

Pleas in law and main arguments

By this action, the applicant seeks annulment of the Commission decision contained in debit note No 3240912189 of 17 December 2007 relating to Commission Decision C(2007) 4645 of 4 October 2007, cancelling, following an OLAF report, the assistance granted by the European Social Fund to finance, by way of a global subsidy, a pilot project carried out by the applicant ⁽¹⁾ the annulment of which is sought by the applicant in Case T-444/07 *CPME v Commission* ⁽²⁾.

In support of its application, the applicant submits, principally, that the Commission has erred in law and exceeded its powers in so far as the contested debit note was not addressed to the actual debtor. By relying on infringement of Article 135 of the Financial Regulation No 1605/2002 ⁽³⁾, it submits that the debit note should have been addressed to the body which played a financially responsible role in the project concerned, which actually received the grant from the European Social Fund.

Moreover, the applicant submits that the fact that the debit note was addressed to it damages its image and its credibility with respect to its financial partners given the general interest task it performs.

⁽¹⁾ Commission Decision C(1999) 2645 of 17 August 1999, amended by Decision No C(2001) 2144 of 18 September 2001.

⁽²⁾ OJ 2008 C 37, p. 29.

⁽³⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

Action brought on 29 February 2008 — Spain v Commission

(Case T-113/08)

(2008/C 107/68)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), to the extent it relates to the subject matter of this action, and
- Order the Commission to pay the costs.

Pleas in law and main arguments

The effect of the contested decision is to exclude from Community financing certain corrective measures, among which, for the purposes of this action, are included those concerning aid to olive oil production in the seasons 1998/1999, 1999/2000 and 1999/2001, to a total sum of EUR 183 965 185,54; and direct aid payments, aid for arable crop areas, applied for in the years 2003 and 2004, to a total sum of EUR 16 591 528,35.

In particular, this action relates to the corrective financial measures adopted in relation to aid to olive oil production, excluding the proportion relating to the season 1999/2000 in Andalusia, and that adopted in relation to aid to arable crops areas applied for in the years 2003 and 2004.

In support of its claims, the applicant alleges:

- As regards aid to olive oil production:
 - Infringement of Article 8 of Regulation No 1663/95 ⁽¹⁾, in that the financial corrective measures were not based on observations made by the Commission on verifications made as a result of the investigation, but on extrapolations from observations relating to other investigations.
 - Infringement of Articles 2 and 3 of Regulation No 729/70 ⁽²⁾ and of Article 2 of Regulation No 1258/1999 ⁽³⁾, since the contested decision applies them in inappropriate circumstances, given that the theoretical irregularities relied on by the Commission to justify the financial corrective measures decided upon are insufficient.
 - Failure to observe the period of 24 months prior to written communication of the results of the verifications, laid down in Article 7(4) of Regulation No 1258/99.
- As regards the aid to arable crops areas:
 - Infringement of the procedure laid down in Article 8(1) of Regulation No 1663/95, since there was no statement of the reasons justifying the financial corrective measures in the document in which the results of the verifications were notified to the Member State, and alternatively, failure to observe the period of 24 months laid down in Article 7(4) of Regulation No 1258/1999.

- Infringement of Article 2 of Regulation No 1258/1999, since the contested decision is applied in inappropriate circumstances, given that the irregularities assessed by the Commission are insufficient.
- Infringement of the provisions of Article 2 of that regulation, and of the Guidelines for the calculation of the financial consequences on preparing the Decision on the clearance of accounts of the EAGGF Guarantee Section.

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- (¹) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ L 158, 8.7.1995, p. 6).
- (²) Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ L 94, 28.4.1970, p. 13).
- (³) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160, 26.6.1999, p. 103).

Appeal brought on 6 March 2008 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 14 December 2007 in Case F-21/07, Marcuccio v Commission

(Case T-114/08 P)

(2008/C 107/69)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

In any event:

- Annul the judgment under appeal fully and unconditionally;
- declare that the action at first instance was brought by the appellant *intra dies*;
- declare that the action at first instance was wholly admissible.

Primarily:

- Grant the claims set out in the action at first instance fully and unconditionally;
- order the respondent to make reimbursement to the appellant of all the costs, disbursement and fees incurred by him in relation to both the proceedings at first instance and the instant appeal proceedings.

In the alternative:

- Refer the case back to the Civil Service Tribunal, with a different composition, for a fresh decision.

Pleas in law and main arguments

The appellant relies on the following grounds of appeal:

1. Absolute failure to state reasons, given the failure to dispel the confusion between the concept of damage and the concept of the occurrence of an event giving rise to the kind of damage referred to in the second paragraph of Article 288 (formerly 215) EC.
2. Infringement of Article 288 EC, the first paragraph of Article 46 of the Statute of the Court of Justice, Article 90 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), the principles of legal certainty, the right to judicial protection and the right to a fair trial.
3. Incorrect and unreasonable interpretation and application of the concept of starting date or *dies a quo* for the purpose of determining a reasonable period within which to bring an action under Article 288 EC.
4. Absolute failure to state grounds by reason, *inter alia*, of a total failure to make preliminary inquiries, and infringement of Article 90 of the Staff Regulations and of the relevant general principles of law in the analysis of the date from which the limitation period for bringing an action under Article 288 EC begins to run.
5. Absolute failure to state grounds in relation to the appellant's alleged delay in bringing an action under Article 288 EC.
6. Infringement of Articles 235 and 288 EC relating to the jurisdiction of the Community court in actions for compensation for damage and unconsidered, arbitrary and illogical failure properly to apply the relevant case-law.
7. Infringement of the standards for fair trials, with reference in particular to the standards laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms.