

**Action brought on 4 June 2004 by the Italian Republic
against the Commission of the European Communities**

(Case T-207/04)

(2004/C 201/46)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 June 2004 by the Italian Republic, represented by Antonio Cingolo, avvocato dello Stato.

The applicant claims that the Court should:

- annul the Commission's letter No E2/LP D(2004) 712 of 25 March 2004, received on 26 March 2004, by which the European Commission, Directorate-General for Regional Policy, communicated to it the decision that amounts in respect of payments of certain advance payments (advance payments in the context of aid schemes for any Objective 1 and 2 programme) must be clearly identified in future payment declarations, in accordance with the provisions of the abovementioned letter from Commissioner Barnier, together with all underlying and connected measures;
- in the alternative, and so far as may be necessary, annul Commission Regulation (EC) No 448/2004 of 10 March 2004 amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds;
- in any event, annul all underlying and connected measures;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments:

The Italian Republic has challenged before the Court of First Instance of the European Communities the Commission's letter No E2/LP D(2004) 712 of 25 March 2004 concerning the payment of advance payments in the context of aid schemes (MOP Research, Technological Development and Advanced Training), and – so far as may be necessary – Commission Regulation (EC) No 448/2004 of 10 March 2004⁽¹⁾, both concerning the eligibility of expenditure of operations co-financed by the Structural Funds.

In support of its claims in respect of the letter of 25 March 2004, the applicant alleges:

- infringement of essential procedural requirements owing to a complete failure to state reasons and owing to the adoption of the contested measure without any proper legal basis and without complying with the defendant's internal procedural rules;
- infringement of Article 9 of Commission Regulation (EC) No 438/2001⁽²⁾ by failing to comply with the accounting methods set out therein;
- infringement of Article 32 of the basic regulation⁽³⁾ and of Commission Regulation No 448/04, which make the payment of advance payments conditional simply upon proof that the 'final beneficiary' State has transferred the sums in question to the end recipients of the funds;
- infringement of Regulation No 448/04 owing to breaches of the principles of equality and legal certainty, and contradictory reasoning in the contested letter.

In respect of Regulation No 448/04, the applicant alleges infringement:

- of the rules governing the eligibility of expenditure laid down by the basic regulation;
- of the rules governing financial control (which do not impose the obligations alleged by the Commission);
- of the principle of proportionality, in so far as the Commission requests evidence in addition to what is provided for and is necessary;
- of the principle of non-retroactivity, given that Regulation No 448/04 contains provisions with retroactive effect for 44 months prior to its adoption, which is clearly unacceptable in the light of the general principles governing legislative enactment.

⁽¹⁾ Commission Regulation (EC) No 448/2004 of 10 March 2004 amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds and withdrawing Regulation (EC) No 1145/2003 (OJ 2004 L 72, p. 66).

⁽²⁾ Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

⁽³⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).