



## Reports of Cases

### JUDGMENT OF THE COURT (Tenth Chamber)

21 September 2016\*

(Appeal — Cohesion Fund — Reduction of financial assistance — Procedure of adoption of the decision by the European Commission — Existence of a time limit — Non-compliance with the time limit laid down — Consequences)

In Case C-139/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 March 2015,

**European Commission**, represented by S. Pardo Quintillán and D. Recchia, acting as Agents, with an address for service in Luxembourg,

appellant,

the other party to the proceedings being:

**Kingdom of Spain**, represented by A. Rubio González, acting as Agent,

applicant at first instance,

supported by:

**Kingdom of the Netherlands**, represented by B. Koopman and M. Bulterman, acting as Agents,

intervener in the appeal,

THE COURT (Tenth Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, A. Borg Barthet and M. Berger, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Spanish.

## Judgment

- 1 By its appeal, the European Commission seeks to have the judgment of the General Court of the European Union of 20 January 2015, *Spain v Commission* (T-109/12, not published, ‘the judgment under appeal’, EU:T:2015:29), by which it annulled Commission Decision C(2011) 9992 of 22 December 2011 reducing the assistance from the Cohesion Fund granted to the following projects: ‘Measures to be undertaken to implement the second phase of the master plan for urban solid waste management in the Autonomous Community of Extremadura’ (CCI No 2000.ES.16.C.PE.020); ‘Outfall: Middle basin, Getafe and lower basin of the Arroyo del Culebro (Tagus basin — Wastewater drainage)’ (CCI No 2002.ES.16.C.PE.002); ‘Re-use of treated water for the irrigation of green spaces in Santa Cruz de Tenerife’ (CCI No 2003.ES.16.C.PE.003) and ‘Technical assistance for the study and drafting of the project to supply water to the Mancomunidad de Algodor and to increase that supply’ (CCI No 2002.ES.16.C.PE.040) (‘the contested decision’).

### I – Legal context

- 2 Under Article 2(1) of Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1), as amended by Council Regulation (EC) No 1264/1999 of 21 June 1999 (OJ 1999 L 161, p. 57) and by Council Regulation (EC) No 1265/1999 of 21 June 1999 (OJ 1999 L 161, p. 62) (‘Regulation No 1164/94, as amended’):

‘The Fund shall provide financial contributions to projects, which contribute to achieving the objectives laid down in the Treaty on European Union, in the fields of the environment and trans-European transport infrastructure networks in Member States with a per capita gross national product (GNP), measured in purchasing power parities, of less than 90% of the Community average which have a programme leading to the fulfilment of the conditions of economic convergence referred to in Article [126 TFEU].’

- 3 Article 8(1) of Regulation No 1164/94, as amended, provides:

‘Projects financed by the Fund shall be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning environmental protection, transport, trans-European networks, competition and the award of public contracts.’

- 4 Article 12 of Regulation No 1164/94, as amended, is worded as follows:

‘1. Without prejudice to the Commission’s responsibility for implementing the Community budget, Member States shall take responsibility in the first instance for the financial control of projects. To that end, the measures they take shall include:

...

- (c) ensuring that projects are managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

...’

- 5 Article H of Annex II to Regulation No 1164/94, as amended, relating to ‘implementing Provisions’, that article being headed ‘Financial Corrections’, provides:

‘1. If, after completing the necessary verifications, the Commission concludes that:

- (a) the implementation of a project does not justify either part or the whole of the assistance granted to it, including a failure to comply with one of the conditions in the decision to grant assistance and in particular any significant change affecting the nature or conditions of implementation of the project for which the Commission’s approval has not been sought, or
- (b) there is an irregularity with regard to assistance from the Fund and that the Member State concerned has not taken the necessary corrective measures,

the Commission shall suspend the assistance in respect of the project concerned and stating its reason, request that the Member State submits its comments within a specified period of time.

If the Member State objects to the observations made by the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides make efforts to reach an agreement about the observations and the conclusions to be drawn from them.

2. At the end of the period set by the Commission, the Commission shall, subject to the respect of due procedure, if no agreement has been reached within three months, taking into account any comments made by the Member State, decide to:

...

- (b) make the financial corrections required. This shall mean cancelling all or part of the assistance granted to the project.

These decisions shall respect the principle of proportionality. The Commission shall, when deciding the amount of a correction, take account of the type of irregularity or change and the extent of the potential financial impact of any shortcomings in the management or control systems. Any reduction or cancellation shall give rise to recovery of the sums paid.

...

4. The Commission shall lay down the detailed rules for implementing paragraphs 1 to 3 and shall inform the Member States and the European Parliament thereof.’

- 6 Article 18 of Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Regulation No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections (OJ 2002 L 201, p. 5) is worded as follows:

‘1. The period of time within which the Member State concerned may respond to a request under the first subparagraph of Article H(1) of Annex II to Regulation (EC) No 1164/94 to submit its comments shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.

2. Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity was less than the Commission’s assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the files concerned.

Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1. The results of such examination shall be examined in the manner specified in the second subparagraph of Article H(1) of Annex II to Regulation (EC) No 1164/94. The Commission shall take account of any evidence supplied by the Member State within the time limits.

3. Whenever the Member State objects to the observations made by the Commission and a hearing takes place under the second subparagraph of Article H(1) of Annex II to Regulation (EC) No 1164/94, the three-month period within which the Commission may take a decision under Article H(2) of Annex II to that Regulation shall begin to run from the date of the hearing.'

