



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

18 June 2013 *

(Fisheries — Financial contribution for the implementation of control and surveillance systems — Decision not to reimburse the expenditure incurred for the acquisition of two ocean patrol vessels — Article 296 EC — Directive 93/36/EEC — Legitimate expectations — Obligation to state reasons)

In Case T-509/09,

Portuguese Republic, represented initially by L. Inez Fernandes, A. Trindade Mimoso and A. Miranda Boavida, and subsequently by Inez Fernandes, H. Leitão and V. Coelho, acting as Agents,

applicant,

v

European Commission, represented by A. Bouquet and M. Afonso, acting as Agents,

defendant,

APPLICATION for annulment of the Commission's decision of 14 October 2009 declaring ineligible for a financial contribution from the European Union, under Commission Decision 2002/978/EC of 10 December 2002 on the eligibility of expenditure on a number of operations to be incurred by certain Member States in 2002 in implementing the control, inspection and surveillance systems applicable to the common fisheries policy (OJ 2002 L 338, p. 33), the expenditure relating to the acquisition of two ocean patrol vessels, intended in part for the control and surveillance of fishing activities,

THE GENERAL COURT (First Chamber),

composed of J. Azizi, President, S. Frimodt Nielsen and M. Kancheva (Rapporteur), Judges,

Registrar: C. Heeren, Administrator,

having regard to the written procedure and further to the hearing on 27 November 2012,

gives the following

* Language of the case: Portuguese.

Judgment

Legal context

- 1 Article 296 EC, which was applicable at the material time, is worded as follows:

‘1. The provisions of [the EC] Treaty shall not preclude the application of the following rules:

 - (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.’
- 2 Council Decision 255/58 of 15 April 1958 established the list referred to in Article 296(2) EC, extracts of which are reproduced in Council document 14538/08 of 10 November 2008. That list provides, *inter alia*, as follows:

‘The list of the arms, munition and war material, including nuclear arms, to which the provisions of Article 296(1)(b) [EC] are applicable is given below:

...

9. Warships and their specialist equipment:

 - (a) warships of all kinds;

...’
- 3 According to the 12th recital in the preamble to Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1):

‘... the negotiated procedure should be considered to be exceptional and therefore applicable only in limited cases’.
- 4 Article 1 of Directive 93/36 provides:

‘For the purposes of this Directive:

...

 - (d) “Open procedures” are those national procedures whereby all interested suppliers may submit tenders;

...

(f) “Negotiated procedures” are those national procedures whereby contracting authorities consult suppliers of their choice and negotiate the terms of the contract with one or more of them.’

5 Article 2(1)(b) of Directive 93/36 provides:

‘1. This Directive shall not apply to:

...

(b) supply contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the Member State’s security so requires.’

6 Article 3 of Directive 93/36 provides:

‘Without prejudice to Articles 2, 4 and 5(1), this Directive shall apply to all products to which Article 1(a) relates, including those covered by contracts awarded by contracting authorities in the field of defence, except for the products to which Article [296](1)(b) [EC] applies.’

7 Council Decision 2001/431/EC of 28 May 2001 on a financial contribution by the Community to certain expenditure incurred by the Member States in implementing the control, inspection and surveillance systems applicable to the common fisheries policy (OJ 2001 L 154, p. 22), lays down the procedures for submitting to the Commission of the European Communities the expenditure programmes relating to that policy for which the Member States wish to receive a financial contribution and the expenditure regarded as eligible.

8 Article 1 of Decision 2001/431 provides:

‘Under the conditions set out in this Decision, the Community may grant a financial contribution (hereinafter “financial contribution”) to control programmes established by the Member States for the implementation of the control, inspection and surveillance systems applicable to the common fisheries policy laid down in Council Regulation (EEC) No 2847/93.

The control programmes shall specify their objectives and the facilities to be deployed and expenditure envisaged, in particular for the action referred to in Article 2.’

9 Article 2 of Decision 2001/431 provides:

‘The financial contribution may be granted in respect of certain expenditure provided for in the control programmes and intended to contribute to the following actions:

...

(e) acquisition and modernisation of control, inspection and surveillance equipment;

...’

10 Article 9(1) of Decision 2001/431 provides:

‘Financial contributions towards the expenditure referred to in Article 2(e) shall cover investment in the acquisition or modernisation of vessels and aircraft used for control, inspection and surveillance of fishery activities.’

