

Action brought on 22 October 2003 by the region of Sicily against the Commission of the European Communities

(Case T-363/03)

(2003/C 304/62)

(Language of the case: Italian)

An action against the European Commission was brought before the Court of First Instance of the European Communities on 22 October 2003 by the region of Sicily, represented and defended by avvocato dello Stato Antonio Cingolo.

The applicant claims that the Court should:

- annul Commission Decision C (2003) 2890 final of 13 August 2003, and debit note No 3240504102 of 26 September 2003 issued by the Commission for the recovery of the sum of EUR 7 704 723,00, and order the Commission to pay the costs accordingly.

Pleas and main arguments

The Region of Sicily brought an action before the Court of First Instance against Commission Decision C (2003) 2890 final of 13 August 2003 concerning cancellation of the contribution from the European Regional Development Fund (ERDF) granted to an infrastructure investment, the Porto Empedocle Major Project, under the Community support framework for structural assistance in the Objective 1 regions of Italy, Region of Sicily, for the period 1989/93, and also brought an action against debit note No 3240504102 of 26 September 2003 issued by the Commission for the recovery of the sum of EUR 7 704 723,00.

The infrastructure was cofinanced by the ERDF of the European Union under Commission Decision C (90) 2363 025 of 14 December 1990.

In support of its plea the region of Sicily argued:

- A) Infringement of Article 54(1) and Article 52(1) of Council Regulation (EC) No 1260/1999 ⁽¹⁾ and incorrect application of Article 24 of Council Regulation (EEC) No 4253/1988 of 19 December 1988 ⁽²⁾, inasmuch as the decision to cancel the contribution is supported by reference to a provision repealed with effect from 1 January 2000.
- B) Infringement of Article 24 of Council Regulation (EEC) No 4253/88, and misuse of powers through failure to state reasons or inconsistency of reasons, as the wording of Article 24 does not make express provision for the cancellation of the whole of a contribution.
- C) Infringement of Article 24 of Council Regulation (EEC) No 4253/88, and misuse of powers through failure to state reasons and to take into account crucial facts and information, as the reasons for the Commission's choice to cancel rather than reduce the assistance in question do not appear in the contested decision, in spite of the fact that the data and information supplied by the recipient give evidence of the continued usefulness of the works carried out and of the imminent completion of the entire Porto Empedocle Major Project.
- D) Infringement of Article 24(1) of Council Regulation (EEC) No 4253/88, and misuse of powers through failure to state reasons and to carry out suitable preliminary investigations, since the Commission did not state clearly the reasons for which it considered the Region of Sicily's observations insufficient.
- E) Infringement of Article 24(3) of Council Regulation (EEC) No 4253/88, since the debit note issued by the Commission does not relate to sums received unduly and to be recovered, as required in the above-mentioned provision.

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

⁽²⁾ Council 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 (OJ 1988 L 374, p. 1).