- 7 The wording of Article H(2) of Annex II to Regulation No 1164/94, as amended, differs as between the different language versions of that provision. It is clear from the French version, according to which, in the absence of an agreement between the parties, the Commission must take a decision 'within three months', that the three-month period referred to in that provision relates to the adoption of the decision on financial corrections. However, in the other language versions of that provision, that three-month period concerns the absence of an agreement between the parties.
- 8 It follows from Article 18(3) of Regulation No 1386/2002, which refers expressly to Article H(2) of Annex II to Regulation No 1164/94, as amended, that the Commission has, by virtue of Article H(2), a three-month period to take a decision on financial corrections, and that period begins to run from the date of the hearing. It is apparent from all the language versions of that Article 18(3) that they contain no disparity in the formulation of that provision.
- 9 Regulation No 1164/94, as amended, was applicable from 2000 to 2006. Regulation No 1386/2002, by virtue of Article 1 thereof, applied to actions approved for the first time after 1 January 2000.
- 10 Under Article 16(1) of Regulation No 1164/94, as amended, Regulation No 1164/94 was to be re-examined by 31 December 2006 at the latest.
- 11 Thus, Regulation No 1164/94, as amended, was repealed by Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation No 1164/94 (OJ 2006 L 210, p. 79).
- 12 Under Article 5 of Regulation No 1084/2006, 'this regulation shall not affect either the continuation or the modification, including the total or partial cancellation, of project or other forms of assistance approved by the Commission on the basis of Regulation (EC) No 1164/94, which shall consequently apply thereafter to that assistance or the projects concerned until their closure'.
- 13 In accordance with Article 6 of Regulation No 1084/2006, Regulation No 1164/94, as amended, is repealed 'without prejudice to the provisions of Article 105(1) of [Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25)] and Article 5 of this regulation'.
- 14 Under Article 100 of Regulation No 1083/2006, headed 'Procedure':

'1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission's

assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a period of two months after the two-month period referred to in the first subparagraph.

2. The Commission shall take account of any evidence supplied by the Member State within the time limits referred to in paragraph 1.

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4. In case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

5. In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.'

15 Article 105 of Regulation No 1083/2006, entitled 'Transitional provisions', is worded as follows:

'1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of [Regulations (EEC) No 2052/88, (EEC) No 4253/88, (EC) No 1164/94 and (EC) No 1260/1999] or any other legislation which applies to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. While taking decision on operational programmes, the Commission shall take account of any assistance co-financed by the Structural Funds or of any project co-financed by the Cohesion Fund approved by the Council or by the Commission before the entry into force of this Regulation and having financial repercussions during the period covered by those operational programmes.

3. By way of derogation from Articles 31(2), 32(4) and 37(1) of Regulation (EC) No 1260/1999, partial sums committed for assistance co-financed by the [European Regional Development Fund (ERDF)] or the [European Social Fund (ESF)] approved by the Commission between 1 January 2000 and 31 December 2006 for which the certified statement of expenditure actually paid, the final report on implementation and the statement referred to in Article 38(1)(f) of that Regulation have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the Funds, shall be automatically decommitted by the Commission not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid.

Amounts relating to operations or programmes which have been suspended due to legal proceedings or administrative appeals having suspensory effect shall be disregarded in calculating the amount to be automatically decommitted.'

16 Article 108 of Regulation No 1083/2006, entitled 'Entry into force', provides in its first two paragraphs:

'This regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.



The provisions laid down in Articles 1 to 16, 25 to 28, 32 to 40, 47 to 49, 52 to 54, 56, 58 to 62, 69 to 74, 103 to 105 and 108 shall apply from the date of entry into force of this Regulation only for programmes for the period 2007 to 2013. The other provisions shall apply from 1 January 2007.’

17 Regulation No 1083/2006 was repealed by Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Regulation No 1083/2013 (OJ 2013 L 347, p. 320 and corrigendum OJ 2016 L 200, p. 140).

18 Article 145 of Regulation No 1303/2013 provides:

‘1. Before taking a decision on a financial correction, the Commission shall launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months.

2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission’s assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3. The Commission shall take account of any evidence supplied by the Member State within the time limits set out in paragraphs 1 and 2.

4. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

5. In the event of an agreement, and without prejudice to paragraph 7 of this Article, the Member State may reuse the Funds concerned or the [European Maritime Fishery Fund (EMFF)] in accordance with Article 143(3).

6. In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

7. Where the Commission, in carrying out its responsibilities under Article 75, or the European Court of Auditors detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Funds or the EMFF to the operational programme.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

- (a) had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial Regulation, or in other audit reports of the audit authority submitted to the Commission and appropriate measures taken; or
- (b) had been the subject of appropriate remedial measures [adopted] by the Member State.

The assessment of serious deficiencies in the effective functioning of management and control systems shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

- (a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;
- (b) for the purpose of applying a flat-rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been the subject of an adjustment in the accounts in accordance with Article 139(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 137(2);
- (c) take into account flat-rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the budget of the Union.

8. The Fund-specific rules for the EMFF may lay down additional rules of procedure for financial corrections referred to in Article 144(7).'

- 19 In accordance with the second paragraph of Article 154 of Regulation No 1303/2013, Article 145 of that regulation is applicable with effect from 1 January 2014.

## **II – Background to the dispute and the contested decision**

- 20 The background to the dispute is set out in paragraphs 1 to 9 of the judgment under appeal and may be summarised as follows.

- 21 By decisions C(2001) 531, of 16 March 2001, C(2002) 4269, of 4 December 2002, C(2003) 1545, of 6 May 2003, and C(2002) 4692, of 27 December 2002, the Commission granted financial assistance under the Cohesion Fund to four projects implemented by the Kingdom of Spain.