11 Article 17(2) and (3) of Decision 2001/431 provide as follows:

‘2. When submitting applications for reimbursement Member States shall verify and certify that the expenditure has been incurred in compliance with the conditions laid down in this Decision and the Directives concerning the coordination of procedures for the award of public works, supply and service contracts, and in accordance with the detailed rules in point 4 of Part A of Annex II.

3. If it appears from the application that the conditions referred to in paragraph 2 have not been met, the Commission shall examine the situation thoroughly, requesting the Member State to submit its observations. If the examination confirms non-compliance, the Commission shall set a time-limit for the Member State to comply. If by the expiry of that time-limit the Member State has not acted in accordance with the recommendations, the Commission may reduce, suspend or cancel the financial contribution in the area concerned ...’

12 Point 4 of Part A of Annex II to Decision 2001/431 is worded as follows:

‘The completed questionnaires on public contracts must refer to the public tender notices published in the *Official Journal of the European Communities*. If notices have not been published in the Official Journal, the beneficiary must certify that the Community legislation on public contracts has been respected.

The Commission may call for any information it considers necessary to decide whether or not Community legislation on public contracts has been respected.

...’

Background to the dispute

13 By Despacho Conjunto No 15/2001 (Joint Decree No 15/2001, *Diário da República*, Series II, of 11 January 2001, pp. 453 and 454) of 19 December 2000, the Government of the Portuguese Republic decided to acquire two ocean patrol vessels for the control and surveillance of national maritime areas and the combating of marine pollution. For their construction, it opted for a negotiated procedure with Estaleiros Navais de Viana do Castelo SA.

14 On 15 April 2001, the Portuguese authorities submitted to the Commission, in accordance with Decision 2001/431, a request for a financial contribution towards the investment projects drawn up in the context of their programme of surveillance and control of fishing activities for the three-year period 2001 to 2003. One of those projects was intended to renew naval capacity for ocean surveillance and provided for the construction of two ocean patrol vessels, allocated as to 70% for the control and surveillance of fishing activities.

15 On 12 November 2002, construction of the two ocean patrol vessels was assigned to Estaleiros Navais de Viana do Castelo.

16 In Commission Decision 2002/978/EC of 10 December 2002 on the eligibility of expenditure on a number of operations to be incurred by certain Member States in 2002 in implementing the control, inspection and surveillance systems applicable to the common fisheries policy (OJ 2002 L 338, p. 33), the Commission granted, under Decision 2001/431, a financial contribution to the projects submitted by the Portuguese Republic in the context of its programme for the surveillance and control of fishing activities for the three-year period 2001 to 2003. In Annex II to that decision, it was established that, for 2002, the Portuguese Republic could receive a maximum financial contribution of EUR 13 510 837.

- 17 On 16 January 2006, the Portuguese authorities applied to the Commission for reimbursement of the amount of EUR 6 732 322.75 in respect of the contribution towards financing the acquisition of two ocean patrol vessels ordered from Estaleiros Navais de Viana do Castelo.
- 18 On 6 February 2006, the Commission informed the Portuguese authorities that it could not accept their application, on the ground that it needed further information on why those authorities had used a negotiated procedure for the award of the contract, which is reserved for specifically military equipment, although the two ocean patrol vessels were to be allocated as to 70% for the control of fishing activities.
- 19 On 19 May 2008, following an exchange of correspondence, a meeting was held between officials from the Commission and the Portuguese authorities.
- 20 On 29 May 2009, the Commission informed the Portuguese authorities that it considered that the expenditure in respect of which reimbursement was requested was not eligible and that no payment could therefore be made. In essence, the Commission explained that, since the Portuguese authorities had used a negotiated procedure to acquire the two vessels at issue, those authorities had not complied with the rules for the award of public contracts, although that condition is laid down in Article 17(2) of Decision 2001/431. The Commission granted the Portuguese authorities a period of one month to submit further observations.
- 21 On 7 July 2009, the Portuguese authorities replied to the Commission, repeating that the procedure for the acquisition of the two ocean patrol vessels was carried out in accordance with EU legislation on public procurement. They also attached an opinion from the Portuguese Ministry of National Defence and requested that the matter be reconsidered in the light of the arguments which were put forward therein.
- 22 By letter of 14 October 2009, the Commission communicated to the Portuguese authorities its decision not to consider as eligible the expenditure relating to the acquisition of two ocean patrol vessels, and further stated that the planned budget commitment for the project, to which Decision 2002/978 relates, had been cancelled ('the contested decision').

