

Re:

Action for compensation for the loss allegedly suffered by the applicants by reason of the EIB's negligence and failures in monitoring the use of funds intended for the completion of the project of 2K-Teint, in performance of the financing contract concluded between the EIB, as agent of the Community, and the Kingdom of Morocco.

Operative part of the order

1. *The action is dismissed as inadmissible;*
2. *2K-Teint SARL, Mohammed Kermoudi, Khalid Kermoudi, Laila Kermoudi, Mounia Kermoudi, Salma Kermoudi and Rabia Kermoudi are ordered to pay, in addition to their own costs, the costs incurred by the Commission and the European Investment Bank (EIB).*

(¹) OJ C 20, 27.1.2007.

**Action brought on 19 February 2008 — Hellenic Republic
v Commission of the European Communities**

(Case T-86/08)

(2008/C 142/47)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: B. Kondolaimos, S. Kharitaki, and by M. Tassopoulou)

Defendant: Commission of the European Communities

Form of order sought

The Court is asked to

- annul or otherwise amend the Commission's decision of 20 December 2007, notified under No E(2007) 6514 final and published as Decision 2008/68/EC (OJ 2008 L 18, p. 12), in so far as it imposes financial corrections on the Hellenic Republic as specified in the application;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the Commission's decision excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it concerns the financial corrections

imposed on it in the sectors: (a) fruit and vegetables, (b) guarantee accompanying measures, (c) failure to meet payment deadlines.

The applicant claims that the contested decision should be annulled because it is unlawful, inasmuch as Community provisions were misinterpreted and misapplied, or it was based on an error as to the facts and incorrect assessment of the factual circumstances, or otherwise as having defective, insufficient and imprecise reasoning, undermining the legal basis of the decision; in addition it should be annulled because in imposing the corrections in question the Commission infringed the principle of proportionality and exceeded the bounds of its discretion.

In particular the applicant puts forward six grounds for annulment.

As regards citrus processing, in view of the factual circumstances and the fact that the correction of 2 % imposed concerns the repetition of the procedure from the bilateral consultation stage, after the annulment of a similar Commission decision by the Court of Justice of the European Communities in Case C-5/03 (¹), the applicant alludes first to the fact that the Commission was in breach of its obligation to comply with the judgments of the Court of Justice under Article 233 EC and the principle of *res iudicata*, and also with the Community rules and guidelines for the clearance of accounts. The applicant also submits that the Commission did not have the necessary powers at the time, that the imposition of a correction for a shortcoming in supplementary checking was unlawful and, lastly, that the 24-month rule was infringed because of the erroneous categorisation of the letter of 1999 as a letter of conclusions.

Secondly, the applicant alleges error as to the facts, insufficient reasoning, infringement of the principle of proportionality and that the Commission exceeded the bounds of its discretion in view of the fact that the alleged infringement (payment by cheque instead of bank transfer) concerns a shortcoming rather than the non-existence of supplementary controls, with no finding of unlawful payment, in conjunction with the date when it was effected.

Thirdly, with regard to the correction in the sector of guarantee accompanying measures, the applicant alleges infringement of essential procedural requirements and otherwise alludes to the fact that at the time the Commission was not empowered to impose financial corrections retroactively for a period earlier than 24 months before the sending of the conciliation letter. Fourthly, the applicant maintains that the contested decision is vitiated by insufficient reasoning, in so far as the conciliation letter merely refers to a shortcoming and in the summary there is doubt as to the exact reason for the correction.

Fifthly, the applicant maintains that the Commission was in error as to the facts and imposed a correction of 5 % in respect of agro-environmental measures and the salvage measure in infringement of the Community rules and guidelines for the clearance of accounts, without justification, in breach of the principle of proportionality and exceeding the bounds of its discretion.

Sixthly, in view of the automatic application of the scale of reductions in Regulation (EC) No 296/96 ⁽²⁾ concerning advances, and without any doubt being cast on the veracity of the reasons which prompted late payments, with the consequence that 100 % of expenditure on late payments was excluded, the applicant alleges infringement of the Community rules and guidelines for the clearance of accounts.

⁽¹⁾ Judgment of 7 July 2005 in Case C-5/03 *Hellenic Republic v Commission* [2005] ECR I-5925.

⁽²⁾ Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5).

Action brought on 18 February 2008 — Republic of Cyprus v Commission

(Case T-87/08)

(2008/C 142/48)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

- annul the procurement notice under reference EuropeAid/126225/C/SER/CY for the conclusion of a contract entitled 'Technical assistance for engineering works for waste management infrastructure and rehabilitation of dumping sites in the northern part of Cyprus', which was published, only in English, on the webpage <http://ec.europa.eu/europaid/tender/data/> on or around 8 December 2007, and annul points 5 and 28.2 of the notice;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

- first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ⁽¹⁾;
- second, because the notice is contrary to and/or incompatible with Article 299 EC, as amended by Article 19 of the

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ⁽²⁾ ('the 2003 Act of Accession') and Protocol No 10, on Cyprus, to the 2003 Act of Accession ⁽³⁾;

- third, because the notice is contrary to or incompatible with both obligations flowing from rules of mandatory international law and United Nations Security Council Resolutions 541(1983) and 550(1984); and
- fourth, because the notice was not published in the Official Journal.

⁽¹⁾ OJ 2006 L 65, p. 5.

⁽²⁾ OJ 2003 L 236, p. 33.

⁽³⁾ OJ 2003 L 236, p. 955.

Action brought on 18 February 2008 — Republic of Cyprus v Commission

(Case T-88/08)

(2008/C 142/49)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by: P. Kliridis)

Defendant: Commission of the European Communities

Form of order sought

- annul the procurement notice under reference EuropeAid/125242/C/SER/CY for the conclusion of a contract entitled 'Technical assistance to support implementation of the Rural Development Sector Programme', which was published, only in English, on the webpage <http://ec.europa.eu/europaid/tender/data/> on or around 6 December 2007, and annul points 5 and 28.2 of the notice;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant submits that the notice is unlawful for the following reasons:

- first, because, in issuing the notice, the Commission exceeded and/or infringed its legal basis, to be specific Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ⁽¹⁾;