4 of Commission Decision C(2003)4637 Final of 16 December 2003 on State aid granted by France to the applicant and to the gas and electricity industry sectors in the form of accounting and fiscal measures adopted in 1997 when EDF's balance sheet was restructured;
- alternatively, annul Articles 3 and 4 of the contested decision inasmuch as the repayment required of EDF was very considerably overestimated;
- order the Commission to pay the costs.

*Pleas in law and main arguments:*

By the contested decision, the Commission took the view that the non-payment by the applicant of corporation tax when tax-free provisions created by it for the renewal of its general supply network were reclassified as the provision of capital constituted State aid incompatible with the common market.

In support of its application, the applicant relies first on a plea in law based on the alleged infringement of essential procedural requirements. It argues that in altering its assessment between the decision to initiate the procedure and the adoption of the contested decision without allowing the applicant to submit its observations, the Commission failed to have regard to the rights of the defence.

The applicant next alleges that the measures at issue must be analysed as a lawful recapitalisation on the applicant's part. In failing to respond to that argument, the Commission failed in its duty to state reasons and committed an error of law in its assessment of the concept of State aid. The applicant also alleges under the same plea that the measures at issue did not affect trade between Member States and accordingly could not be considered to be State aid.

Lastly, in support of the form of order sought in the alternative, the applicant alleges that the contested decision required repayment of a greater sum than that which could possibly be considered to be due.