

Pleas in law and main arguments:

The contested decision in this case is Commission Decision 2004/592/EC of 23 July 2004 [C(2004) 2837 final] amending Decision 1999/659/EC fixing an indicative allocation by Member State of the allocations under the European Agricultural Guidance and Guarantee Fund-Guarantee section for rural development measures for the period 2000 to 2006. ⁽¹⁾

According to the applicant, the amendment contained in the contested decision not only adapts the allocation of Community funds to the Italian Republic for 2004 in respect of the expenditure forecasts submitted by the latter, but redetermines the total allocation of funds for the Italian Republic, reducing by about EUR 40 million – by setting a total allocation of EUR 4 473.2 million – the amount available under the ‘Berlin envelope’ (EUR 4 512.3 million).

In support of its claims, the applicant pleads infringement of the principle of non-retroactivity. It argues that Regulation No 817/2004 ⁽²⁾ was adopted on 20 April 2004 and entered into force on 7 May 2004, long after expiry of the time-limit of 30 September laid down in Article 47(1) of Regulation No 445/2002 for the Member States to forward to the Commission the statement of expenditure incurred in 2003 and expenditure remaining to be disbursed by the end of that year, and the forecasts for 2004 and subsequent years. The Commission should therefore have determined the budget appropriations for 2004 on the basis of the provisions of Article 49 of Regulation No 445/2002, which was still in force on 30 September 2003, and not on the basis of Article 57 of Regulation No 817/2004. Accordingly, in 2004 the Commission was not entitled to adopt the contested decision, which relies on the new implementing rules of Regulation No 1257/1999 ⁽³⁾ as its legal basis, or make the relevant adjustment of the initial allocations by Member State defined in Decision 659/1999, as amended by Decision 426/2000, provided for by Article 57, cited above.

In the alternative, even if it is held that Regulation 817/2004, and in particular Article 57 thereof in its entirety, was correctly applicable also to the forecasts provided by the Member States by 30 September, under Regulation No 445/2002, the applicant disputes that the Commission is authorised to revise the allocations laid down by Decision 1999/659, as amended by Decision 2000/426, by reducing the total allocation under the ‘Berlin envelope’ and, in any event, contends that that reduction could not include the Italian Republic. In that connection, the applicant alleges infringement of Article 46 of Regulation No 1257/1999 and of Article 57 of Regulation No 817/2004. The

applicant maintains that the complete absence of any legal basis which would allow the reduction made in the contested decision shows that, in adopting that decision, the defendant completely disregarded the purpose of the Regulation underlying the measure, thereby also misusing its powers.

In the further alternative, the applicant pleads infringement of the principle of the protection of legitimate expectations and of the duty to give a statement of the reasons on which a measure is based.

⁽¹⁾ OJ L 263 of 10.8.2004, p. 24.

⁽²⁾ Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 153 of 30.4.2004, p. 30).

⁽³⁾ Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 160 of 26.6.1999, p. 80).

Action brought on 13 October 2004 by French Republic against Commission of the European Communities

(Case T-425/04)

(2005/C 19/64)

(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 October 2004 by the French Republic, represented by its Agents Ronny Abraham, Géraud de Bergues and Stéphanie Ramet, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul in its entirety Commission Decision No C(2004)360 of 2 August 2004 concerning State aid paid by France to France Télécom;
- order the Commission to pay the costs.

Pleas in law and main arguments:

In support of its action, the applicant relies, first, on an infringement of essential procedural requirements and the rights of the defence. According to the applicant, the Commission based its decision on factors, namely ministerial proposals of 12 July 2002, which are outside the scope of the procedure as defined by the decision to open the procedure. The applicant claims that the Commission should have extended the procedure by adopting a new decision to open it.

The applicant also relies on an error of law in relation to the concept of State aid within the meaning of Article 87(1) EC. According to the applicant, the Commission wrongly applied the principle of the private investor who is fully informed of the conditions of a market economy. According to the applicant, since the ministerial proposals did not amount to a commitment on the part of the State and could not be categorised as State aid, the principle of the fully-informed private investor was not applicable. The applicant also maintains that the Commission wrongly held there to be aid on the basis of two separate events which, taken separately, it would have to accept did not comprise the elements necessary for the categorisation of State aid to apply. Those events are the statements of July 2002 and the draft shareholder's advance of December 2002.

Thirdly, the applicant claims that the Commission committed a manifest error of assessment when it took the view that an analysis of the contents of the interview of 12 July 2002 allowed it to be concluded that the State was giving an undertaking as a shareholder, which would have had an influence on the markets in December.

Lastly, the applicant submits that the reasoning adopted contains contradictions and inadequacies which lead to the contested decision being vitiated on the ground of a lack of proper reasoning.

**Action brought on 13 October 2004 by French Republic
against Commission of the European Communities**

(Case T-427/04)

(2005/C 19/65)

(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 October 2004 by the French Republic, represented by its Agents Ronny Abraham, Géraud de Bergues and Stéphanie Ramet, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul in its entirety Commission Decision No C(2004)361 of 2 August 2004 concerning State aid paid by France to France Télécom;
- order the Commission to pay the costs.

Pleas in law and main arguments:

The contested decision in this case held that the business tax regime applying to France Télécom (FT) between January 1994 and December 2002 constituted State aid which was incompatible with the common market.

In support of its claims, the applicant argues, first, that the Commission committed a manifest error of assessment and an error of law. In that regard, it challenges the Commission's analysis of the tax regime applying to FT under Law No 90-568 of 2 July 1990 on the organisation of the French Postal Service and France Télécom. This had led the Commission to treat the levy paid by FT between 1991 and 1993 as being of a mixed character, whereas it was purely fiscal in nature and to take the view that FT had been subject to two separate tax regimes between 1991 and 2002, whereas there had been a single regime, divided into two periods. The defendant should accordingly have applied an offset in respect of the 1991-2002 period.

The applicant also claims infringement of Article 15 of Regulation No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, inasmuch as the Commission should have held that there had been a period of ten years between the day when the alleged aid had been granted, 2 July 1990, being the date on which Law No 90-568 completely and definitively established the tax regime in question, and the first request for information from the defendant on 28 June 2001.

The applicant also relies on the principle of legitimate expectations, in that the contested decision requires the recovery of aid from FT, and of its own rights of defence, in that the Commission made a finding as to the existence of aid without having given the French authorities the opportunity of commenting on an essential element of its arguments, namely the mixed character of the levy paid by FT between 1991 and 1993.