Procedure and forms of order sought by the parties

- 23 By application lodged at the Registry of the General Court on 18 December 2009, the Portuguese Republic brought the present action.
- 24 The Portuguese Republic claims that the General Court should:
- annul the contested decision;
 - order the Commission to adopt a decision granting the applications for reimbursement submitted by the Portuguese Republic in connection with Decision 2002/978;
 - order the Commission to pay the costs.
- 25 The Commission contends that the General Court should:
- dismiss the action;
 - order the Portuguese Republic to pay the costs.

- 26 Upon hearing the report of the Judge-Rapporteur, the General Court (First Chamber) decided to open the oral procedure.
- 27 The parties presented oral argument and answered the oral questions put to them by the General Court at the hearing on 27 November 2012.

Law

Admissibility of the second head of claim

- 28 With regard to the Portuguese Republic's head of claim that the General Court should order the Commission to adopt a decision granting the applications for reimbursement submitted in connection with Decision 2002/978, it is sufficient to point out that, according to settled case-law, the General Court has no power to issue directions to the institutions. Under Article 264 TFEU, the General Court may only declare the contested act to be void, in whole or in part, or dismiss the action. It is then for the institution concerned, in application of Article 266 TFEU, to take the measures needed to comply with the General Court's judgment (see, in that regard, order of 29 November 1993 in Case T-56/92 *Koelman v Commission* [1993] ECR II-1267, paragraph 18; Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others v Commission* [1998] ECR II-3141, paragraph 53, and Case T-51/07 *Agrar-Invest-Tatschl v Commission* [2008] ECR II-2825, paragraph 27).
- 29 Accordingly, the second head of claim must be dismissed as inadmissible.

The application for annulment

- 30 In support of its action, the Portuguese Republic raises in essence three pleas in law. The first alleges infringement of Decision 2001/431, in that the Commission could not lawfully refuse to grant the requested funding to the Portuguese Republic when it fulfilled the requirements laid down in that decision. The second alleges infringement of the principle of the protection of legitimate expectations and the third alleges infringement of the obligation to state reasons.

The first plea, alleging infringement of Decision 2001/431

- 31 The Portuguese Republic claims, in essence, that it was entitled to reimbursement of the expenditure relating to the acquisition of two ocean patrol vessels, since, contrary to what the Commission claimed in the contested decision, it did not disregard the EU rules applicable to public contracts.
- 32 Indeed, the Portuguese Republic argues that it complied, in the present case, with its national legislation, which transposed all the EU rules applicable to public contracts then in force, in particular Directive 93/36. That legislation transposed into domestic law, inter alia, the exceptions provided for in Articles 2 and 3 of that directive.
- 33 Since the ocean patrol vessels for which funding was sought were warships, covered by the list referred to in Article 296 EC (see paragraph 2 above), the Portuguese Republic considers that it could benefit from the exceptions provided for in Articles 2 and 3 of Directive 93/36 and that, therefore, the rules for the award of public contracts provided for in that directive did not apply in the present case.

