

Action brought on 13 August 2004 by Stardust Marine S.A. against the Commission of the European Communities

(Case T-344/04)

(2004/C 262/101)

(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 13 August 2004 by Stardust Marine S.A., established in Paris, represented by Bernard Vatier, lawyer.

The applicant claims that the Court should:

- Declare that European Commission Decision 2000/513/EC of 8 September 1999, which orders the French State to recover the alleged State aid of FRF 600 million from STARDUST, is vitiated by illegality, and that that illegality is of such a kind as to engage the Commission's liability under Article 288 of the EC Treaty;
- Consequently, order the European Commission to pay to Stardust the sum of EUR 112 635 569.73 in damages, with statutory interest from the date of the present application;
- Order that the forthcoming decision shall be provisionally enforceable;
- Order the Commission to pay all the costs in the present action.

Pleas in law and main arguments

In support of its application, the applicant claims that the unlawful nature of Decision 2000/513/EC cannot be disputed, since that decision has already been annulled by judgment of the Court of Justice EC of 16 May 2002 in Case C-482/99. That unlawfulness is, the applicant submits, sufficient to engage the Commission's non-contractual liability under Article 288 EC. The applicant also claims that, even supposing that the decision at issue were a legislative act containing economic policy measures, the Commission would have infringed a superior rule of law protecting individuals by adopting a decision adversely affecting the applicant without legal or factual basis. Therefore, the applicant argues that the Commission is required to pay damages to it.

As concerns the harm allegedly sustained, the applicant states that STARDUST was the subject of a court-supervised recovery

scheme by judgment of the Tribunal de Commerce de Paris. The cessation of payments which led to that judgment is the direct consequence of the debt arising from the Commission's decision. The harm sustained is the amount of the deficit in STARDUST's assets.

Action brought on 20 August 2004 by Italian Republic against the Commission of the European Communities

(Case T-345/04)

(2004/C 262/102)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 August 2004 by the Italian Republic

The applicant claims that the Court should annul the following decisions:

- the memorandum of 17 June 2004 No D (2004) 4074 concerning DOCUP Ob 2 — Lombardy Region 2000-2006 (No. CCI 2000 IT 16 2 DO 014) — Certification of the intermediate statement of expenses and claim for payment, received on 17 June 2004, by which the European Commission — Directorate General Regional Policy — Regional intervention in France, Greece, Italy, transmitted the following decision: 'the Commission therefore requests the submission of the intermediate statement of expenses and the claim for payment in question together with the following information in respect of every measure providing for an aid scheme:

- total amount of advances paid
- amount of the advances paid which are eligible for structural fund contribution as previously stated.

In the absence of such information, the Commission will not be able to make the payment requested in respect of the measures relating to the aid scheme of the DocUP Lombardy 2000-2006 Objective 2' together with all other connected and prior acts;

— the memorandum of 14 July 2004, n. JE/OA D (2004) 5446, concerning DOCUP OB 2 — Friuli-Venezia Giulia Region 2000-2006 (No. CCI 2000 IT 16 2 DO 013) — Certification of the intermediate statement of expenses and claim for payment, received on 15 July 2004, by which the European Commission — Directorate General Regional Policy — Regional intervention in France, Greece, Italy, transmitted the following decision: 'the Commission therefore requests the submission of the intermediate statement of expenses and the claim for payment in question together with the following information in respect of every measure providing for an aid scheme:

— total amount of advances paid

— amount of the advances paid which are eligible for structural fund contribution as previously stated.

In the absence of such information, the Commission will not be able to make the payment requested in respect of the measures relating to the aid scheme of the DocUP Friuli-Venezia Giulia 2000-2006 Objective 2' together with all other connected and prior acts;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments:

This action has been brought against the memoranda of the European Commission of 17 June 2004 No D (2004) 4074 (DOCUP Regione Lombardia) and of 14 July 2004 No JE/OA D (2004) 5446 (DOCUP Friuli Venezia Giulia), both of which seek to subject the procedure for the payment of advances in the context of aid schemes to conditions which are not required by the legislation in force with the purpose of limiting improperly the expenditure which is eligible for the use of the structural funds concerned.

In support of its claims, the Italian Republic alleges:

— breach of essential procedural requirements inasmuch as the legal basis is incorrect, there is no statement of reasons and the decision-making procedure has not been complied with. The applicant points out in that regard that the contested acts make no mention of the provision of law enabling them to be adopted.

Further to the breach of the obligation to provide reasons, the applicant also claims that the contested memoranda were not adopted in accordance with the correct procedure provided by the Commission's rules of procedure.

— infringement of Article 32 of the basic regulation (Council Regulation No 1260/99) and of Commission Regulation No 448/04 which make subject payment of advances only to evidence that the State which is the final beneficiary has paid the relevant monies to the final recipients of the investment.

— infringement of the rules governing eligibility of the expenditure laid down in the basic regulation. According to the

applicant, the relevant regulation in the present case precludes the approach adopted by the Commission, according to which the rules on eligibility of expenditure must be understood to mean that they subject eligibility of expenditure to evidence that the financing has actually been used to carry out a project which fulfils the purpose for which the aid was granted.

— infringement of the rules governing financial control (Article 38 of the basic regulation and implementing provisions) which do not provide for the requirements alleged by the Commission.

— breach of the principle of proportionality, in view of the fact that the Commission requires evidence beyond that which is required and necessary.

— infringement of Regulation No 448/04 by breach of the principles of equality and legal certainty and contradiction in the contested memorandum.

— infringement of Article 9 of Commission Regulation (EC) No 438/2001 for failure to observe the accounting rules provided for therein.

— breach of the principle of simplified procedures.

Action brought on 17 August 2004 by Sadas S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-346/04)

(2004/C 262/103)

(Language in which the application was submitted: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 17 August 2004 by Sadas S.A., established in Tourcoing (France), represented by A. Bertrand, lawyer.

L.T.J. Diffusion was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— alter in its entirety the operative part of the decision of the First Board of Appeal in Case R 393/2003-1;

— annul the decision contested in that case by which the examiner found that there is a likelihood of confusion in the minds of the public between the mark 'ARTHUR' and the mark in respect of which registration is sought 'ARTHUR ET FELICIE';

— order L.T.J. Diffusion to pay the costs.