

Eleventh, the applicants allege a breach of Regulation No 4253/88 by virtue of the fact that the Commission wrongly held that the subsidisation of the 'Noord-Nederland' technology centre was not in accordance with the single programming document.

The applicants conclude by alleging a breach of the EC Treaty and of Regulation No 4253/88 by reason of the fact that, for the purpose of establishing the total error percentage, the Commission wrongly took into account the findings relating to the renovation plan for the Martini Hall in Groningen.

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- (¹) Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).
- (²) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).
- (³) Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84).
- (⁴) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).
- (⁵) Commission Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (OJ 1997 L 290, p. 1).
- (⁶) Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

Action brought on 19 February 2009 — Netherlands v Commission

(Case T-70/09)

(2009/C 90/52)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels and M. Noort, Agents)

Defendant: Commission of the European Communities

Form of order sought

— annul in part Commission Decision C(2008) 8355 of 11 December 2008 on the reduction of the aid from the European Regional Development Fund within the framework of the single programming document for the Groningen-Drenthe region coming under objective 2 — no 97.07.13.003 — granted in accordance with Commission Decision C(1997) 1362 of 26 May 1997, in

so far as the former decision relates to the 2% flat-rate adjustment to the budget in the amount of EUR 1 139 346,24 which was applied and the expenditure amounting in total to NLG 1 160 456 which it was declared could not be subsidised; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its application the Netherlands first alleges infringement of the principle of legal certainty in that obligations are imposed on a Member State on the basis of case-law of the Court of Justice which post-dates the imposition of those obligations and which at that moment were not clear, precise and foreseeable for the Member State concerned.

In the alternative, the Netherlands alleges infringement of the principle that reasons must be given by virtue of the fact that no more detailed grounds were provided as to the nature of the cross-border interest of the project in question, that project having in the interim been approved and the value of which fell below the thresholds laid down in the public procurement directives.

In conclusion, the Netherlands alleges a breach of Article 211 EC by reason of the fact that the Commission applied a flat-rate reduction of 2% on the ground of the alleged failure to comply with the national conditions governing the project, even though the Commission has power only in respect of compliance with the Community conditions.

Action brought on 17 February 2009 — hofherr kommunikation v OHIM (NATURE WATCH)

(Case T-77/09)

(2009/C 90/53)

Language of the case: English

Parties

Applicant: hofherr kommunikation GmbH (Innsbruck, Austria) (represented by S. Warbek, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 December 2008 in case R 1410/2008-1 and allow registration of the trade mark applied for; and

— Order OHIM to pay the legal costs.