

Pleas in law and main arguments

This action seeks the annulment of Commission Decision C(2007) 3893 of 8 August 2007, by which the defendant made a financial correction in the assistance granted by the European Regional Development Fund (ERDF) to the applicant for the development of a 'Rete di piazze telematiche [infrastructure for universal access to information highways] per la Città di Napoli', together with compensation for the damage caused by that decision.

In support of its application for annulment of the contested decision, the applicant makes the following submissions:

- The decision is illogical, inadequate and completely wanting any legal and factual grounds, insofar as the Commission deliberately failed to take account of all the parameters (both as to form and substance) which should have been examined for the purposes of the correct application of Article 24 of Regulation No 4253/88 and, consequently, its own assessment as to whether the applicant is responsible for the irregularities of which it is accused is irremediably vitiated.
- The concept of irregularity in Article 24 of Regulation No 4253/88 has been misinterpreted and misapplied, insofar as the objections levelled against the applicant do not come within the definition of 'significant changes' affecting the nature or conditions of the operation that is being financed or, even less, within the category of 'sums received unduly' for the purposes of the Community budget.
- The Commission is responsible for the initial delay of the project, insofar as, even though the date for the initiation of the Project and for the eligibility of expenditure was 1 July 1997, the funding agreement was approved by the Commission on 14 July 2007 and notified to the Comune di Napoli only on 25 July 1997.
- The failure to take into account, for the purposes of assessing the eligibility of the expenditure, the entire seven-month period which it took the Commission to approve the amended version of the project submitted by the applicant.
- The Commission incorrectly concluded that the discovery of asbestos and the subsequent delay caused by its removal did not constitute *force majeure*.
- The suspensory effect of the judgment of the Tribunale Amministrativo Regionale was incorrectly limited to the period between 2 August 2001 (date of the judgment) and 5 December 2001 (date when the judgment on appeal of the Consiglio di Stato was notified to the applicant) and that period was limited to invoices issued in connection with the contract for the supply of computer technology, the subject matter of the suspension itself.
- Breach of the principle of proportionality, insofar as the Commission totally failed to take account, for the purposes of calculating the reduction in the assistance, of the fact that the applicant had acted in good faith, that the (alleged) irregularities were of a negligible nature and seriousness, that the operation being financed was actually completed and, lastly, the fact that the responsibility for the facts alleged must be attributed in part to the Commission itself and in part to *force majeure*.
- Breach of the obligation to state reasons, insofar as the Decision does not explain why the alleged irregularities are to be regarded as 'significant'.
- As regards compensation for damage, the applicant submits that, even if the Commission's conduct were not found to be unlawful, it has nonetheless caused damage to the applicant. The decision ordering repayment, in particular, caused wholly unforeseeable and exceptional damage, especially in view of the fact that the operation was completed successfully and with the congratulations of the Commission itself.

Order of the Court of First Instance of 5 September 2007 — ReckittBenckiser v OHIM

(Joined Cases T-2/05, T-3/05, T-49/05, T-118/05 and T-119/05) ⁽¹⁾

(2007/C 283/74)

Language of the case: English

The President of the Court of First Instance (First Chamber) has ordered that the case be removed from the register.

⁽¹⁾ OJ C 69, 19.3.2005.