

*Defendant:* European Commission

### Form of order sought

— Annul Commission Decision C(2009) 10561 of 18 December 2009 on the reduction of the contribution from the European Regional Development Fund (ERDF) granted by Commission Decision C(95) 2529 of 27 November 1995 and latterly by Commission Decision C(1999) 3557 of 15 November 1999 in respect of the RESIDER II Programme Saarland (1994-1999) in the Federal Republic of Germany;

— Order the Commission to pay the costs.

### Pleas in law and main arguments

By the contested decision the Commission reduced the overall contribution granted from the ERDF in respect of the Community initiative RESIDER II SAARLAND (1994-1999) in the Federal Republic of Germany.

The applicant relies on five pleas in law in support of its action.

In its first plea the applicant submits that there is no legal basis for the consolidation and extrapolation of financial corrections in the programming period 1994 to 1999.

Secondly, the applicant alleges infringement of Article 24(2) of Regulation (EEC) No 4253/88<sup>(1)</sup> as the conditions for a reduction have not been met. It submits, in particular, in that regard that the Commission misconstrued the notion of 'irregularity'. Furthermore, the Commission 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. There is insufficient definition, for an allegation of systematic irregularity, of the administrative and control systems to be submitted. 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) risk of loss to the Community budget. The applicant maintains that, over

and above that, correction rates were cumulated without the outcome in individual cases being checked by reference to the principle of proportionality. 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 the applicant submits that insufficient reasons were given for the contested decision. It submits in that regard that the derivation and grounds for the amount of the flat-rate reductions could not be deduced from the contested decision. In addition, there is nothing to indicate that the Commission sufficiently took into account the submission of the German authorities. Furthermore, the Commission failed to draw any conclusions from the weaknesses identified in the project assessments carried out by external assessors with regard to the conclusiveness of the findings.

Lastly, the applicant puts forward a fifth plea in law alleging that the defendant infringed the principle of partnership because it now relies on the 'datasheets on the eligibility of expenditure' which were only compiled during the current programming period. Furthermore, the Commission bases the contested decision on systemic failings in the administrative and control system, even though it confirmed, in the course of the programming period, that the administrative and control systems were capable of functioning.

<sup>(1)</sup> 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 3 March 2010 — Procter & Gamble Manufacturing Cologne v OHIM — Natura Cosméticos (NATURAVIVA)**

**(Case T-107/10)**

(2010/C 134/66)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Procter & Gamble Manufacturing Cologne GmbH (Cologne, Germany) (represented by: K. Sandberg, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Natura Cosméticos, SA (Itapecerica da Serra, Brazil)

### Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 November 2009 in case R 1558/2008-2;
- Order the defendant to pay the costs of the proceedings; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the defendant.

### Pleas in law and main arguments

*Applicant for the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'NATURAVIVA', for goods and services in classes 3, 5 and 44

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited:* German trade mark registrations of the mark 'VIVA', for goods in class 3; Community trade mark registration of the mark 'VIVA', for goods in class 3

*Decision of the Opposition Division:* Rejected the Community trade mark application in its entirety

*Decision of the Board of Appeal:* Upheld the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly found that there was no likelihood of confusion between the trade marks concerned.

**Action brought on 5 March 2010 — Luxembourg v Commission**

(Case T-109/10)

(2010/C 134/67)

*Language of the case:* French

### Parties

*Applicant:* Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent, and P. Kinsch, lawyer)

*Defendant:* European Commission

### Form of order sought

- Annul the contested decision in so far as it applies to the Grand Duchy of Luxembourg;
- Order the Commission to pay the costs.

### Pleas in law and main arguments

The applicant seeks the annulment, in so far as it applies to the Grand Duchy of Luxembourg, of Commission Decision C(2009) 10712 of 23 December 2009 reducing the assistance granted to the Community Initiative Interreg II/C 'Rhine/Meuse Flooding\*' in the Kingdom of Belgium, Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) under Commission Decision C(97) 3742 of 18 December 1997 (ERDF No. 970010008).

In support of its action, the applicant puts forward two pleas in law.

By the first plea in law, the applicant claims that if the actions for annulment brought by the Dutch and German authorities are upheld, the Grand Duchy of Luxembourg should benefit as a result. If it is found that the errors and weaknesses, allegedly systematic, which the Commission's audit was thought to have revealed in the functioning of the program in question in the Netherlands and Germany, do not in reality exist, the very basis of the decision's reasoning fails and with it the linear financial correction applied to the projects implemented in Luxembourg.