

Fourth ground: infringement of Article 12 of Regulation No 1260/99, the first paragraph of Article 4 of Regulation No 438/2001 and Article 258 TFEU and lack of competence on the part of the defendant. According to the applicant, the Commission attached major importance to the alleged infringements — which are of no great importance — of the rules governing the award of public contracts. However, according to a correct interpretation of Article 12 of Regulation 1260/99 and Article 4 of Regulation No 438/2001, systematic infringement of those rules cannot result directly in a correction being made but must instead give rise to the instigation of an infringement procedure, with a corresponding suspension of payments, pursuant to Article 32(3)(f) of Regulation No 1260/99, in respect of the measures to which the infringement relates.

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- (¹) Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).
 (²) Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

**Action brought on 10 March 2010 — USFSPEI and Others
 v Council**

(Case T-122/10)

(2010/C 148/58)

Language of the case: French

Parties

Applicants: Union syndicale fédérale des services publics européens et internationaux (USFSPEI) (Brussels, Belgium), Giuseppe Calo (Luxembourg, Luxembourg), Jean-Pierre Tytgat (Mamer, Luxembourg) (represented by: J.-N. Louis, A. Coolen, B. Cambier, L. Renders, S. Pappas, avocats)

Defendant: Council of the European Union

Form of order sought

- Annul Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remunerations and pensions of officials and other servants of the European Union and the correction coefficients applied thereto, which is nevertheless to remain in

force until the Council has adopted a new regulation, in accordance with the proposal of the Commission, to take effect on 1 July 2009;

- order the Council to pay the applicants Calo and Tytgat, as well as other officials and servants of the European Union, arrears in remuneration and pensions which they are entitled to from 1 July 2009 onwards, together with default interest from the date those arrears were due, at the rate laid down by the ECB for its main refinancing operations, increased by two percentage points;
- order the Council to pay the USF one Euro by way of symbolic compensation for the moral harm suffered through the wrongful act in the form of the adoption of the illegal Regulation No 1296/2009 of 23 December 2009.

Pleas in law and main arguments

By the present action, the applications seek the annulment of Council Regulation (EU, EURATOM) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto. (¹)

In support of their action, the applicants allege that Regulation No 1296/2009 is illegal, that there has been an abuse of process and an infringement of the principles of sincere cooperation and coherence flowing from Article 4(3) TEU.

The applicants also submit that there has been an infringement of Articles 65 and 65a of the Statute, Articles 1 and 3 of Annex XI thereof as well as the principle of parallel action, the principle of legitimate expectations and the principle of 'patere legem quam ipse fecisti'.

Finally, the applicants submit that there has been an infringement of the obligation to state reasons and the principle of proportionality.

(¹) OJ 2009 L 348, p.10