

- order the defendant to bear their own costs and to pay those incurred by the applicants.

Pleas in law and main arguments

SEGI and its two representatives are seeking compensation for the damage allegedly suffered as a result of the abovementioned association's name having been included in the list of terrorist persons, groups and bodies, pursuant to Common Position 2001/931/CFSP ⁽¹⁾, adopted on 27 December 2001, confirmed by Council Common Position 2002/340/CFSP ⁽²⁾ adopted on 2 May 2001, and Council Common Position 2002/940/CFSP ⁽³⁾ adopted on 17 June 2002.

In support of their arguments, the applicants claim that the common position, which is the subject-matter of the action, is vitiated by a number of irregularities, namely breach of a number of fundamental rights, liberties and principles, protected under the Convention of Human Rights and the Charter of Fundamental Rights, such as the right to the presumption of innocence, the right to a proper hearing, in so far as there is no means of challenging the common position in question through the courts, the right to freedom of speech, in particular so far as concerns the right to self-determination and the search for a solution to the Basque conflict by negotiation, and the right to privacy.

The applicants also claim that the procedure for the adoption of Decision 2001/931/CFSP was unlawful in that on 27 December 2001 the Council adopted four measures to combat terrorism and to define the list of terrorist persons, groups and bodies. However, those four measures are closely linked and it is impossible to understand one without knowledge of the other three. Moreover, it would appear that the European Parliament was consulted only in relation to Regulation No 2580/2001 and not the other measures, in particular Common Position 2001/931/CFSP. The latter measures, although they are, in formal terms, common positions, contain provisions which fall within the scope of JHA (Justice and Home Affairs) or which reflect framework decisions or positions which should have been the subject of consultation with the European Parliament, pursuant to Article 39(1) of the Treaty on European Union.

The applicants also allege breach of the rights of the defence and of the obligation to provide reasons.

⁽¹⁾ OJ L 344, of 28.12.2001, p. 93.

⁽²⁾ OJ L 116, of 3.5.2002, p. 75.

⁽³⁾ OJ L 160, of 18.6.2002, p. 32.

Action brought on 14 November 2002 by the Regione Siciliana against the Commission of the European Communities

(Case T-341/02)

(2003/C 7/49)

(Language of the case: Italian)

An action was brought before the Court of First Instance of the European Communities on 14 November 2002 by the Regione Siciliana, represented by the Avvocatura dello Stato, against the Commission of the European Communities.

The applicant claims that the Court should:

- annul the Commission's decision No 109206 of 5 September 2002 on the closure of the major project 'Messina-Palermo motorway' (ERDF No 93.05.03.001 — ARINCO No 93.IT.16.009) and order the Commission of the European Communities to pay the costs

Pleas in law and main arguments

The contested decision, which concerns the major project 'Messina-Palermo motorway' partly financed by contributions from the European Regional Development Fund (ERDF), closed the intervention procedure and decided that the costs of the instalments which had been completed by the date of adoption of the decision were eligible. Consequently the decision concluded that there would be a settlement of the ERDF contribution by unblocking EUR 26 378 246 with a balance to be recovered of EUR 58 036 177.

In support of its claims the applicant puts forward the following arguments:

- The contested decision is *ultra vires* in so far as it appears to have been issued by the Director General for Regional Policy instead of by the Commission itself. Additionally, in the decisions of 22 December 1993 and 28 July 1995 adopted earlier in the course of the project, the deadline by which costs had to have been incurred in order to be eligible for cofinancing was fixed as 31 December 1997, whereas in the contested decision the eligibility of costs was for the first time correlated to the functionality, within a reasonable period of time, of the works in respect of which the costs were incurred.

- Infringement and erroneous application of Articles 24 and 25 of Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993⁽¹⁾.
- The actions at issue are contradictory and infringe the principle of protection of legitimate expectation. It is submitted in this regard that, for the purposes of the decisions of 28 July 1995 cited above, the costs incurred prior to 31 December 1997 could benefit from cofinancing without containing any reference to the

completion or functionality of the works. Those requirements were introduced in the closure proposal of 22 December 2001, whilst the works were in full progress and the managers responsible had already submitted the relevant certificates. The contested decision then sets out an interpretation of the functionality of the works which, even though more favourable than that set out in the closure proposal, departs from the rules originally laid down for the eligibility for Community cofinancing of the costs incurred.

Lastly, the applicant alleges infringement of the duty to state reasons.

⁽¹⁾ OJ 1988 L 374, p. 1 and OJ 1993 L 193, p. 20 respectively.