

In support of its claims, the applicant argues that the Commission:

- by having failed to initiate the formal investigation procedure when, once it had received the Italian Government's proposal for reformulation of the applications in respect of the third invitation to tender under the previous scheme, it considered that proposal incompatible with the common market, has infringed Article 88(2) of the Treaty and the principle of protection of the right to a fair hearing;
- has breached the principle of legal certainty;
- has committed an error of assessment.

According to the applicant, by making the compatibility with the common market of the proposal to allow undertakings taking part in the third tender procedure to reformulate their tender and by concluding, without the least discussion with the parties concerned, that the proposal was incompatible, the Commission has altered its decision to approve the 1997 scheme, which presupposed a previous investigation under Article 87 of the Treaty.

Furthermore, the applicant alleges that, by affecting and putting an end to pre-existing legal situations, the defendant has in fact revoked the authorisation decision of 1997, without observing the procedural guarantees provided by Regulation EC No 659/99 for cases of revocation of aid.

⁽¹⁾ Order of the Court of First Instance of 8 June 2005, not published.

⁽²⁾ Order of the Court of First Instance of 8 June 2005, not yet published in the ECR.

⁽³⁾ Order of the Court of First Instance of 15 June 2005, not published.

Action brought on 21 September 2005 — COFRA s.r.l. v Commission of the European Communities

(Case T-363/05)

(2005/C 296/70)

Language of the case: Italian

Parties

Applicant(s): COFRA s.r.l. (Barletta (Italy)) (represented by Michele Arcangelo Calabrese, lawyer)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims, subject to all procedural reservations, that the Court should declare that, by having acted unlawfully as set out in the application, the Commission has seriously and manifestly infringed Community law, and has caused the applicant financial damage and must therefore be ordered to pay the applicant compensation:

- (a) of EUR 387 700,00, revalued in accordance with the ISTAT (Italian Central Statistical Office) indices of 26 June 2001 until the date of judgment;
- (b) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2002 until the date of judgment;
- (c) of EUR 387 700,00, revalued in accordance with the ISTAT indices of 26 June 2003 until the date of judgment;
- (d) interest on those revalued sums,

and that the Court should order the defendant to pay the costs, including those of the party's technical consultancy.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-362/05 *Nuova Agricast v Commission*.

Action brought on 26 September 2005 — Austria v Commission

(Case T-368/05)

(2005/C 296/71)

Language of the case: German

Parties

Applicant(s): Republic of Austria (represented by: H. Dossi)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

- annul Commission Decision C(2005)2685 of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), and order the Commission to bear the costs of the proceedings;