

- holding that the aid granted to Ferriere Nord did not constitute a measure implementing a system already approved in 1992;
- interpreting point 82 of the 2001 guidelines cited above so as to give them unlawful retroactive application, instead of treating that point as void *ab initio*;
- finding that the investment for which Ferriere Nord was granted aid had no environmental purpose;
- failing to apply the burden of proof which requires that the Commission, not the undertaking, isolate from the total cost of the investment the cost corresponding to environmental protection.

(¹) OJ L 310 of 28.11.2001, p. 22.

(²) OJ C 72 of 10.03.1994, p. 3.

Appeal brought on 9 February 2005 (fax of 7 February 2005) by the Commission of the European Communities for the partial annulment of the judgment delivered on 23 November 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-166/98 between Cantina sociale di Dolianova and Others and the Commission of the European Communities

(Case C-51/05 P)

(2005/C 82/35)

(Language of the case: Italian)

An appeal against the judgment delivered on 23 November 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-166/98 between Cantina sociale di Dolianova and Others and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 9 February 2005 by the Commission of the European Communities represented by C. Cattabriga and L. Visaggio, acting as Agents.

The appellant claims that the Court should:

- 1 – annul the judgment of the Court of First Instance of the European Communities in Case T-166/98 *Cantina sociale di Dolianova and Others v Commission of the European Communities* in so far as it accedes to the claim for damages against the Commission and, consequently
- 2 – deliver final judgment in the matter by dismissing that action as inadmissible;

- 3 – order Cantina sociale di Dolianova and the other applicants at first instance to pay the costs at first instance and on appeal.

Pleas in law and main arguments

The Commission confines the present appeal to paragraphs 129 to 150 of the judgment of the Court of First Instance concerning the determination of the starting date of the five-year limitation period prescribed by Article 46 of the Statute of the Court of Justice. In the Commission's view, the assessment reached on the matter in the contested judgment – which found that time started to run for the purposes of that limitation period when the applicants realised that they would not receive payment of Community aid on the basis of the security lodged at the time by the DAI in favour of AIMA – is the result of a clear error of law.

In determining the starting date of the limitation period of the action brought by the applicant cooperatives, the Court of First Instance failed wholly to take account of the fact that, from 1983, Regulation (EEC) No 2499/82 (¹) had objectively caused damage to those cooperatives, concentrating instead on the latter's perception of that damage. The Court found that it did not suffice that the applicants knew that they had suffered damage as a result of the application of Regulation No 2499/82; it also found to be necessary a wholly subjective element, namely the applicants' awareness that they could not obtain a remedy without bringing an action for damages against the Commission.

Such a finding is contrary to settled Community case-law and to the principle of legal certainty.

(¹) OJ 1982 L 267 of 16.09.1982, p. 16 (no longer in force).

Action brought on 9 February 2005 by the Commission of the European Communities against the Portuguese Republic

(Case C-53/05)

(2005/C 82/36)

(Language of the case: Portuguese)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 9 February 2005 by the Commission of the European Communities, represented by P. Andrade and W. Wils, acting as Agents, with an address for service in Luxembourg.