

Action brought on 25 January 2010 — Germany v Commission

(Case T-21/10)

(2010/C 100/65)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and C. von Donat, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 9049 of 13 November 2009, notified to the applicant by letter of 16 November 2009, reducing the assistance granted to the Single Programming Document Objective 2 Saarland (1997-1999) in the Federal Republic of Germany from the European Regional Development Fund (ERDF) under Commission Decisions C(97)1123 of 7 May 1997 and C(1999) 4928 of 28 December 1999;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By the contested decision, the Commission reduced the financial assistance granted from the ERDF in respect of the Single Programming Document (1997-1999) for the Objective 2 region of the Saarland in the Federal Republic of Germany.

The applicant puts forward five pleas in law in support of its action.

First, the applicant complains that there is no legal basis for the flat-rate approach to and extrapolation of financial corrections in the funding period 1994-1999, which covers the Single Programming Document.

Second, the applicant alleges infringement of Article 24(2) of Regulation (EEC) No 4253/88 ⁽¹⁾ since the conditions for a reduction do not apply. It submits, in particular, in that regard that the Commission misconstrued the notion of 'irregularity'. Furthermore, although the Commission made an assumption regarding systemic errors, it did not establish that the national authorities responsible for the administration of Structural Funds were in breach of their obligations under Article 23 of Regulation No 4253/88. The assumptions regarding systemic errors in relation to administration and

control are, moreover, according to the applicant, based on erroneous findings of fact. The applicant also submits that important aspects of the factual background have been determined and assessed incorrectly.

In the alternative, the applicant submits by its third plea in law that the reductions put forward in the contested decision are disproportionate. The applicant claims in this respect that the Commission failed to exercise its discretion under Article 24(2) of Regulation No 4253/88. Furthermore, the flat-rate corrections applied are in excess of the (potential) loss to the Community budget. The applicant also takes the view that the extrapolation of errors is disproportionate because specific errors cannot be applied to a heterogeneous whole.

By its fourth plea in law the applicant alleges a breach of essential procedural requirements. In this respect, the applicant complains about the inadequacy of the reasons put forward for the contested decision and the procedures adopted by the defendant at the end of the funding period. The applicant submits that the contested decision does not disclose how and why the Commission set the flat rates applied at the level that it did. Furthermore, the Commission changed the findings of the assessors working in situ without conducting a further assessment and failed or failed sufficiently to take into account the submission of the German authorities.

Finally, the applicant puts forward a fifth plea in law whereby the defendant infringed the principle of partnership inasmuch as it initially confirms the adequacy of administrative and control systems, but bases the contested decision on systemic failings in the administrative and control system.

⁽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).

Action brought on 25 January 2010 — Esprit International v OHIM — Marc O'Polo International (Representation of the letter 'e' on a trouser pocket)

(Case T-22/10)

(2010/C 100/66)

Language in which the application was lodged: German

Parties

Applicant: Esprit International LP (New York, United States of America) (represented by: M. Treis, lawyer)