

Action brought on 7 May 2013 — Italy v Commission

(Case T-255/13)

(2013/C 178/27)

*Language of the case: Italian***Parties**

Applicant: Italian Republic (represented by: M. Salvatorelli, avvocato dello Stato, and by G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision C(2013) 981 final of 26 February 2013 on 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 it involves flat rate financial corrections made in connection with Investigations AC/2005/44, XC/2007/0107 and XC/2007/030 (flat rate financial correction relating to cross-compliance for the claim years 2005, 2006 and 2007 in the amount of EUR 48 095 235,86), Investigations FV/2007/315 and FV/2007/355 (flat rate financial correction relating to the processing of citrus fruits for the financial years 2005, 2006 and 2007 in the amount of EUR 17 913 976,32), and Investigations FA/2008/64, FA/2008/103, FA/2009/064 and FA/2009/104 (flat rate financial correction relating to recognition criteria for the financial years 2007, 2008 and 2009 in the amount of EUR 6 354 112,39);

— order the Commission of the European Union to pay the costs.

Pleas in law and main arguments

The contested decision is alleged to be unlawful for several reasons:

1. the Commission made the corrections despite a total or partial failure to transpose directives, thus rendering those corrections vulnerable if ever infringement proceedings were to be initiated;
2. the Commission, without reason, disregarded the Italian authorities' conduct, failing to take into account (i) the

need for a gradual approach to an extremely complex system, (ii) the significance of the reference made by the EU legislation to the options for its adoption by each of the Member States, and (iii) the relative uncertainty as to the interpretation of Community law: as a result, the contested decision infringes the principles of legal certainty, legality, proportionality, good faith and protection of legitimate expectations;

3. the Commission completely disregarded the differences between the monitoring systems used by each of the paying agencies;
4. the Commission applied a high level of correction — 10 % — which is in fact only applicable in the event of inadequate random monitoring; and
5. it infringes the principle that a decision must state the reasons on which it is based.
6. The specific complaints made by the Commission in that decision are also contested, following a detailed investigation of the facts relating to the documentation examined by the Commission.
7. The part of the decision which concerns the flat rate correction relating to the processing of citrus fruits for the years 2005, 2006 and 2007 is unlawful and is contested in so far as it attributes responsibility for the cases of fraud discovered within the sector to inadequate monitoring on the part of the Member State. In particular, the Commission has not taken into account the fact that no partial or total failure to act was imputable to the State, given that the fraudulent activity in question was in fact imputable to the public officials who were supposed to confirm, following the monitoring entrusted to them, the legality of the activity carried out and the scope of the contributions; therefore, it was not possible for the investigations to be carried out in any other way, and thus avoid fraud, until the criminal conduct mentioned was discovered.
8. The flat rate correction relating to the ARBEA (Agenzia della Regione Basilicata per le Erogazioni in Agricoltura) (Agricultural Payments Agency — Basilicata Region) recognition criteria for the financial years 2007, 2008 and 2009, which was made on the basis of alleged organisational shortcomings supposedly imputable to Italy, is contested on the grounds that (i) rules have been applied to the situation which were not in force at the time the material events took place and (ii) the Commission has disregarded the fact that Italy adopted the necessary corrective measures in good time.