- 22 They are:

- ‘measures to be undertaken to implement the second phase of the master plan for urban solid waste management in the Autonomous Community of Extremadura’ (CCI No 2000.ES.16.C.PE.020);
- ‘middle basin, Getafe and lower basin of the Arroyo del Culebro (Tagus basin — Wastewater drainage)’ (CCI No 2002.ES.16.C.PE.002);

- ‘re-use of treated water for the irrigation of green spaces in Santa Cruz de Tenerife’ (CCI No 2003.ES.16.C.PE.003) (‘the third project’); and
  - ‘technical assistance for the study and drafting of the project to supply water to the Mancomunidad de Algodor and to increase that supply’ (CCI No 2002.ES.16.C.PE.040) (‘the fourth project’).
- 23 After having received a declaration concerning the closure of each of those projects from the Spanish authorities, the Commission sent them, by letters of 29 May 2007, 9 June 2008 and 4 May and 27 November 2009, a closure proposal including in each case a financial correction because of irregularities with regard to the applicable rules in public contract matters.
- 24 The Spanish authorities having informed the Commission that they did not agree to those closure proposals and having sent it additional information in that regard, the Commission sent them supplementary observations by letters of 21 January and 21 June 2010 before inviting them to a hearing which was held on 14 July 2010.
- 25 Since that hearing did not enable the parties to reach an agreement on all the questions raised, the Spanish authorities sent fresh information to the Commission by letters of 15 and 17 September 2010.
- 26 On 22 December 2011 the Commission adopted the contested decision.
- 27 In that decision, the Commission states, as introductory remarks, that the analysis of the documentation sent to it concerning the projects at issue enabled it to discern that there were irregularities under the EU and national rules on public contract matters.
- 28 The Commission then sets out the irregularities identified. These relate:
- where the contracts relate to the first project, to the fact of having used award criteria incompatible, firstly, with Article 30 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), and, secondly, with a provision of domestic Spanish law;
  - where the contracts relate to the second project, to the fact of having used the negotiated procedure without publication in breach of Article 7(3)(d) of Directive 93/37;
  - where the contracts relate to the third project, to the fact of having used the negotiated procedure without publication in breach of Article 7(3)(d) of Directive 93/37 and Article 6 thereof;
  - where the contracts relate to the fourth project, to the fact of having used the negotiated procedure without publication in breach of Article 11(3)(d) and (e) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).
- 29 In the light of those irregularities, the contested decision reduced the financial assistance granted under the Cohesion Fund in the following proportions:
- EUR 623135.74 for the first project;
  - EUR 1010179.66 for the second project;
  - EUR 546192.66 for the third project; and
  - EUR 30199.32 for the fourth project.



### III – The action before the General Court and the judgment under appeal

- 30 By application lodged at the Registry of the General Court on 07 March 2012, the Kingdom of Spain brought an action for the annulment of the decision at issue.
- 31 In support of that action, it raised three pleas in law alleging infringement of Article 18(3) of Regulation No 1386/2002, infringement of Article H of Annex II to Regulation No 1164/94, as amended, and disregard of the principle of protection of legitimate expectations respectively.
- 32 The judgment of the General Court annulled the contested decision.
- 33 In that regard, the General Court recalled, firstly, in paragraph 22 of the judgment under appeal, that the Court of Justice has previously held that it follows from a schematic interpretation of the relevant regulations that the adoption by the Commission of a decision on financial corrections in connection with the Cohesion Fund, as from 2000, was subject to the observance of a certain time limit, the length of which varied depending on the applicable rules (see, to that effect, judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraphs 76, 82, 83, 93 and 94, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 76, 82, 83, 93 and 94).
- 34 The General Court continued, in paragraphs 23 to 25 of the judgment under appeal, that thus, pursuant to the combined provisions of Article H(2) of Annex II to Regulation No 1164/94, as amended, and Article 18(3) of Regulation No 1386/2002, the period at the end of which the Commission must adopt a decision on financial corrections was three months from the date of the hearing (judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 95, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 95). It held that, in accordance with Article 100(5) of Regulation No 1083/2006, the Commission is to take a decision on the financial correction within six months of the date of the hearing and, if no hearing takes place, the six-month period is to begin to run two months after the date of the letter of invitation sent by the Commission (judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 96, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 96). It also recalled that, in accordance with Article 145(6) of Regulation No 1303/2013, the Commission is to take a decision on the financial correction within six months of the date of the hearing or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing, it being understood that, if no hearing takes place, the six-month period will begin to run two months after the date of the letter of invitation to the hearing sent by the Commission (judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 97, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 97).
- 35 In that regard, it must be made clear that, although Regulation No 1265/1999, which amended Regulation No 1164/94, entered into force on 1 January 2000, it is nevertheless apparent from the second paragraph of Article 108 of Regulation No 1083/2006 that Article 100 of that regulation is to apply from 1 January 2007, including to programmes from before the period from 2007 to 2013. It noted that that is, furthermore, in keeping with the principle that rules of procedure apply immediately after their entry into force (judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 98, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 98). The General Court added that, concerning Article 145 of Regulation No 1303/2013, under the terms of the second paragraph of Article 154 of that regulation, it applies with effect from 1 January 2014 (judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 99, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 99).

- 36 The General Court recalled, secondly, in paragraph 28 of the judgment under appeal, that the Court of Justice has held that failure by the Commission to comply with those time limits constituted an infringement of essential procedural requirements which was to be found by the European Union Court of its own motion (see judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 103 and the case-law cited, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 103 and the case-law cited).
- 37 In paragraph 29 of the judgment under appeal, the General Court found that, in the present case, the hearing was held on 14 July 2010 and the Commission adopted the contested decision on 22 December 2011, so that that institution failed to comply with the six-month time limit laid down in Article 100(5) of Regulation No 1083/2006.
- 38 The General Court added, in paragraphs 30 and 31 of the judgment under appeal, that the foregoing conclusion is not called into question by the observations submitted by the Commission in response to a question put to it concerning the consequences to be drawn, in the present case, from the judgments of the Court of Justice of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157), delivered during the proceedings before the General Court. In those observations, the Commission had submitted that those judgments of the Court of Justice ‘state the general principle of the existence of a time limit which runs from the day of the hearing, without, however, examining the reason and aim pursued by the provision setting the dies a quo at the time the hearing was held, nor the theory of a possible interruption to the time limit’. It argues in that regard that the reasoning of the Court of Justice, referred to by the General Court in paragraphs 22 to 27 of the judgment under appeal, applies only in the ‘normal’ situation where the position of the Member State concerned is definitively determined on the date of the hearing organised by the Commission, in which situation the Commission therefore has all the argument and facts which the Member State concerned puts forward in support of its position and in which it is, accordingly, able to give a decision. It is, however, frequently the case that the Commission agrees to continue the dialogue beyond the hearing, at the request and in the interest of the Member State concerned and, in such cases, it is appropriate to take the view that the continuation of the dialogue between the parties interrupts the running of the period laid down for the Commission to adopt its decision and that the period does not begin to run until that dialogue has been completed.
- 39 The General Court rejected that line of argument on the following grounds, appearing in paragraphs 32 to 36 of the judgment under appeal.
- 40 Firstly, the Commission itself accepts the application *ratione temporis* of Article 100(5) of Regulation No 1083/2006 to the present case.
- 41 Secondly, and as follows from the judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157), that provision requires it, generally, to adopt a decision on financial corrections within six months of the hearing organised with the Member State concerned. It provides for only one exception to that rule, which is when a hearing has not been held. However, it does not provide for a derogation application where the Commission and the Member State concerned wish to continue their discussions beyond the hearing. It thus differs from Article 145(6) of Regulation No 1303/2013, which makes an express reservation in the case of the situation referred to by the Commission, but which has been applicable only since 1 January 2014.
- 42 Thirdly, it clearly follows from the schematic interpretation of the provisions in question adopted by the Court of Justice that, although the time limit set for the Commission to make its finding has been amended many times by the applicable rules, the EU legislature has, on each occasion, intended to impose on it a precise time limit, taking the view that it was in the interest of both the EU and its Member States that the end of the financial corrections procedure be foreseeable, which implies the

setting of a predetermined time limit for adopting the final decision, while leaving the Commission sufficient time to adopt that decision (see, to that effect, judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraphs 84 to 86 and 88, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 84 to 86 and 88).

- 43 It may be deduced from those considerations that, even if the Commission and the Member State concerned agree to continue their discussions beyond the hearing, a final decision on financial corrections must be made within six months of that hearing in every case to which Article 100(5) of Regulation No 1083/2006 applies *ratione temporis*, unlike those covered by Article 145(6) of Regulation No 1303/2013.
- 44 Fourthly, it is apparent from the judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156, paragraphs 10 to 12), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157, paragraphs 10 to 12) that the discussions between the parties continued beyond the hearing in both cases in question and that the Commission had adopted the contested decision in those cases less than six months after the end of those discussions in one of them, facts which the Court of Justice would have taken into account if it had intended to restrict the scope of the interpretation given in those judgments.
- 45 In paragraph 37 of the judgment under appeal, the General Court held that, in the light of all the foregoing, the contested decision had not been validly adopted and must, accordingly, be annulled.

#### **IV – Forms of order sought by the parties and procedure before the Court**

- 46 The Commission contends that the Court of Justice should:
- set aside the judgment under appeal;
  - refer the case back to the General Court for final judgment, and
  - order the Kingdom of Spain to pay the costs.
- 47 The Kingdom of Spain claims that the Court should:
- dismiss the appeal; and
  - order the Commission to pay the costs;
- 48 By order of the President of the Tenth Chamber of 27 January 2016, the Kingdom of the Netherlands was granted leave to intervene in support of the form of order sought by the Kingdom of Spain.

#### **V – The appeal**

- 49 In support of its appeal, the Commission puts forward two grounds of appeal, alleging that the General Court erred in law as regards, principally, the setting of a time limit for the adoption of the decision on financial corrections and, in the alternative, the determination of the nature of that time limit and the effects following from non-compliance therewith.