- 34 Furthermore, the Portuguese Republic claims that under the rules in force on the date on which it submitted its application for funding, the Commission could not lawfully reject that application, since the Portuguese Republic had decided to benefit from the exemption provided for in Article 296 EC. Moreover, the decision to exclude military vessels from funding is unfair, since it penalises Member States which have chosen to carry out controls of fishing activities using warships.
- 35 The Commission rejects those arguments.
- 36 As a preliminary point, it is important to point out that the disagreement between the Portuguese Republic and the Commission is, essentially, restricted to the question whether a Member State requesting the assistance of the Union, under Decision 2001/431, to acquire equipment for the control of fishing activities may derogate from EU rules on the award of public contracts by relying on the military nature of the equipment concerned.
- 37 In that regard, it should be pointed out, first, that Decision 2001/431 lays down the procedures for submission to the Commission of expenditure programmes relating to the common fisheries policy for which the Member States wish to receive a financial contribution and the expenditure regarded as eligible.
- 38 It is clear from Article 2(e), Article 9(1) and Article 17(2) and (3) of Decision 2001/431, the provisions of which are cited in paragraphs 9 to 11 above, that a financial contribution by the Union for the acquisition of vessels which are actually used for the control and surveillance of fishing activities is possible, under that decision, only if the expenditure is incurred in accordance with the conditions laid down by that decision and by the directives concerning the coordination of procedures for the award of public contracts, including Directive 93/36.
- 39 Compliance with the rules laid down by the directives at issue is thus a prerequisite for the expenditure incurred by the Member States to be regarded as eligible for a financial contribution by the Union. It follows that Decision 2001/431, and in particular Article 17(2) thereof, must be regarded as requiring that co-financing by the Union presupposes the applicability *ratione materiae* of those directives. That interpretation of Decision 2001/431 is also supported by point 4 of Part A of Annex II, cited in paragraph 12 above, which specifies the content of the information to be provided to the Commission which is necessary to ascertain whether or not EU legislation on public contracts has been respected, without leaving open any possibility that that legislation may not apply *ratione materiae*.
- 40 Indeed, the inherent purpose of the requirement to comply with the conditions laid down by the directives concerning the coordination of procedures for the award of public contracts is primarily to ensure that purchase operations co-financed by the Union are fully transparent and fully controllable. In addition, co-financing by the Union of warships does not, in principle, fall within the common fisheries policy. Accordingly, in that regard, the conditions to be satisfied in order to permit such co-financing are those set out in the provisions of those directives which govern those procedures from a substantive standpoint.
- 41 In the present case, it is undisputed that, by opting for a negotiated procedure for the construction of the two ocean patrol vessels, the Portuguese Republic considered that it was not required to comply with the rules applicable to the award of public contracts. Indeed, by relying on Article 2(1)(b) and Article 3 of Directive 93/36 and its national legislation transposing that directive, the Portuguese Republic considered that the contracts at issue in the present case did not fall, *ratione materiae*, within the scope of that directive.
- 42 However, in the light of the foregoing, it must be held that, under Decision 2001/431, it is not permissible for a Member State to request, on the one hand, co-financing by the Union for the acquisition of vessels wholly or partly intended for the purposes of control and surveillance of fishing

activities which, in accordance with that decision, must comply with the rules on the award of public contracts and to decide, on the other hand, not to apply those rules by relying on Article 296(1)(b) EC, on account of the military nature of the equipment acquired.

- 43 The above considerations cannot be called into question by the Portuguese Republic's argument that it was determined that Member States cannot benefit from any exemption from procurement rules based on Article 296 EC only after it had submitted its application for a financial contribution to the Commission, that is to say when Commission Regulation (EC) No 391/2007 of 11 April 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy (OJ 2007 L 97, p. 30) was adopted.
- 44 In that regard, it is true that it is actually as a result of the adoption of Regulation No 391/2007 that it was expressly stated that expenditure incurred on vessels to be used for fisheries control purposes could not benefit from any exemption from EU procurement rules with reference to Article 296 EC. Similarly, it should be pointed out that Regulation No 391/2007 was not applicable *ratione temporis* in the present case, since it entered into force at a later date than that of the Portuguese Republic's request for a financial contribution. However, it cannot be inferred from that fact that the legislation applicable up until that date allowed Member States to receive financial assistance from the Union for the acquisition of vessels in the context of the common fisheries policy and, at the same time, to derogate from the rules on the award of public contracts by relying on Article 296 EC. In that regard, it is necessary to consider, as does the Commission, that even before that stipulation was laid down by Regulation No 391/2007, it followed from the conditions provided for by Decision 2001/431 that Member States which intended to avail themselves of the possibility of derogating from the general rules by relying on Article 296 EC could not at the same time claim a financial contribution by the Union towards the acquisition of equipment for fisheries control purposes.
- 45 Moreover, it must be held that, contrary to what the Portuguese Republic claims, Decision 2001/431 does not prevent the Member States which entrust to the military corps the activities of fisheries control and surveillance from receiving the funding for implementing that common policy. It is true that, to the extent that that decision requires compliance with the rules on public contracts, those Member States cannot derogate from the general rules applicable to public contacts and claim funding from the Union. However, Article 296(1)(b) EC does not prevent the Member States which intend to acquire military equipment falling within the scope of that provision from deciding nonetheless to comply with the common procedures for the award of public contracts and, accordingly, from being able to claim the financial contribution provided for in Decision 2001/431. It is therefore necessary to reject the argument by the Portuguese Republic concerning the alleged unfairness, as regards Member States which have chosen to use military means to ensure fisheries control, of the exclusion from Community co-financing of equipment acquired outside the general procedures for the award of public contracts on the basis of the exemption provided for in Article 296(1)(b) EC.
- 46 With regard to Article 2(1)(b) of Directive 93/36, it should be noted that, according to that provision, that directive is not to apply to supply contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of the Member State's security so requires.
- 47 As has been held (see paragraphs 39 et seq. above), co-financing by the Union under Decision 2001/431 presupposes the application of the provisions which govern from a substantive standpoint the procedures for the award of public contracts provided for in the relevant directives. However, even if a Member State were able to rely on the exemption provided for in Article 2(1)(b) of Directive

93/36 and claim co-financing under Decision 2001/431, it must be pointed out that the Portuguese Republic has failed to show that the conditions for the application of that exemption were fulfilled in the present case.

