

COURT OF FIRST INSTANCE

Action brought on 27 November 2006 — 2K-Teint and Others v EIB and Commission

(Case T-336/06)

(2007/C 20/22)

Language of the case: French

Parties

Applicants: 2K-Teint SARL, Mohamed Kermoudi, Khalid Kermoudi, Laila Kermoudi, Mounia Kermoudi, Salma Kermoudi and Rabia Kermoudi (Casablanca, Morocco) (represented by: P. Thomas, lawyer)

Defendants: European Investment Bank (Luxembourg, Grand Duchy of Luxembourg) and Commission of the European Communities (Brussels, Belgium)

Form of order sought

- admit the application and declare the applicants' action well founded;
- order the EIB to release its entire file concerning the equity loan to the capital of 2K-Teint, including all documents exchanged in that regard with the BNDE, failing which to pay a late-payment fine of EUR 10 000 per day;
- rule that the EIB is liable to the applicants in quasi-delict by reason of the errors, failures, negligence and omissions of the EIB with regard to the applicants;
- rule that the applicants suffered a loss quantified [as set out in the application];
- order an expert to report on the extent and validity of the losses described;
- order the EIB and/or the European Community jointly and severally to pay the applicants amounts in respect of the causes of action set out above, converted to Euros [on the basis of the following indications] with statutory interest as from the first court summons issued to the applicants, that is to say the summons to appear before the Tribunal d'arrondissement, Luxembourg (District Court), dated 17 June 2003 and until payment in full;
- rule that the judgment to be delivered will be provisionally enforceable notwithstanding any remedies and without a guarantee;
- order the EIB and/or the European Community jointly and severally to pay, as an amount additional to the costs, the provisional sum of EUR 12 500 which the applicants have had to pay to ensure their defence and representation at the hearing and which it is inequitable that they should bear;
- order the EIB and/or the European Community to pay all the expenses and costs of the action;
- reserve to the applicants all rights and claims.

Pleas in law and main arguments

By a financing contract signed in Luxembourg on 28 April 1994, the EIB, acting in the name and on behalf of the European Community on the basis of a mandate granted by the European Commission, granted the Kingdom of Morocco, as assistance with risk capital, a conditional loan intended to finance productive projects in the industrial sector, in particular in association with European Union undertakings (natural and legal persons) (Global Loan Financial Sector II Project). According to the terms of the contract, the product of the EIB's loan to Morocco was to be on-loaned with a view to financing projects pursuant to agreements in the form of loans from banks in Morocco, subsequently acting as financial intermediaries. Those loans used for on-lending were intended to ensure the financing by the financial intermediaries of loans or investments in the capital of Moroccan operators, the final beneficiaries. The grant of each loan to the operators was to be the subject of a contract concluded between the bank and the operator concerned by the investment in question. The intermediary was obliged to submit every application with a view to financing investment or a loan to the EIB for approval together with the Moroccan State. The EIB was required to notify the Moroccan State of its agreement with a copy thereof sent simultaneously to the financial intermediary.

On 12 October 1994, an on-lending agreement was signed between the Kingdom of Morocco and the Banque Nationale pour le Développement Economique (BNDE) which then became one of the financial intermediaries within the meaning of the contract concluded between the EIB and the Kingdom of Morocco. On 29 November 1995, a loan agreement in the context of the IInd EIB Line was concluded between the BNDE and the applicants, subject to the EIB's agreement and receipt of the funds by the BNDE. The contract concerned the partial financing of investment in the company 2K-Teint. By letter of 14 October 1994, the EIB gave its agreement to the 2K-Teint project's receiving that financing.

By the present action in respect of non-contractual liability on the part of the Community, the applicants seek compensation for the loss which they claim to have suffered by reason of the allegedly wrongful conduct of the EIB in the exercise of its responsibilities as agent of the Community in the context of the management of the loan in question. Inter alia, they allege that the clearing of the loan was extremely slow and it was released only in July 1997, which led them to arrange a short-term loan with the BNDE. The applicants' failure to perform their financial obligations led the BNDE to initiate recovery proceedings before the national courts. By a judgment of a Moroccan national court, the company 2K-Teint was ordered to sell its business.

Firstly, the applicants allege a number of irregularities committed by the BNDE in the management of the Community funds, of which they informed the EIB, seeking its response. The applicants claim that the EIB did not react to the information sent to it. They argue that the EIB was required to act since the BNDE acted if not on instruction as its agent, at least as its apparent agent, the EIB retaining an important role in the decisions on the loans in question.

Furthermore, the applicants claim that the EIB should accept liability not only for the errors of the BNDE arising in connection with the legal relationship between them, but also the consequences of its own deficiencies and failures. They allege that the EIB did not efficiently monitor or check the use of the funds from the time of their receipt by the Moroccan bodies, which consequently meant that the allegedly fraudulent conduct of the BNDE was encouraged or even supported. They submit that the EIB was guilty of failures, negligence and omissions, to a serious extent, in its duties of prudence, diligence and care in the management of Community funds.

The applicants submit that the losses which they claim to have suffered are directly related to the omissions and failures of the EIB. They therefore seek an order that it compensate them for those losses.

Action brought on 1 December 2006 — Shell Petroleum and Others v Commission

(Case T-343/06)

(2007/C 20/23)

Language of the case: English

Parties

Applicants: Shell Petroleum NV (The Hague, The Netherlands), The Shell Transport and Trading Company Ltd (London, United

Kingdom), Shell Nederland Verkoopmaatschappij BV (Capelle aan den IJssel, The Netherlands) (represented by: O.W. Brouwer, W. Knibbeler, S. Verschuur, lawyers)

Defendant: Commission of the European Communities

Form of order sought

Shell Petroleum NV and The Shell Transport and Trading Company Ltd request the Court:

- To annul, in full, Commission's Decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case COMP/F/38.456 — *Bitumen* — NL, hereinafter, 'the decision') insofar as it is addressed to Shell Petroleum NV and The Shell Transport and Trading Company Ltd; or in the alternative
- to annul, in part, the decision, insofar as it finds that Shell Petroleum NV and The Shell Transport and Trading Company Ltd infringed Article 81 EC between 1 April 1994 and 19 February 1996 and to reduce the fine imposed upon them; and
- in any event, to reduce the fine imposed on Shell Petroleum NV and The Shell Transport and Trading Company Ltd pursuant to the decision;
- to order the defendant to pay the costs of the proceedings, including costs incurred by Shell Petroleum NV and The Shell Transport and Trading Company Ltd associated with payment in whole or in part of the fine or constituting a bank guarantee;
- take any other measures that the Court considers to be appropriate.

Shell Nederland Verkoopmaatschappij BV requests the Court:

- to annul, in part, the decision insofar as it finds that Shell Nederland Verkoopmaatschappij BV infringed Article 81 EC between 1 April 1994 and 19 February 1996 and to reduce the fine imposed upon it; and
- in any event, to reduce the fine imposed on Shell Nederland Verkoopmaatschappij BV pursuant to the decision;
- to order the defendant to pay the costs of the proceedings, including costs incurred by Shell Verkoopmaatschappij BV associated with payment in whole or in part of the fine or constituting a bank guarantee;
- take any other measures that the Court considers to be appropriate.