

The applicant essentially relies on two Commission failures, capable of giving rise to non-contractual liability on the part of the Commission. More precisely, the applicant alleges, first, errors committed by officials when carrying out their duties, and, secondly, a failure to monitor funding awarded by the Commission, breach of Articles 155 EC and Article 311 of the Fourth Lomé Convention, and of the general principles of sound administration, duty of care and protection of legitimate expectations.

⁽¹⁾ Since 23 June 2000, the Lomé Convention has been replaced by the Cotonou Agreement (OJ 2000 L 317, p. 3). The applicant still refers in his application, however, to the Lomé III and IV Conventions.

Action brought on 3 September 2008 — Nuova Agricast Srl v Commission

(Case T-373/08)

(2008/C 285/90)

Language of the case: Italian

Parties

Applicant: Nuova Agricast Srl (Cerignola, Italy) (represented by: M.A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should order the defendant to pay it:

- EUR 1 447 249,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2003 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2003 until the date of judgment; and
- EUR 1 432 497,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2004 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2004 until the date of judgment; and

- EUR 2 009 197,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2005 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2005 until the date of judgment; and
- EUR 1 830 564,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2006 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2006 until the date of judgment; and
- EUR 1 947 081,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2007 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2007 until the date of judgment;
- interest on the sums as revalued, calculated from the date of judgment until satisfied in full, at the rate set by the European Central Bank for main refinancing operations, plus the number of percentage points considered by the Court to be just, which, in the applicant's view, should be not fewer than two; and
- the costs of the proceedings, including those of the party's technical consultancy for 2008.

Pleas in law and main arguments

This present action is the natural continuation of the action in Case T-362/05, in which the applicant sought, *inter alia*, an order that the Commission pay it compensation for loss of profit, consisting of the difference between the income from normal management recorded in balance sheets drawn up on 30 June 2003 and, subsequently, on 30 June 2004, 2005, 2006 and 2007, and the income that would have been obtained from normal management if the projected investment funds had been paid in full.

By the present action, the applicant charges the Commission with the same (or virtually the same) unlawful acts previously alleged in Case T-362/05. The same complaints concerning the acts and conduct of the defendant are also set out in this application, but take account of the ruling of the Court of Justice of the European Communities in its judgment delivered on 15 April 2008 in Case C-390/06 P *Nuova Agricast v Commission*.