- 48 Indeed, it should be noted at the outset that, as is clear from the case-file, the supply contract for the acquisition of the two ocean patrol vessels was not declared secret, since Joint Decree No 15/2001, published in the *Diário da República*, reported the decision of the Portuguese Republic to acquire two warships and opt for the negotiated procedure for the award of the contract with the company Estaleiros Navais de Viana do Castelo.
- 49 It must be pointed out, next, that the Portuguese Republic relies on the protection of the essential interests of State security or the particular security measures for the supplies in question to justify the exemption from the general rules on the award of supply contracts.
- 50 However, it should be pointed out that the Portuguese Republic merely relies on the confidentiality of sensitive information, relating to the development and installation of military communications software on the ocean patrol vessels, without providing any specific evidence with regard to the particular security measures needed for the supply of the ocean patrol vessels, or the reasons why it considered that the objective of protecting the confidentiality of particular data would be less well safeguarded if that production was entrusted to companies other than Estaleiros Navais de Viana do Castelo.
- 51 In that regard, it should be recalled that, according to the case-law, the requirement to impose an obligation of confidentiality in no way prevents the use of a competitive tendering procedure for the award of a contract (see, in that regard, Case C-337/05 *Commission v Italy* [2008] ECR I-2173, paragraph 52). Moreover, as the Commission rightly claims, requirements relating to confidentiality could be taken into account, in particular, in the conditions governing participation in the procedure or in the assessment of the proposals, by laying down an award sub-criterion relating to measures to protect the confidentiality of information.
- 52 Therefore, resort to Article 2(1)(b) of Directive 93/36, even assuming that that provision is applicable, to justify the acquisition of ocean patrol vessels by a negotiated procedure seems to be disproportionate as regards the objective of preventing the disclosure of sensitive information relating to the production of those vessels. The Portuguese Republic has not shown that such an objective was unattainable within a competitive tendering procedure such as that specified by the same directive (*Commission v Italy*, paragraph 53).
- 53 It follows that, in the present case, merely asserting, as does the Portuguese Republic, that the supplies at issue are declared secret, that they are accompanied by special security measures or that it is necessary to exclude them from the EU rules to protect the essential security interests of the State is not sufficient to establish, in the absence of any evidence, that exceptional circumstances justifying the exemptions provided for in Article 2(1)(b) of Directive 93/36 actually exist.
- 54 As a result, the Portuguese Republic is not justified in claiming that, by virtue of Article 2(1)(b) thereof, Directive 93/36 did not apply to the contract at issue.
- 55 It follows from the foregoing that it is not possible to uphold any of the arguments put forward by the Portuguese Republic to justify its request, on the basis of Decision 2001/431, for a financial contribution by the Union for the acquisition of two ocean patrol vessels without its being required to comply with the procurement rules set out in Directive 93/36.
- 56 By opting for a negotiated procedure, the Portuguese Republic failed in this case to comply with the rules laid down by that directive, Article 6 of which requires contracting authorities which award a public contract to use the open procedure or restricted procedure, unless the contract falls within one of the exceptional cases exhaustively listed in paragraphs 2 and 3 of that article.

57 In the present case, it is clear that the contract at issue does not fall within any of the cases provided for in Article 6(2) and (3) of Directive 93/36, which, moreover, the Portuguese Republic does not claim, and accordingly the Commission was right to conclude that, in so far as that Member State opted for a negotiated procedure when acquiring the two vessels at issue, it did not comply with the requirements laid down by that directive. In those circumstances, the Commission could lawfully consider that the expenditure relating to the acquisition of two ocean patrol vessels should be declared ineligible for financial assistance under Decision 2001/431.

