

Third, the applicant contends that the percentage of 17 % of the value of sales applied by the Commission for the purposes of calculating the basic amount of the applicant's fine is excessively high. In doing so, the Commission allegedly violates the principles of equal treatment and proportionality, the 2006 Fining Guidelines and the duty to state reasons.

Fourth, the applicant submits that there is no basis for multiplying the applicant's value of sales by the number of years during which the practices in which it engaged occurred. Further, it claims that the automatic multiplication of the amount determined on the basis of the value of sales by the number of years of an undertaking's participation in the infringement confers on the alleged duration of the infringement an importance disproportionate in relation to other factors and in particular to the gravity of the infringement.

Fifth, the applicant advances that there is no basis for imposing on the applicant an additional amount of EUR 436 850,53, equal to 17 % of the value of its sales.

Sixth, the applicant claims that the Commission should have taken into consideration several mitigating circumstances that warrant a substantial reduction of the applicant's fine.

Seventh, the applicant argues that there was no basis for imposing a fine that exceeds 10 % of its turnover. In doing so, the Commission violated Article 23 of Regulation (EC) 1/2003 ⁽¹⁾ and the principle of proportionality.

Eighth and in the alternative, the applicant submits that its fine should be substantially reduced in order to take into account its inability to pay.

⁽¹⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 EC (OJ 2003 L 1, p. 1).

Action brought on 9 June 2008 — Spain v Commission

(Case T-206/08)

(2008/C 197/51)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: Sr. F. Díez Moreno)

Defendant: Commission of the European Communities

Form of order sought

- annul Commission Decision 2008/321/EC of 8 April 2008 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 under the European Agricultural Guarantee Fund (EAGF), in so far as it includes corrections which affect the Kingdom of Spain, deriving from two investigations concerning potential for vine production (VT/VI/2002/14 and VT/VI/2006/09), totalling EUR 54 949 195,80, as a result of the application of a correction at a flat rate of 10 % of all the expenditure declared earlier by way of related assistance; and
- order the Commission to pay the costs.

Pleas in law and main arguments

The exclusions from Community financing which affect Spain in the present proceedings derive from two investigations concerning potential for vine production (VT/VI/2002/14 and VT/VI/2006/09), taking as a basis for the calculation of the financial correction the expenditure declared by Spain for all the assistance measures for which the products resulting from illegal plots of vineyard plantations in the budgetary years 2003 and 2004 could compete, for a total of EUR 54 949 195,80 (correction at a flat rate of 10 % of all the expenditure declared by way of such assistance, in respect of defects in controls of the prohibition on any plantation of vines).

The Kingdom of Spain challenges the proposed financial correction, considering it unjustified and disproportionate, on the basis of the following arguments:

- failure to state the reasons on which the proposed correction is based;
- correct implementation by Spanish organisations of controls for the detection of illegal plantations in 2003 and 2004;
- failure by the Commission to carry out the procedures provided for in connection with the clearance of accounts,
- inappropriateness of using the results of the investigation carried out in 2002;
- rejection of the extrapolation of the proposed correction to the Autonomous Regions not visited; and
- absence of technical arguments to support the proposed percentage of charge: discriminatory aspects of the various regulatory measures.