

Action brought on 5 March 2010 — Netherlands v Commission**(Case T-119/10)**

(2010/C 113/111)

*Language of the case: Dutch***Parties***Applicant:* Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries and J. Langer, Agents)*Defendant:* European Commission**Form of order sought**

— annul European Commission Decision No C(2009) 10712 of 23 December 2009 reducing assistance under the European Regional Development Fund (ERDF) for the Community Initiative (CI) Interreg II/C Inundation Rijn-Maas Programme in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008);

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its application, the applicant puts forward seven pleas in law:

— breach of Article 24(2) of Regulation No 4253/88⁽¹⁾ by reason of the determination of financial reductions on the basis of extrapolation, even though that provision does not provide any basis for so doing;

— breach of Article 24(2) and (3) of Regulation No 4253/88 by reason of the imposition of flat-rate financial reductions, even though that provision does not provide any basis for so doing;

— infringement of the principle of legal certainty by reason of the imposition of obligations on a Member State by reference to case-law of the Court of Justice dating from after the imposition of those obligations, which obligations, at the moment of their imposition, were not clear, precise and foreseeable for the Member States;

— infringement of the principle of proportionality by reason of the imposition of a financial reduction of 25 % of the costs declared in connection with contracts, in which context there was a failure to comply with general principles such as those of transparency, non-discrimination and equal treatment;

— infringement of the principle of proportionality by reason of the imposition of a financial reduction of 100 % of the costs declared in connection with contracts which exceed the threshold values of Directive 93/37/EEC,⁽²⁾ Directive 93/36/EEC⁽³⁾ or Directive 92/50/EEC⁽⁴⁾ and which were awarded without any competition;

— breach of the duty to state reasons through the failure to explain how the scope of the flat-rate reductions imposed was established;

— breach of the duty to state reasons through the imposition of project-specific reductions for which insufficient reasons were given.

⁽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; corrigendum OJ 1994 L 111, p. 115).

⁽³⁾ Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

⁽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).