

Second, the applicants claim that the Council, by refusing to take into account certain additional key information, violated its obligation of due diligence and proper administration, and consequently made a manifest error of appraisal.

Third, the applicants contend that the Council by refusing to exclude children's footwear from the scope of the measures at the stage of the definitive regulation, violated Article 21 of the Basic Regulation, its obligation of motivation under Article 253 EC and made a manifest error of appraisal.

(<sup>1</sup>) OJ L 275, 2006, p. 1.

**Action brought on 2 February 2007 — Kingdom of Spain  
v Commission of the European Communities**

(Case T-2/07)

(2007/C 56/61)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Decision C(2006) 5102 of 20 October 2006, in that it reduces the assistance from the Cohesion Fund to the group of projects No 2001 ES 16 C PE 050 (Clearance of the hydrographical basin of the Júcar 2001-Group2)

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

The present action is directed at Commission Decision C(2006) 5103 of 20 October 2006, which reduced the assistance from the Cohesion Fund to the group of projects No 2001 ES 16 C PE 050, performed in Spain and designated as 'Clearance of the hydrographical basin of the Júcar 2001-Group 2'.

It concerns a comprehensive group of three different projects which received assistance of EUR 11 266 701, which was reduced by virtue of the impugned decision by EUR 1 900 281.

In support of its claims, the applicant alleges incorrect and incoherent interpretation of Directive 92/17/EEC (<sup>1</sup>), in so far as it relates to the criterion of experience (Article 30(1) and (2)) and to the use of the system of average prices (Article 30(1)).

Regarding the inclusion of the 'criterion of experience' as one of the criteria for the contract award, while that criterion is not expressly provided for in the applicable rules, it is submitted that Community case-law allows for that possibility, and that the use of that criterion can in no way constitute a grave and manifest infringement of the Community rules, or, in any event, can only amount to an excusable error of law on account of lack of clarity of the applicable rule.

On the other hand, the applicant disputes that the use of the system of average prices, used during the analysis of the most economically advantageous tender in the projects awarded, infringes the principle of equal treatment, by discriminating in favour of excessively low tenders compared with other more expensive tenders.

In the alternative, the applicant also alleges breach of Article H (2) of Annex II to Regulation (EC) No 1164/94, (<sup>2</sup>) on the ground of infringement of the principles of legitimate expectations and legal certainty; and, in respect of Contract No 2000/GV/2005, breach of the principle of proportionality, as well as breach of Article 19 of the Directive No 93/37, cited above.

(<sup>1</sup>) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).

(<sup>2</sup>) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ L 130, 25.5.1994, p. 1).

**Action brought on 2 January 2007 — Spain v Commission**

(Case T-3/07)

(2007/C 56/62)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Decision C(2006) 5103 in full, which seeks to apply financial corrections to five projects carried out in Andalucía:

— when the Court considers the first of the pleas alleged, it must annul the decision in part, reducing the amount of the corrections by 1 136 320 EUR,