

Fifth, the applicant maintains that the facts have been assessed incorrectly so far as concerns the alleged shortcomings in respect of the requirements for management and supervision of the measure.

In relation to the islands of the Aegean, the applicant pleads, first, infringement of the principle of *res judicata*, given that, by its judgment of 27 October 2005 in Case C-175/03 *Greece v Commission*, not published in the ECR, the Court of Justice annulled the financial correction which had been imposed in this field for the same years, or, in the alternative, infringement of Articles 264 TFEU and 266 TFEU.

Second, the applicant contends that Article 7(4) of Regulation (EC) No 1258/1999, ⁽⁵⁾ which provides that corrections are to be imposed on the basis of the 24-month rule, has been interpreted and applied incorrectly, in the alternative, that essential procedural requirements have been breached, in the further alternative, that the European Union was not empowered, *ratione temporis*, to impose a correction in 2010 based on the letter of 17 August 2000, or finally that the imposition of corrections in 2010 for shortcomings of the control system in 1999, 2000 and 2001 infringes the general principle of legal certainty and the general principles requiring action to be taken within a reasonable time and the European Union to act timeously, on account of the unjustified and excessively long duration of the procedure.

Lastly, in relation to animal premiums, the applicant maintains, first, that the procedure for clearance of the accounts is invalid because the Commission was not empowered, *ratione temporis*, to impose financial corrections and, second, that the facts have been assessed incorrectly, and the principle of proportionality has been infringed, as regards appraisal of the risk to the fund posed by the specific issues.

⁽¹⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

⁽²⁾ Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco.

⁽³⁾ Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector.

⁽⁴⁾ Commission Regulation (EC) No 1621/1999 of 22 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards aid for the cultivation of grapes to produce certain varieties of dried grapes.

⁽⁵⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy.

Action brought on 4 January 2011 — Portugal v Commission

(Case T-2/11)

(2011/C 89/42)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo and J. Saraiva de Almeida, Agents)

Defendant: European Commission

Form of order sought

— annulment of Commission Decision C(2010) 7555 of 4 November 2010, excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in the part that applies to Portugal an individual financial correction to the POSEI measure, in the financial years 2005, 2006 and 2007, in the total amount of EUR 743 251,25.

— order the European Commission to pay all the costs.

Pleas in law and main arguments

The applicant relies on four pleas in law: infringement of Article 11 of Regulation No 885/2006; ⁽¹⁾ error in the interpretation of recital 28 in the preamble to Regulation No 43/2003; ⁽²⁾ infringement of Article 7(4) of Regulation No 1258/1999; ⁽³⁾ breach of the principles of equality and proportionality.

By its first plea, the applicant claims that the Commission infringed Article 1 of Regulation No 885/2006 insofar as it did not indicate any results of checks or any observations relating to the years 2005 and 2006, thereby preventing the Portuguese authorities from proving that its conclusions were inaccurate in relation to those years, or from correcting any deficiencies so as to comply with the Community rules and, therefore, denying them the benefit of the procedural guarantee granted to the Member States under that provision.

By its second plea, the applicant claims that the Commission misinterpreted recital 28 in the preamble to Regulation No 43/2003, in so far as it considered that the monitoring carried out by the Portuguese authorities was insufficient in the light of EU standards, given the level of irregularities noted, without explaining at any time, however, to what extent or for what reason this monitoring should have been different or more extensive while, at the same time, it considered this monitoring to be sufficient for the purposes of calculating the financial correction.

It adds that the Commission also infringed Article 7(4) of Regulation No 1258/1999, under which the Commission is to decide on the expenditure to be excluded from the Community financing where it finds that expenditure has not been effected in compliance with Community rules, by excluding from Community financing the expenditure incurred by the Portuguese Republic, having found, wrongly, that this had not been effected in compliance with those rules.

By its third plea, the applicant claims that the Commission infringed Article 7(4) of Regulation No 1258/1999 in that, during the clearance of the EAGGF-Guarantee accounts, it completely ignored the guidelines set out in Working Paper VI/5330/97 of 23.12.1997, which the Commission established and adopted for the purposes of applying that provision, particularly in relation to the calculation of the financial corrections.

Finally, the applicant claims that, owing also to the failure to observe the above-mentioned guidelines, the Commission breached the principles of equality and proportionality too. Thus, it breached the principle of equality in that it did not treat the situation of the Portuguese Republic in the same way as it treated other equal situations, in particular, by applying a financial correction rate of 5 %, in accordance with those guidelines. It breached the principle of proportionality in that, precisely because it failed to observe those guidelines, the Commission applied much higher correction rates, that is, between 44,32 % and 90,48 %, which was explained on the basis of the financial loss at issue.

By that same line of reasoning, the Commission also infringed Article 7(4) of Regulation No 1258/1999, according to which 'The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community'.

⁽¹⁾ Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD.

⁽²⁾ Commission Regulation (EC) No 43/2003 of 23 December 2002 laying down detailed rules for applying Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001 as regards aid for the local production of crop products in the outermost regions of the European Union

⁽³⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy.

Action brought on 25 January 2011 — Singapore Airlines and Singapore Airlines Cargo PTE v Commission

(Case T-43/11)

(2011/C 89/43)

Language of the case: English

Parties

Applicants: Singapore Airlines Ltd and Singapore Airlines Cargo PTE Ltd (represented by: J. Kallaugher, Solicitor, J. P. Poitras, Solicitor, J. R. Calzado and É. Barbier de la Serre, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission's Decision of 9 November 2010 in case COMP/39.258 — *Airfreight*;

— As a complement, or in the alternative, reduce the amount of fine imposed on the applicants; and

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging that the decision breaches essential procedural requirements, including:

— The right to an independent and impartial tribunal;

— The right to legal certainty and foreseeable penalties; and

— The applicants' rights of the defence, since Singapore Airlines Cargo PTE Ltd was not granted access to the replies to the Statement of Objections filed by the other undertakings to which the Statement of Objections was addressed and other relevant material in the Commission's possession that is relied on in the decision.

2. Second plea in law, alleging that the decision is vitiated by a series of errors of fact and law in the application of Article 101 TFEU in relation to the nature and scope of the supposed 'cartel', as:

— The decision is vitiated by inadequate reasoning because it fails to explain the basis for its central findings and does not define the relevant markets.

— The decision is affected by errors of assessment in relation to the nature and scope of the supposed 'cartel'. In particular, the contacts alleged in the decision do not constitute a single worldwide network and the finding of a 'common aim' linking these contacts is not supported by the evidence;

— The Commission has erred in law when it defined the elements of the alleged complex infringement;

— The Commission has wrongly assessed the alleged complex infringement relating to non-commissioning of surcharges; and

— The Commission has committed errors of law and of assessment when it treated the three alleged 'elements' of the infringement as a single infringement.

3. Third plea in law, alleging that the Commission has committed errors of law and fact when it applied Article 101 TFEU to conduct related to sales in foreign jurisdictions, as: