— in the alternative, declare unlawful under Article 241 EC and inapplicable paragraph B(12) and paragraph C(2) of datasheet No 19 annexed to the Commission decision of 23 April 1997 (97/322/EC);

— order the Commission to pay the costs.

Pleas in law and main arguments

The present application concerns assistance from a venture-capital fund for an undertaking (Sys S.p.A.) to enable the latter to make an investment in an area which is eligible under objective 2. By its application, the applicant Investire Partecipazioni S.p.A. asks the Court of First Instance to annul the Commission decision of 11 August 2005, file No 08405, concerning the Commission's final position on financial corrections for the purposes of Article 24 of Regulation (EEC) No 4253/88 [1] in relation to Measure 1.5 of the Piedmont SPD, objective 2 (1997 — 1999) — venture-capital fund for an investment in the company Sys S.p.A. — and of the supplementary decision of 23 August 2005, file No 08720. It follows from those two decisions that the ineligible Community contribution was EUR 542 277.6, corresponding to the Community participation in the venture-capital fund contribution to the undertaking Sys S.p.A.

In support of its claims, the applicant puts forward the following pleas in law:

— In the first place, Investire Partecipazioni S.p.A. considers that, by adopting the contested decisions, the Commission committed a manifest error of assessment in fact and in law. The Commission erroneously assessed the facts concerning the investment in the company Sys S.p.A. and proceeded to misapply the relevant legislation, in particular the provisions of datasheet number 19 concerning eligible expenditure under the Structural Funds, 'Financial engineering: venture-capital funds', annexed to the Commission decision of 23 April 1997, and Article 24 of Regulation No 4253/88. The applicant emphasises in that connection that the company Sys S.p.A. had in fact taken appropriate action unequivocally directed towards setting up an operational network in the objective 2 zone [2].

— Second, the applicant considers that, in adopting the contested decision, the Commission infringed the principle of sound financial management laid down in Article 274 EC and in Article 24 of Regulation No 4253/88.

— In the alternative, that is to say in the event of the interpretation of the relevant legislation made by the Commission being held to be correct, Investire Partecipazioni S.p.A. considers that the decisions with which the present proceedings are concerned in any event constitute an infringement of the general principles of legal certainty, protection of legitimate expectations and proportionality, in relation to the conduct of, and the positions taken during the management failures of the Piedmont Fund, by both the Piedmont Region and the Commission, regarding interpretation of the legislation at issue.

[1] Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374 of 31.12.1988, p. 1).

[2] Commission Decision (97/322/EC) of 23 April 1997 modifying the decisions approving the Community support frameworks, the single programming documents and the Community initiative programmes in respect of Italy (OJ L 146 of 5.6.1997, p. 11).

Action brought on 21 November 2005 — Combescot v Commission

(Case T-422/05)

(2006/C 22/40)

Language of the case: Italian

Parties

Applicant(s): Philippe Combescot (Lecce, Italy) (represented by: A. Maritati and V. Messa, lawyers)

Defendant(s): European Commission

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul the Commission's decision of 29 July 2004 to reassign him to Brussels headquarters, such decision being in substitution for a previous, similar decision of 13 June 2003;

— acknowledge that the applicant has suffered non-material damage, to his health and to his image as a result of the decision, with serious repercussions on his psychological balance;

— award the applicant damages of EUR 150 000.

Pleas in law and main arguments

The action is brought against the Commission's decision of 29 July 2004 to reassign the applicant to headquarters.

In support of his claims, the applicant argues that the decision:

— is unlawful, unjustified and arbitrary for failing to take account of the fact that, at the time of the assignment, the medical committee had recognised that the applicant was unfit for service until 31 December 2004;

— does not allow the official to continue the therapy prescribed by his doctor;

— cannot be justified by the interests of the service, since an official on sick leave cannot fulfill the work requirements of the service.

The applicant adds that the contested decision has caused him to lose the rights of an official in a non-member country, since his illness arose at a time when he was performing the functions of resident adviser in Guatemala.

Action brought on 16 November 2005 — Italian Republic v Commission

(Case T-424/05)

(2006/C 22/41)

Language of the case: Italian

Parties

Applicant(s): Italian Republic (represented by: Paolo Gentili, Avv. dello Stato)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action, brought by the Italian Republic, is concerned with Commission decision No C(2005) 3302 of 6 September 2005.

By that decision, the Commission declared to be incompatible with the common market the provisions of Article 12 of Decree Law No 269/2003, converted into Law No 326/2003.

It provides, essentially, that the rate of tax replacing income tax levied on the net profits of the various types of investment funds and open-ended investment companies is to be reduced from 12.5 % to 5 % where the funds or companies invest during the calendar year at least two-thirds of the value of their assets, for more than one-sixth of the fund's business days, in small or medium-sized quoted capitalisation funds. Such funds or companies are referred to as being 'specialised'.

According to the Commission, the measure is selective, favouring, first, small or medium-sized capitalisation undertakings as compared with others, channelling certain funds towards them; second, they favour the specialised funds or companies, as compared with general funds or companies, by allowing them to assign greater income to individual units, since the income is subject to a lower replacement tax. Moreover, it is a measure which has no connection with the general tax system and in fact constitutes nothing more than operational aid. Finally, there is no reason for any derogation in favour of the measure under Article 87(3)(c) EC.

According to the Italian Government, the decision is vitiated, first, from the procedural point of view, because the decision to initiate the procedure under Article 88(2) EC was adopted without a prior exchange of views between the Commission and the Italian administration, as provided for in Regulation No 659/99 concerning procedures for State aid (first plea).

Next, no adequate reasons are given concerning the basic profile put forward by the Italian Government in the course of the procedure: in the Italian legislation (which transposes the directives on regulation of financial markets), unit trusts and open-ended investment companies are classified merely as independent funds divided into units. They do not therefore constitute undertakings within the meaning of Community law. The Commission took note of that situation, but observed that 'in certain cases' such investment instruments constitute undertakings; however, the Commission did not specify in what cases and under what conditions open-ended investment companies and funds acquire that status (second plea).

The third plea alleges infringement of Article 87 EC, on the basis that open-ended investment funds and companies cannot, by virtue of their nature, ever be regarded as undertakings within the meaning of Community law, in so far as they are merely forms of collective ownership of transferable securities. However, even if they are regarded as such, the alleged aid is not selective, because any interested party (companies managing 'contractual' unit trusts or promoting open-ended investment companies) could establish specialised instruments alongside general instruments, and thus take advantage of the relief available.