58 Having regard to the foregoing, the first plea in law must be rejected.

The second plea, alleging infringement of the principle of the protection of legitimate expectations

59 By its second plea, the Portuguese Republic claims that the Commission infringed the principle of the protection of legitimate expectations. In essence, it considers that, in accepting the request for financial assistance which the Portuguese Republic submitted under Decision 2001/431, the Commission gave it the assurance that it would obtain financing for the acquisition of the ocean patrol vessels. The Portuguese Republic adds that, when assessing the request for financial assistance, and in particular when adopting Decision 2002/978, the Commission should have informed it that the negotiated procedure was not valid for the acquisition of the two vessels at issue.

60 The Commission rejects those arguments.

61 With regard to the principle of the protection of legitimate expectations, it must be recalled that, according to settled case-law, the right to rely on the principle of the protection of legitimate expectations, which is one of the fundamental principles of the European Union, extends to any individual in a situation where the EU authorities, by giving him precise assurances, have caused him to entertain legitimate expectations (see Case T-273/01 *Innova Privat-Akademie v Commission* [2003] ECR II-1093, paragraph 26 and the case-law cited, and judgment of 18 January 2006 in Case T-107/03 *Regione Marche v Commission*, not published in the ECR, paragraph 129).

62 However, the principle of the protection of legitimate expectations cannot be used to object to the cancellation of Community assistance where the conditions laid down for the grant of that assistance have manifestly not been fulfilled (see, to that effect, Case T-126/97 *Sonasa v Commission* [1999] ECR II-2793, paragraph 39, and judgment of 14 December 2006 in Case T-162/04 *Branco v Commission*, not published in the ECR, paragraph 123 and the case-law cited).

63 Moreover, the Portuguese Republic provides no evidence that the Commission would have given assurances as to the eligibility of the expenditure at issue if a negotiated procedure had been used. In any event, it is clear from the examination of the first plea that such assurances would have been unlawful. It follows that the Portuguese Republic has failed to show that the conditions required by the case-law cited in paragraphs 61 and 62 above were fulfilled in the present case.

64 Consequently, the second plea must be rejected.

The third plea, alleging a failure to state reasons

65 By its third plea, the Portuguese Republic considers that the contested decision is vitiated by a failure to state reasons, in that the Commission fails to explain therein the reasons for its refusal to reimburse.

66 The Commission rejects those arguments.

- 67 With regard to the obligation to provide reasons, it should be recalled that it is settled case-law that the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Case C-478/93 *Netherlands v Commission* [1995] ECR I-3081, paragraphs 48 and 49, and Case C-487/06 P *British Aggregates v Commission* [2008] ECR I-10515, paragraph 172).
- 68 This is *a fortiori* the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure (*Netherlands v Commission*, paragraph 50, and Case C-304/01 *Spain v Commission* [2004] ECR I-7655, paragraph 50).
- 69 Moreover, the Court of Justice considered that an implementing measure satisfied the obligation to state reasons where it contains an express reference to the provisions of the regulation on which that measure is based and thus allows recognition of the criteria taken into account when the measure was adopted (see, in that regard, Case 78/74 *Deuka* [1975] ECR 421, paragraph 6; Case 230/78 *Eridania-Zuccherifici nazionali and Società italiana per l'industria degli zuccheri* [1979] ECR 2749, paragraphs 14 to 16; and Case 35/80 *Denkavit Nederland* [1981] ECR 45, paragraphs 33 to 36).
- 70 In the present case, it should be noted that the adoption of the contested decision was preceded by a meeting and an exchange of correspondence. Moreover, the contested decision refers to the letter of 29 May 2009, addressed to the Portuguese authorities under Article 17(3) of Decision 2001/431, in which the Commission had explained in detail the reasons which led it to conclude, after examining the file, that the expenditure concerned could not be regarded as eligible (see paragraph 20 above).
- 71 It must be noted that the context in which the contested decision was adopted and the reasons stated in that decision allowed the Portuguese Republic to defend itself and to put forward its arguments for that purpose and also make it possible to understand the reasoning followed by the Commission when adopting the contested decision.
- 72 Since the Commission did not infringe the obligation to state reasons, the third plea must be rejected.
- 73 The action must therefore be dismissed.

Costs

- 74 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 75 Since the Portuguese Republic has been unsuccessful, it must be ordered to pay the costs, in accordance with form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action;

2. Orders the Portuguese Republic to pay the costs.

Azizi

Frimodt Nielsen

Kancheva

Delivered in open court in Luxembourg on 18 June 2013.

[Signatures]