A – *The first plea in law*

1. Arguments of the parties

- 50 By its first ground of appeal, the Commission is of the opinion that the General Court incorrectly held that that institution is obliged to adopt the decision on financial corrections within a certain period, the length of which is determined by the rules in force at the date on which the hearing between the Commission and the Member State concerned was held.
- 51 That ground of appeal comprises two parts, the Commission alleging that the General Court has erred in law by holding that Article 100 of Regulation No 1083/2006 applied in the present case as regards the procedure to be followed — and more particularly the time limit to be complied with — to rule on a financial correction when, firstly, the provision applicable in this case was Article H(2) of Annex II to Regulation No 1164/94, as amended, and, secondly, the relevant EU rules do not lay down any time limit for the adoption of a Commission decision on financial corrections.
- 52 By the first part of its first ground of appeal, the Commission complains that the General Court wrongly interpreted and applied the transitional provisions of the various regulations in question. Thus, on the one hand, the General Court disregarded the scope of Article 105(1) of Regulation No 1083/2006, from which provision it is apparent that projects co-financed under a scheme before the adoption of a new basic regulation in 2006 remain fully subject to that scheme until their closure, whether it is a question of continuing them or modifying them, including their total or partial withdrawal. On the other, the General Court has incorrectly interpreted the second paragraph of Article 108 of Regulation No 1083/2006.
- 53 In the Commission's submission, Article 105 of Regulation No 1083/2006, under the heading 'Transitional provisions', lays down the temporal succession of the legislative acts relating to the Cohesion Fund. It follows from Article 108 of that regulation, concerning the entry into force thereof, that only those co-financed projects approved in accordance with the new rules applicable between 2007 and 2013 are covered by that regulation. The objective of Article 108 thereof is to postpone the application of certain provisions of the new basic regulation to a later date, namely 1 January 2007, on their entry into force on 1 August 2006, for programmes between 2007 and 2013. Thus, the provisions of Regulation No 1083/2006 which are applicable with effect from the entry into force of that regulation concern, in essence, the programming, while those which cannot be applied until after 1 January 2007 relate mainly to financial and budgetary management.
- 54 Those specific transitional provisions may be explained by the fact that the basic acts concerning the Cohesion Fund refer differently to the successive programming periods (2000 to 2006, 2007 to 2013, 2014 to 2020), which are tied to the EU financial frameworks. Thus, those basic acts contain substantive and procedural rules concerning the programming, execution and control of financial contributions paid by the EU as part of the policy of cohesion and those rules form, for each programming period, a dissociable body of provisions of which the particular provisions cannot be considered in isolation.
- 55 In those circumstances, the General Court was incorrect in finding, in paragraph 26 of the judgment under appeal, that, by virtue of the second paragraph of Article 108 of Regulation No 1083/2006, Article 100 thereof is 'applicable from 1 January 2007, including to programmes prior to 2007 to 2013'. In accordance with Article 105 of Regulation No 1083/2006, the procedural provision applicable *ratione temporis* to the correction of an approved project, such as here, in the context of the programming period 2000 to 2006, is not Article 100(5) of that regulation, but Article H(2) of Annex II to Regulation No 1164/94, as amended.



- 56 By the second part of its first ground of appeal, the Commission points out that the wording of Article 100 of Regulation No 1083/2006 differs from that of Article H of Annex II to Regulation No 1164/94, as amended.
- 57 Thus, under Article 100(5), in the absence of agreement between the Commission and the Member State, ‘the Commission shall take a decision on the financial correction within six months of the date of the hearing’.
- 58 However, in accordance with Article H(2) of Annex II to Regulation No 1164/94, as amended, in the Spanish language version thereof, ‘after expiry of a time limit laid down by the Commission, ..., in the absence of agreement within three months, the Commission shall take a decision’.
- 59 That latter provision does not, therefore, lay down any period within which the Commission must take its decision, but sets only a time limit before which the Commission and the Member State concerned must make efforts to reach agreement. The fact that there is no time limit for the purposes of adopting a final decision on financial corrections is corroborated by a number of decisions of the Court of Justice as regards the European Agricultural Guidance and Guarantee Fund (EAGGF).
- 60 Consequently, the General Court erred in law by holding, in paragraph 22 of the judgment under appeal, that the Commission was required to adopt the decision on financial corrections within a specific time limit.
- 61 The Kingdom of Spain is of the view that the second part of the first ground of appeal is inadmissible, given that the Commission does not put forward any legal argument to establish that paragraphs 22 to 27 of the judgment under appeal contain an error of law, but merely alleges that it was not required to adopt the contested decision within a certain time limit.
- 62 According to that Member State, in any event that part is unfounded.
- 63 As regards the first part of that ground of appeal, it is ineffective, since the operative part of the judgment under appeal is justified to the required legal standard, irrespective of whether the time limit applicable in the present case was that of three months laid down in Article H(2) of Annex II to Regulation No 1164/94, as amended, or that of six months under Article 100(5) of Regulation No 1083/2006. In its submission, that part is also unfounded.

## 2. Findings of the Court

- 64 It is appropriate to examine first the second part of the first ground of appeal concerning the error of law which the General Court is alleged to have committed in holding that, as from 2000, the Commission is required to comply with a certain time limit when it adopts a decision on financial corrections in relation to Structural Funds. The first part of that ground of appeal, concerning the alleged infringement of EU law by the General Court as regards the arrangements for application of that time limit, will be examined, if necessary, subsequently.
- a) The second part of the first ground of appeal
- i) Admissibility
- 65 Concerning the admissibility of the second part of the first ground of appeal, the plea of inadmissibility raised by the Kingdom of Spain must be rejected.



- 66 It is indeed settled case-law that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, *inter alia*, judgments of 4 July 2000, *Bergadem and Goupil v Commission*, C-352/98 P, EU:C:2000:361, paragraph 34; of 6 March 2003, *Interporc v Commission*, C-41/00 P, EU:C:2003:125, paragraph 15; and of 12 September 2006, *Reynolds Tobacco and Others v Commission*, C-131/03 P, EU:C:2006:541, paragraph 49).
- 67 However, in the present case, the Commission does not merely repeat or reproduce verbatim the pleas in law and arguments which it previously submitted to the General Court, but disputes before the Court of Justice the interpretation or application of EU law made by the General Court in the judgment under appeal.
- 68 In support of the second part of the first ground of its appeal, the Commission argues, in essence, that the General Court disregarded EU law by considering that it lays down a time limit with which that institution is required to comply when it makes a financial correction and states, in its application initiating the appeal, the legal arguments on which it relies in that regard.
- 69 It follows that the second part of the Commission's first ground of appeal is admissible.

