

Case T-321/01

Internationaler Hilfsfonds eV

v

Commission of the European Communities

(Development cooperation — Community co-financing of projects by NGOs —  
Ineligibility of an NGO — Rejection of co-financing applications)

Judgment of the Court of First Instance (Third Chamber), 18 September  
2003 . . . . . II-3228

Summary of the Judgment

1. *Actions for annulment — Action challenging a decision confirming a decision not challenged within the time-limit — Inadmissible — Concept of confirmatory decision — Decision concerning an application for Community co-financing submitted by a non-governmental organisation dealing with development cooperation — Not included*  
(Art. 230 EC)

2. *Budget of the European Communities — Financial regulation — Community co-financing of projects undertaken in developing countries by non-governmental organisations — Commission decision declaring an organisation ineligible for Community co-financing — Submission by the latter of new arguments to establish its eligibility — Commission obliged to re-examine the eligibility of the organisation before rejecting projects subsequently submitted*
3. *Procedure — Costs — Recoverable costs — Meaning — Costs incurred before the European Ombudsman — Not included*  
(*Rules of Procedure of the Court of First Instance, Art. 91(b)*)

1. An action for annulment of a decision which merely confirms an earlier decision which has not been challenged in good time is inadmissible. A decision is a mere confirmation of an earlier decision where it contains no new factors as compared with the earlier measure and is not preceded by any re-examination of the situation of the addressee of the earlier measure.

may refer to other, earlier, decisions in the contested decision, the latter nevertheless remains an autonomous and self-sufficient decision which may therefore be challenged in court.

(see paras 31-33)

Concerning an application for Community co-financing of projects undertaken in developing countries by non-governmental organisations, each application is autonomous and must be judged entirely on its own merits. Therefore, before deciding whether to provide financial support for a project proposed in an application for co-financing, the Commission must, for each application submitted, consider whether the applicant in question satisfies the conditions for eligibility. Whilst it is true that the Commission

2. A Commission decision refusing two applications for Community co-financing submitted by a non-governmental organisation (NGO) dealing with development cooperation must be annulled if, though presented with new arguments put forward by that organisation for the purpose of establishing its potential eligibility for Community co-financing, the Commission, at the time when it adopted that decision, did not examine the eligibility of that organisation on the basis of that new information.

The Commission practice whereby, when its services find that an NGO is not eligible for Community co-financing, that decision automatically results in the rejection of subsequent project proposals by that NGO, until such time as the NGO satisfies the eligibility criteria may be used only in cases where, after the Commission declared an NGO ineligible for Community co-financing, the latter did not submit new arguments in favour of its eligibility. If an NGO, when it submits a new application for co-financing, also submits new arguments to establish its eligibility, the Commission must reconsider the eligibility of the NGO in the light of those new arguments and thus cannot have recourse to an automatic rejection procedure.

(see paras 62, 64, 70-71)

3. Under Article 91(b) of the Rules of Procedure of the Court of First Instance, recoverable costs are confined to expenses which are both incurred for the purpose of the proceedings before the Court and indispensable for such purposes. Even if substantial legal work is carried out in the course of the proceedings preceding the judicial phase, by 'proceedings' Article 91 of the Rules of Procedure refers only to proceedings before the Court of First Instance, to the exclusion of any prior stage. Therefore, costs relating to proceedings before the European Ombudsman cannot be considered necessary costs within the meaning of Article 91(b) of the Rules of Procedure.

(see paras 78-81)