

2. *The applicant and the intervener shall each bear their own costs and half of the defendant's costs.*

⁽¹⁾ OJ C 11, 16.1.2010.

**Order of the General Court of 17 March 2011 —
Marcuccio v Commission**

(Case T-44/10 P) ⁽¹⁾

**(Appeal — Civil service — Officials — Social security —
Reimbursement of medical expenses — Obligation to state
reasons — Act adversely affecting an official — Appeal
manifestly unfounded)**

(2011/C 139/35)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) delivered on 25 November 2009 in Case F-11/09 *Marcuccio v Commission*, not published in the ECR, seeking annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*
2. *Mr Luigi Marcuccio shall bear his own costs and pay the costs incurred by the European Commission in the appeal proceedings.*

⁽¹⁾ OJ C 80, 27.3.2010.

**Action brought on 4 January 2011 — Portugal v
Commission**

(Case T-3/11)

(2011/C 139/36)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by L. Inez Fernandes, M. Figueiredo and J. Saraiva de Almeida)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Decision of 4 November 2010 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in so far as under the reason 'Weaknesses in LPIS-GIS [Land Parcel Identification System and Geographic Information System respectively] system, performance of on-the-spot checks and in calculation of sanctions' it applied financial corrections to several measures, excluding from European Union financing the sum of EUR 40 690 655,11 relating to expenditure incurred by the applicant in the financial years 2005, 2006 and 2007;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant puts forward 10 pleas in law.

1. First plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the checks made in connection with the LPIS-GIS, on the basis of the risk analysis, in accordance with Article 27 of Commission Regulation (EC) No 796/2004.
2. Second plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the intensification of the checks made in connection with the LPIS-GIS in accordance with Article 26 of Commission Regulation (EC) No 796/2004.
3. Third plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the checks made in connection with the LPIS-GIS in accordance with the 75 %/90 % rule referred to in Article 24(1)(c) of Commission Regulation (EC) No 796/2004.
4. Fourth plea in law, alleging a manifest error by the Commission in finding serious and reasonable doubts as to the existence of inconclusive and/or poor checks, on the sole basis of a single special case in which a motorway was included in the eligible area.
5. Fifth plea in law, alleging a manifest error by the Commission in applying the 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of EAGGF Guarantee Section accounts' laid down in Document VI/5330/1997-PT, with the consequent non-observance of the principle of the equality of Member States.

6. Sixth plea in law, alleging a manifest error by the Commission in applying financial corrections over and above the expenditure under the Single Payment Scheme (the SPS), financial year 2006, so including all the measures relating to the first and second pillars.
7. Seventh plea in law, alleging a manifest error by the Commission in failing to take into consideration the factors relating to the 'Calculation of Sanctions' in the light of the information provided by the Portuguese authorities showing fulfilment of the obligations under Article 49(1) of Commission Regulation No 796/2004, and shows also that there was no risk for the Fund, so that on this point too the contested decision constitutes a breach of the principle of proportionality.
8. Eighth plea in law, alleging a manifest error by the Commission in levelling a charge of deliberate failure to fulfil obligations in the light of the information provided by the Portuguese authorities, which shows that the obligations under Article 53 of Commission Regulation No 796/2004 were wholly fulfilled.
9. Ninth plea in law, alleging a manifest error by the Commission in that it failed to take into account the information provided by the Portuguese authorities, showing compliance with Article 21 of Regulation No 2237/2003 for the year 2004 and with Article 13(5) of Commission Regulation No 796/2004 for the year 2005, concerning checks on the minimum density of nut trees.
10. Tenth plea in law, alleging a manifest error by the Commission relating to the corrections affecting amounts paid in connection with the Additional Amounts of Aid measure — meat premiums and SPS payments for special rights.

Action brought on 24 January 2011 — AECOPS v Commission

(Case T-51/11)

(2011/C 139/37)

Language of the case: Portuguese

Parties

Applicant: AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 88 0369 P1, reducing to PTE 37 056 405 the amount of the assistance granted by Commission Decision C(88) 831 of 29 April 1988 and, at the same time, requiring reimbursement of the amount of EUR 294 298,41;

- order the European Commission to pay both its own costs and those of the applicant.

Pleas in law and main arguments

In support of its action, the applicant relies on two pleas in law.

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:
 - the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;
 - breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have the matters concerning them dealt with by the institutions of the Union within a reasonable period;
 - breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.

2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.