ii) Substance

- 70 With regard to whether the first ground of appeal is well founded, it must be borne in mind that the Court of Justice has held on many occasions that, although the EU rules in force until the end of 1999 do not lay down a time limit for the adoption of a decision on financial corrections by the Commission, since 2000 that has, however, been subject to compliance with a time limit laid down in EU law (see judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraphs 75 to 82; of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 75 to 82; of 22 October 2014, *Spain v Commission*, C-429/13 P, EU:C:2014:2310, paragraph 29; of 4 December 2014, *Spain v Commission*, C-513/13 P, not published, EU:C:2014:2412, paragraph 36; of 24 June 2015, *Germany v Commission*, C-549/12 P and C-54/13 P, EU:C:2015:412, paragraph 81, and of 24 June 2015, *Spain v Commission*, C-263/13 P, EU:C:2015:415, paragraph 50).
- 71 In its judgments of 24 June 2015, *Germany v Commission* (C-549/12 P and C-54/13 P, EU:C:2015:412, paragraph 96), and of 24 June 2015, *Spain v Commission* (C-263/13 P, EU:C:2015:415, paragraph 60), the Court furthermore classified that case-law as 'established'.
- 72 Accordingly, by holding, in paragraph 22 of the judgment under appeal, that the adoption by the Commission of a decision on financial corrections in connection with the Cohesion Fund was subject, as from 2000, to compliance with a certain time limit, the General Court, far from erring in law, made merely a correct application of the case-law of the Court of Justice in that area.
- 73 It must be stated in that context that the arguments put forward by the Commission in order to call that case-law into question cannot be accepted.
- 74 Firstly, the Commission's argument that the finding that, as from 2000, the adoption of a decision on financial corrections in connection with Structural Funds is subject to compliance with a legal time limit by that institution is contradicted by a number of the decisions of the Court of Justice is irrelevant to the assessment of the procedural validity of a decision such as that at issue in the present case. It thus follows from those decisions that the Court of Justice rejected the argument drawn by various Member States from the fact that, at the time of adoption of the decision contested by them, the Commission had exceeded the time limit laid down for that purpose.

- 75 On the one hand, the judgments of 27 January 1988, *Denmark v Commission* (349/85, EU:C:1988:34, paragraph 19 ), of 6 October 1993, *Italy v Commission* (C-55/91, EU:C:1993:832, paragraph 69), of 4 July 1996, *Greece v Commission* (C-50/94, EU:C:1996:266, paragraph 6), and of 22 April 1999, *Netherlands v Commission*, C-28/94, EU:C:1999:191, paragraph 51), referred to in that regard by the Commission, concern the EU rules relating to the EAGGF which at that time contained no provision which could be regarded as comparable to the rules of EU law which led the Court of Justice to make the finding in the preceding paragraph of the present judgment.
- 76 What is more, the EAGGF rules relevant to the cases referred to by the Commission were applicable well before 2000, so that the judgments of the Court of Justice delivered in those cases are totally irrelevant to the case-law which the Commission seeks to call into question in the present appeal.
- 77 On the other, with regard to the order of 22 January 2010, *Greece v Commission* (C-43/09 P, not published, EU:C:2010:36), also referred to by the Commission, it suffices to note that neither Regulation No 1386/2002 nor Regulation No 1083/2006 was applicable *ratione temporis* in the case which gave rise to that order.
- 78 Secondly, it is appropriate to state that the Commission's argument is based on the wording of Article H(2) of Annex II to Regulation No 1164/94, as amended, in its Spanish language version, according to which the time limit of three months laid down therein is linked to the absence of agreement between the parties.
- 79 As the Court of Justice has pointed out in paragraphs 52 and 53 of the judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157), the meaning of that provision varies depending on the language versions of that provision, since it is clear from the French language version that the three-month period referred to in that provision relates to the adoption of the decision on financial corrections.
- 80 The Court of Justice deduced therefrom, in paragraph 55 of those judgments, that, for the purposes of ensuring a uniform application and interpretation of the same text, the language versions of which differ, the provision in question must be interpreted by reference not to a particular language version, but to the purpose and general scheme of the rules of which it forms part.
- 81 Thus, it is following a schematic interpretation of the relevant EU rules that the Court of Justice interpreted those rules as meaning that, as from 2000, the Commission is required to comply with a legal time limit when adopting a decision on financial corrections (see judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraphs 56 to 82, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 56 to 82).
- 82 Thirdly, the Commission's theory is contradictory.
- 83 That institution has itself, on many previous occasions, preferred an approach diametrically opposite to that which it is advocating in the present appeal.
- 84 As the Court of Justice has previously had occasion to point out in its judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156, paragraph 81), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157, paragraph 81), Article 18 of Regulation No 1386/2002, in accordance with which the Commission set the parameters for the application of Regulation No 1164/94, as amended, can be understood only as confirming the existence of a legal time limit for the purposes of adoption of a decision on financial corrections.

85 Moreover, as the Court of Justice has stated in paragraph 83 of those judgments, an identical interpretation follows from the wording used by the Commission itself in Communication 2011/C 332/01 from the Commission to the European Parliament, the Council and the Court of Auditors — Annual accounts of the European Union — Financial year 2010 (OJ 2011 C 332, p. 1), which states, on page 63, concerning the cohesion policy, that, where the Member State disagrees with the correction required or proposed by the Commission, following a formal contradictory procedure with the Member State that includes the suspension of payments to the programme, ‘the Commission has three months from the date of a formal hearing with the Member State (six months for 2007-2013 programmes) to adopt a formal financial correction decision and issues a recovery order to obtain repayment from the Member State’.

86 In the light of the foregoing considerations, the second part of the first ground of appeal must be rejected as unfounded.

b) First part of the first ground of appeal

87 As regards the first part of the first ground of appeal, it concerns, in essence, whether, as the Commission asserts, Article H(2) of Annex II to Regulation No 1164/94, as amended, in force between 2000 and 2006, governs the procedure applicable *ratione temporis* to the contested decision, so that the General Court wrongly applied Article 100 of Regulation No 1083/2006, which replaced Regulation No 1164/94, as amended.

