

Action brought on 4 September 2012 — Italy v Commission

(Case T-387/12)

(2012/C 319/28)

*Language of the case: Italian***Parties***Applicant:* Italian Republic (represented by: S. Fiorentino, lawyer)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul the European Commission implementing decision 2012/336/EU of 22 June 2012 (notified under document C(2012) 3838), 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), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as that decision is the object of the present action;
- order the Commission to pay the costs.

Pleas in law and main arguments

The scope of the present action is limited to the flat-rate financial corrections applied to the Italian Republic in relation to the aid scheme for growers of processing tomatoes, for the years 2006, 2007 and 2008.

In support of its action, the applicant relies on a single plea alleging infringement of Article 7(4) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103) and of Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (2005 L 209, p. 1).

By that plea, the applicant challenges the application of the financial corrections made by the contested decision, equal to 2 % of expenditure, submitting that those corrections were applied notwithstanding the proof, acknowledged by the Commission, that no significant financial damage was caused.

In addition, the applicant disputes the quantification of the corrections themselves in so far as their actual determination is disproportionate and manifestly illogical, since they are considerably higher than the potential damage resulting from the conduct attributed to the Italian authorities.

Action brought on 6 September 2012 — Diputación Foral de Bizkaia v Commission

(Case T-397/12)

(2012/C 319/29)

*Language of the case: Spanish***Parties***Applicant:* Diputación Foral de Bizkaia (Spain) (represented by: I. Sáenz-Cortabarría Fernández, lawyer)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul Article 2 of the contested decision, in so far as it declares unlawful the aid provided for in the agreements notified on 15 April 2009 or, in the alternative, in so far as it declares unlawful the aid provided for in the notified agreement on land;
- annul Articles 5 and 6 of the contested decision, in so far as the Commission based its examination of the compatibility with the Treaty, provided for in Article 108(2) TFEU, on the premiss that the aid was unlawful;
- in any event, order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision ⁽¹⁾ qualifies as unlawful aid compatible and incompatible with the internal market, respectively, the 'land' agreement (Convenio sobre suelo) and the 'housing' agreement (Convenio sobre viviendas) entered into on 15 December 2006 between Bizkailur S.A. (public company, wholly owned by the Diputación (Regional Council)), on the one hand, and Habidite Technologies Pais Vasgo S.A., the Grupo Empresarial Afer S.L. and the Grupo Habidite, on the other, relating to the construction of a Habidite factory in Alonsótegui.

In supports of its action, the applicant raises four pleas in law.

1. By its first plea in law, it alleges an error of law in that the decision classifies the aid granted in the 2006 agreements as unlawful, in finding that, on that date, a legally binding and unconditional agreement to grant aid to Habidite existed. The Commission takes no account of the legal consequences resulting from an interpretation of the contracts in accordance with the provisions of domestic law which govern them (in particular, Article 1258 of the Spanish Civil Code).