

4. Fourth plea in law, alleging the infringement of the principle of proportionality, the principle that penalties must fit the offence and the principle of equal treatment, since the fine imposed on the applicant is disproportionate to the gravity of the infringement. In this regard the applicant submits that:

— in the case of an object infringement, the Commission is bound to have regard to the “nature” and “capability” in its proper market and economic context assessing and calibrating its gravity;

— properly analysed, there were powerful reasons in the present case to regard the applicant’s infringement as less grave than the Commission did in applying its gravity multiplier.

5. Fifth plea in law, alleging the breaches of the duty to state adequate reasons and the principle of proportionality in increasing the basic amount of the fine by an additional amount of 16 % for deterrence.

6. Sixth plea in law, alleging an error in law and of fact and manifest errors of assessment, and infringement of the principles of legitimate expectations and/or equal treatment and the Leniency Notice, insofar as the Commission granted the applicant the lowest level of reduction in fine in respect of leniency despite being the first undertaking to apply for a reduction in fine under the Leniency Notice.

7. Seventh plea in law, alleging a manifest error of assessment and infringement of the principle of equal treatment and the principle of proportionality in not granting the applicant a reduction of the fine by way of mitigation, insofar as the Commission failed to take equal account of the fact that the applicant had limited participation in the infringement and did not participate in all elements of the infringement.

Action brought on 27 January 2011 — Spain v Commission

(Case T-54/11)

(2011/C 80/58)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2010) 7700 of 16 November 2010 reducing the financial assistance from the

European Regional Development Fund (ERDF) to the Objective 1 integrated operational programme for Andalucía (2000-2006) CCI No 2000.ES.16.1.PO.003, in so far as it imposes a financial correction of 100 % on the ERDF-financed expenditure for contracts No 2075/2003 and No 2120/2005;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of Article 39(3) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), as the Commission failed to take a decision within the period of three months from the date of the hearing or, as the case may be, from the date on which the supplementary information was supplied by the Spanish authorities.

2. Second plea in law, alleging infringement, by reason of incorrect application, of Article 39(3)(b) of Regulation No 1260/1999, since the Commission applies a financial correction to contracts No 2075/2003 and No 2120/2005 on the ground of alleged irregularities in the procedure followed in awarding those contracts, whereas the use of the negotiated procedure without prior publication of a tender notice was perfectly justified by the provisions of Article 6(3)(b) and (c) of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

Action brought on 27 January 2011 — Castelnou Energía v Commission

(Case T-57/11)

(2011/C 80/59)

Language of the case: Spanish

Parties

Applicant: Castelnou Energía, S.L. (Madrid, Spain) (represented by: E. Garayar, lawyer)

Defendant: European Commission

Form of order sought

— declare the application for annulment admissible;

— pursuant to Article 263 of the Treaty on the Functioning of the European Union, annul the Decision;