88 In that regard, the arguments put forward by the Commission in support of its appeal are unfounded.

89 It must be borne in mind that the Court of Justice has held on many occasions that it follows from Article 108 of Regulation No 1083/2006 that Article 100 thereof is applicable from 1 January 2007, including to programmes approved before that date but still in progress (see judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 98; of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 98; of 22 October 2014, *Spain v Commission*, C-429/13 P, EU:C:2014:2310, paragraph 31; of 4 December 2014, *Spain v Commission*, C-513/13 P, not published, EU:C:2014:2412, paragraph 45; of 24 June 2015, *Germany v Commission*, C-549/12 P and C-54/13 P, EU:C:2015:412, paragraph 84, and of 24 June 2015, *Spain v Commission*, C-263/13 P, EU:C:2015:415, paragraph 53).

90 In that context, it must be stated that the wording of the second paragraph of Article 108 of that regulation leaves no room for doubt as to its meaning and scope. Thus, in accordance with its first sentence, the provisions which are listed therein apply from 1 August 2006 ‘only for programmes for the period 2007 to 2013’. However, under its second sentence, ‘the other provisions shall apply from 1 January 2007’ without any other stipulation and, accordingly, in general.

91 Among the ‘other provisions’, within the meaning of the second sentence of the second paragraph of Article 108 of that regulation, is Article 100 of that regulation, which therefore applies as such from 1 January 2007.

92 Such an application of that Article 100, entitled ‘Procedure’, is all the more justified since it complies with the principle that procedural rules are immediately applicable (see, in particular, judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 98, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 98).

- 93 Furthermore, in the present case, it is not apparent from any factor in the dispute that a new rule of law was applied to a legal situation which arose and became definitive under the former law. On the contrary, the Commission did not commence the financial correction procedure until a date after the entry into force of Regulation No 1083/2006 and the hearing of the parties was even held nearly three and a half years after the date of applicability of Article 100 of that regulation.
- 94 Inasmuch as the Commission bases an argument on Article 105(1) of Regulation No 1083/2006, it must be pointed out that that provision is intended to lay down the transitional scheme for structural funds which were approved on the basis of EU rules in force until 31 December 2006 but which continue beyond that date and closure of which takes place at a later date.
- 95 In so doing, the transitional scheme concerns the substantive rules applicable in that regard, as, moreover, is clear from the use of the terms ‘assistance’ and ‘project’ in that Article 105, in the same way as the content of paragraphs 2 and 3 thereof, and not rules of a procedural nature, which must be governed by the rule of principle referred to in paragraph 92 of the present judgment.
- 96 Consequently, that transitional provision set out in Article 105 of Regulation No 1083/2006 does not apply to the procedural time limit with which the Commission is required to comply when it adopts a decision on financial corrections under that regulation.
- 97 It is appropriate also to add that, from both a logical and practical point of view, it would make no sense for Article 100 of Regulation No 1083/2006, which requires the Commission to adopt its decision on financial corrections within six months of the date of the hearing, to apply from 1 January 2007 but only to programmes in the 2007 to 2013 period, as the Commission claims. In respect of the 2007 to 2013 period, the question of the financial correction does not arise as early as 2007, but only a number of years later, after closure of the projects. The application of that limitation as regards a time limit, such as is set out in Article 100 of that regulation, from the start of 2007 comes into effect only provided that that rule governs a project period already underway at that date.
- 98 In those circumstances, the General Court did not err in law when applying, in paragraph 29 of the judgment under appeal, Article 100(5) of Regulation No 1083/2006.
- 99 In any event, even if, as the Commission argues, the provisions not of Article 100(5) of Regulation No 1083/2006 but those of Article H(2) of Annex II to Regulation No 1164/94, as amended, read in conjunction with Article 18(3) of Regulation No 1386/2002, were applicable to the present case, it is nonetheless clear that that institution did not better comply with the requirements as regards time limit set out in the latter two of those provisions when adopting the contested decision.
- 100 It is clear from the case-law of the Court of Justice that Article H(2) of Annex II to Regulation No 1164/94, as amended, read in conjunction with Article 18(3) of Regulation No 1386/2002, provides that, in order to adopt a decision on financial corrections, the Commission is required to comply with a time limit of three months from the date of the hearing (see judgments of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraphs 95 and 102, and of 4 September 2014, *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 95 and 102).
- 101 The first part of the first ground of appeal must therefore also be rejected and, accordingly, the first ground of appeal is unfounded in its entirety.



## B – *The second ground of appeal*

### 1. Arguments of the parties

- 102 By its second ground of appeal, the Commission submits that the General Court committed an error of law in holding that the period imposed on that institution for the adoption of the decision on financial corrections is a mandatory period, disregard of which constitutes infringement of an essential procedural requirement which invalidates a decision adopted outside that period.
- 103 The Commission states that it puts forward this ground of appeal only in the alternative, in case the Court of Justice should either reject its main ground, on the basis that that institution must adopt the contested decision within the time limit set in Article 100(5) of Regulation No 1083/2006, or share the Commission's interpretation that that regulation is not applicable *ratione temporis* but nonetheless holds that Article H(2) of Annex II to Regulation No 1164/94, as amended, lays down a time limit for the adoption of that decision.
- 104 In each of those possible situations, the Commission disputes the reasoning given in the judgment under appeal as regards the nature of the time limit set for that institution for the adoption of a decision on financial corrections.
- 105 According to the Commission, paragraphs 28, 30, 31 and 33 to 36 of the judgment under appeal depart from the 'traditional' case-law of the Court of Justice, which the General Court had previously followed. In that regard, the Commission refers to a number of judgments of the Court of Justice delivered in EAGGF cases, from which it follows that there is no longer any mandatory time limit for the adoption of decisions on financial corrections. Such an approach is consistent with the essential purpose of a decision on financial corrections, which is to safeguard the financial interests of the EU, the Commission being bound to guarantee that the expenditure made in that context complies with EU law.
- 106 The fact that there is no penalty for non-compliance with that time limit ought to be interpreted as meaning that it is not mandatory but merely indicative.
- 107 Accordingly, non-compliance with the time limit does not affect the lawfulness of the Commission's decision, except where the Member State shows that the delay in the adoption of that decision has adversely affected its interests. As a general rule, the delay is due to the need to continue the discussions with the Member State concerned and to the communication, by that State, of new information after the hearing has taken place, such that the interests of the Member State are duly taken into account. In the present case, the Kingdom of Spain has not established how the non-compliance with the time limit has caused it harm and, in any event, the amount of time by which the time limit was exceeded cannot be regarded as unreasonable.
- 108 The Commission concludes therefrom that the General Court erred in law by annulling the contested decision on the ground that the Commission had adopted it outside the time limit.
- 109 The Kingdom of Spain contends that the second ground of appeal put forward by the Commission should be rejected as unfounded.

