

In support of its submissions, the applicants put forward the following pleas in law:

Firstly, that the contested Decision is not in accordance with the authorisation procedure under the framework Regulation <sup>(2)</sup> as it lacks an adequate legal basis for its adoption.

Secondly, the Decision adopted by the defendant not to include the product concerned in the Union list of additives without a risk management decision, solely based on the withdrawal of the original application for authorisation, is in breach of the authorisation procedure for the product concerned.

Thirdly, the defendant violated the applicants' legitimate expectations by not providing for the opportunity to replace the original applicant for the product concerned.

Finally, the procedure leading up to the contested Decision was not in compliance with general principles of EU law, such as the principles of sound administration, transparency and legal certainty.

<sup>(1)</sup> Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs (OJ 2002 L 220, p. 18)

<sup>(2)</sup> Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ 2004 L 338, p. 4).

## Action brought on 16 June 2010 — Spain v Commission

(Case T-263/10)

(2010/C 221/83)

*Language of the case: Spanish*

### Parties

*Applicant:* Kingdom of Spain (represented by: N. Díaz Abad, lawyer)

*Defendant:* European Commission

### Form of order sought

— Annul the decision of the European Commission of 8 April 2010 declaring the suspension of the interim payment application submitted by the Kingdom of Spain on 17 December 2009 on the grounds stated in Section I of the legal reasoning set out in the originating application;

— uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— order the Commission to pay the costs.

### Pleas in law and main arguments

This action is directed against the decision of the Commission to interrupt the payment deadline of the interim payment application submitted by the Kingdom of Spain on 17 December 2009. That interim payment application, for a total amount of EUR 2 717 227,26, relates to the Operational Programme for Community Assistance from the European Social Fund in the framework of the Regional Competitiveness and Employment Objective for the Autonomous Community of the Balearics (CCI 2007ES052PO005).

In support of its claims the applicant relies on the following pleas in law:

— Infringement of Article 91(1)(a) of Council Regulation (EC) No 1083/2006 <sup>(1)</sup> of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, since the Commission, without any report from a national or Community audit body to suggest the existence of a significant deficiency in the functioning of the management and control systems, and in the absence of any such deficiency, by means of the contested decision interrupted the payment deadline of the interim payment application submitted by the Kingdom of Spain.

— Infringement of the control strategy approved by the Commission, in as much as the Commission interrupted the payment deadline for that interim payment on the ground that the absence of systems audits constitutes a significant delay in the implementation of the strategy, when that strategy enabled the Kingdom of Spain to submit those systems audits until 30 June 2010.

— Infringement of the principle of legal certainty, since the Commission claims that the Kingdom of Spain failed to produce the systems audits in advance of the timetable agreed with the Commission itself, a requirement which therefore the Spanish authorities could not have foreseen.

- Infringement of the principle of protection of legitimate expectations, since the national authorities acted in reliance on auditing timetables which the Commission had approved in the strategy, timetables which were being met, without any indication from the Commission at any time that this represented any deficiency in the management and control system.
- Infringement of the principle of proportionality, since the measure adopted by the Commission is disproportionate and contrary to efficient financial management, and there are other less onerous legal instruments capable of attaining the same objective.
- Lastly, the Kingdom of Spain claims default interest under Article 87(2) of Regulation 1083/2006, Article 83 of Regulation 1605/2002 <sup>(2)</sup> and Article 106(5) of Commission Regulation 2342/2002. <sup>(3)</sup>

<sup>(1)</sup> Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

<sup>(3)</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

#### Action brought on 16 June 2010 — Spain v Commission

(Case T-264/10)

(2010/C 221/84)

*Language of the case: Spanish*

#### Parties

*Applicant:* Kingdom of Spain (represented by: Mrs Nuria Díaz Abad, lawyer)

*Defendant:* European Commission

#### Form of order sought

- Annul the decision of the European Commission of 10 May 2010 declaring the suspension of the interim payment application submitted by Spain on 18 December 2009 on

the grounds stated in Section 1 of the legal reasoning set out in the originating application;

- Uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

- Order the Commission to pay the costs.

#### Pleas in law and main arguments

The present action is brought against the Commission's decision to interrupt the payment deadline in respect of the interim payment application submitted by Spain on 18 December 2009. That interim payment application, for a total amount of EUR 37 320 854,12, relates to the Operational Programme for Community Assistance of the European Social Fund for Fighting Discrimination in the framework of the Objectives of Convergence and Regional Competitiveness and Employment in Spain (CCI 2007ES05UPO002).

The pleas in law and main arguments are the same as those already raised in Case T-263/10 *Spain v Commission*.

#### Action brought on 16 June 2010 — Spain v Commission

(Case T-265/10)

(2010/C 221/85)

*Language of the case: Spanish*

#### Parties

*Applicant:* Kingdom of Spain (represented by: Mrs Nuria Díaz Abad, lawyer)

*Defendant:* European Commission

#### Form of order sought

- Annul the decision of the European Commission of 15 April 2010 declaring the suspension of the interim payment application submitted by Spain on 11 December 2009 on the grounds stated in Section I of the legal reasoning set out in the originating application;