

Action brought on 9 June 2004 by the United Kingdom of Great Britain and Northern Ireland against the Commission of the European Communities

(Case T-215/04)

(2004/C 217/51)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 June 2004 by the United Kingdom of Great Britain and Northern Ireland, represented by M. Bethell, agent, assisted by D. Anderson QC and H. Davies, Barrister, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the contested decision in its entirety;
- order the Commission to pay the applicants costs.

Pleas in law and main arguments:

The applicant contests the Commission decision of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement with regard to the Government of Gibraltar Corporation Tax Reform⁽¹⁾. In the decision, the Commission finds that the proposed tax reform constitutes state aid incompatible with the common market.

In support of its application, the applicant submits that the Commission's conclusions as to regional selectivity are vitiated by material errors of fact and are wrong in law.

According to the applicant, Gibraltar, which is a colony whose self-government the United Kingdom is obliged to develop under the UN Charter, does not form part of the United Kingdom as a matter of domestic, international and Community law. Furthermore, the applicant states that Gibraltar is distinct from the United Kingdom and that it receives no subsidy or financing from the United Kingdom. The applicant also claims that the tax systems of the United Kingdom and of Gibraltar are entirely separate and unconnected and that the reform proposals do not constitute a tax reduction to the tax system applicable in the United Kingdom. The Commission's approach also infringes, according to the applicant, the principle of equal treatment in that measures adopted by a symmetrically devolved region are not to be treated as state aid whereas the same measures adopted by an asymmetrically devolved region are.

The applicant contends that the Commission's conclusions with respect to material selectivity are wrong in law and are insufficiently reasoned.

The applicant finally submits that the Commission has infringed the applicant's right to be heard in that it did not raise certain matters upon which it has sought to base its decision during the course of the procedure under Article 88(2) EC.

⁽¹⁾ State aid C 66/2002 — Gibraltar government corporation tax reform.

Action brought on 9 June 2004 by European Environmental Bureau and Stichting Natuur en Milieu against the Commission of the European Communities

(Case T-236/04)

(2004/C 217/52)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 June 2004 by European Environmental Bureau, Brussels, Belgium and Stichting Natuur en Milieu, Utrecht, The Netherlands, represented by Mr P. van den Biesen and Mr B. Arentz, lawyers.

The applicant claims that the Court should:

- Partially annul Commission Decision 2004/248/EC⁽¹⁾ insofar as it concerns article 2 para 3 and article 3 sub b;
- Order the Commission to pay the costs of these proceedings;

Pleas in law and main arguments:

By the contested decision the Commission decided not to amend Annex I to Directive 91/414⁽²⁾ so as to include 'Atrazine' among the active substances listed there. Article 4 of Directive 91/414 states that only plant protection products containing substances listed in Annex I may be authorised by Member States. By refusing to include Atrazine in Annex I the Commission decided not to allow further use of plant protection products containing this substance.

The applicants do not challenge this aspect of the decision but rather certain transitional provisions which allow until 30 June 2007 and subject to conditions aimed at minimising risk certain limited uses of products containing Atrazine. In the preamble to its decision the Commission justified these transitional measures through the current absence of efficient alternatives and the need to allow time for their development.

In support of their application the applicants submit that the contested provisions violate Directive 91/414. Article 8 of this directive provides that Member States may continue to authorise, for a 12-year period, substances which had already been on the market two years after the notification of the directive. Atrazine is such a substance. However, if in the meantime such substances have not been included in Annex I, then according to the applicants there is no legal basis in Directive 91/414 for allowing continued use after the expiry of the 12-year transitional period. The applicants thus submit that by the contested provisions the Commission created a new basis for a continued authorisation of Atrazine, even though it had no power to do so under Directive 91/414.

The applicants also claim that the Commission violated Directive 92/43⁽¹⁾, by not including in the contested decision further restrictions related to the Special Areas of conservation, more specifically the Natura 2000 network of article 3 of Directive 92/43.

⁽¹⁾ OJ L 78 16.3.2004, p. 53.

⁽²⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, Official Journal L 230, 19.8.1991, p. 1-32.

⁽³⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal L 206, 22.7.1992, p. 7-50.

Action brought on 11 June 2004 by the Italian Republic against the Commission of the European Communities

(Case T-239/04)

(2004/C 217/53)

(Language of the case: Italian)

An action against the European Commission was brought before the Court of First Instance of the European Communities on 11 June 2004 by the Italian Republic, represented by State Advocate Danilo del Gaizo.

The applicant claims that the Court should:

- Declare the contested decision null and void;
- Order the Commission to pay the costs.

Pleas in law and main arguments

This action is directed against Commission Decision C(2004)930 fin of 30 March 2004 relating to Proceeding No C62/2003 (ex NN 7/2003) declaring incompatible with the common market State aid in respect of urgent measures concerning employment to which Italy gave effect in the Decree-Law of 14 February 2003 converted into Law No 81 of 17 April 2003. In particular the Commission found that the aid measure at issue confers a financial benefit on persons

acquiring undertakings in financial difficulties, which are subject to extraordinary administration, have at least 1 000 employees and prior to 30 April 2003 entered into a collective agreement with the Ministry of Labour for approval of the transfer of workers, as well as for undertakings in financial difficulty subject to extraordinary administration having at least 1 000 employees and subject to transfer.

In support of its claims the applicant State maintains that:

- the aid at issue does not constitute a measure of a general nature intended to promote employment and, as such, does not distort or threaten to distort competition; accordingly, it does not constitute State aid within the meaning of Article 87(1)EC.
- the Commission's assessment of the compatibility of the aid is negated by the period of validity of a measure justified by the need to confront a temporary situation or grave crisis in employment and limited to the period of time strictly necessary for tackling it, in accordance with the principle of proportionality.
- there has been an infringement of the guidelines concerning State aid for recovery and restructuring, inasmuch as, in regard to the sale of Ocean SpA to Brandt Italia, point 100 of those guidelines expressly refers to non-notified aid, stating that the Commission must examine the compatibility with the common market of any aid in favour of recovery and restructuring granted without the Commission's authorisation.
- the Commission has infringed its Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment⁽¹⁾, inasmuch as it did not consider the aid measure at issue to be compatible with it.

⁽¹⁾ OJ 2002 L 331, p. 3.

Action brought on 9 June 2004 by European Environmental Bureau and Stichting Natuur en Milieu against the Commission of the European Communities

(Case T-241/04)

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