### 2. Findings of the Court

- 110 In order to rule on the merits of this ground of appeal, put forward in the alternative by the Commission, it must be noted that, on grounds identical to those set out in paragraphs 74 to 76 of the present judgment, the line of argument which that institution seeks to draw from the judgments of 27 January 1988, *Denmark v Commission* (349/85, EU:C:1988:34, paragraph 19), of 6 October 1993,



*Italy v Commission* (C-55/91, EU:C:1993:832, paragraph 69), of 4 July 1996, *Greece v Commission* (C-50/94, EU:C:1996:266, paragraph 6), and of 22 April 1999, *Netherlands v Commission* (C-28/94, EU:C:1999:191, paragraph 51), is irrelevant.

- 111 As regards the remainder, it must be noted that, in the judgment under appeal, the General Court applied the basic principles of the case-law of the Court of Justice as it follows from the judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157).
- 112 That case-law of the Court of Justice is based not only on an analysis of the scheme and purpose of all the EU rules on structural funds (paragraphs 56 to 84 of those judgments), but also on other considerations such as the efficient and diligent management of the budgets of both the EU and the Member States and observance of the principles of sound administration and cooperation in good faith between the institutions and the Member States (paragraphs 86 to 88 of those judgments). The Court has also taken care to emphasise that the interpretation which it has laid down in those judgments is not likely to cause any practical difficulty, since it allows the Commission a sufficient period in which to adopt its decision (paragraph 85 of those judgments).
- 113 With regard more specifically to the penalty for the Commission's non-compliance with the time limit set for it to adopt a decision on financial corrections, the Court has held, in paragraph 102 of the judgments of 4 September 2014, *Spain v Commission* (C-192/13 P, EU:C:2014:2156), and of 4 September 2014, *Spain v Commission* (C-197/13 P, EU:C:2014:2157), that, contrary to what the Commission has claimed, the fact that the relevant rules do not expressly provide that, in the event of non-compliance with the time limit laid down for adopting a decision on financial corrections, the Commission may no longer adopt such a decision is irrelevant, since the setting of a time limit within which a decision of that nature must be adopted is in itself sufficient.
- 114 The Court of Justice added, in paragraph 103 of those judgments, that failure to comply with the procedural rules relating to the adoption of an act having an adverse effect constitutes an infringement of essential procedural requirements, which it is a matter for the Union judicature to raise, even of its own motion, and the fact that the Commission did not adopt the decision at issue within the period set by the EU legislature constitutes an infringement of essential procedural requirements.
- 115 That case-law has subsequently been confirmed on a number of occasions by the Court of Justice, as is clear, *inter alia*, from the judgments of 22 October 2014, *Spain v Commission* (C-429/13 P, EU:C:2014:2310), of 4 December 2014, *Spain v Commission* (C-513/13 P, not published, EU:C:2014:2412), of 24 June 2015, *Germany v Commission*, (C-549/12 P and C-54/13 P, EU:C:2015:412), and of 24 June 2015, *Spain v Commission* (C-263/13 P, EU:C:2015:415).
- 116 It must be stated in that context that the time limit at issue in the present case was laid down clearly and precisely by the EU legislature and that, contrary to what was provided for in Regulation No 1303/2013, Regulation No 1083/2006 does not take account in that regard of the continuation of discussions between the parties after the hearing.
- 117 In a European Union based on the rule of law, it is for the courts thereof to ensure compliance with such a general rule, if necessary by penalising, even of their own motion, any infringement of that rule. The principles of lawfulness and legal certainty preclude a time limit laid down in an EU regulation for the purposes of adoption of an act having an adverse effect being regarded as being merely indicative in nature, disregard of such a time limit by the author of the act not affecting the validity of that act.

- 118 In those circumstances, the General Court cannot be held to have erred in law by taking the settled case-law of the Court of Justice in that field as its basis for annulling the contested decision for an infringement of essential procedural requirements, such that the second ground of appeal must be rejected.
- 119 Since none of the Commission's grounds of appeal has been upheld, the appeal must be dismissed in its entirety.

## **VI – Costs**

- 120 Pursuant to Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 121 Article 138 of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1), provides in paragraph 1 that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 122 Since the Commission was unsuccessful and the Kingdom of Spain applied for an order for costs against it, it must be ordered to pay the costs of the proceedings.
- 123 Article 140(1) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.
- 124 In consequence, the Kingdom of the Netherlands is to bear its own costs.

On those grounds, the Court (Tenth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders the European Commission to pay the costs;**
- 3. Orders the Kingdom of the Netherlands to bear its own costs.**

[Signatures]