

Grounds for the application for a declaration of invalidity: Infringement of Article 8(1)(b) of Regulation No 207/2009 in conjunction with Article 53(1)(a) of that regulation

Decision of the Cancellation Division: Dismissal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 in conjunction with Article 53(1)(a) of that regulation

Action brought on 24 October 2013 — Germany v Commission

(Case T-557/13)

(2014/C 9/41)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and J. Möller)

Defendant: European Commission

Form of order sought

— Annul Article 1 and the Annex to Commission Implementing Decision 2013/433/EU of 13 August 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 financing by the European Union is therein excluded in respect of payments of a total of EUR 6 192 951,34 made by the competent paying agencies of the Federal Republic of Germany in the framework of the implementation of the aid rules for the potato starch sector for the years 2003 to 2005;

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging failure to observe the conditions for the grant of the premium and the aid — payment of the minimum price

The applicant alleges infringement of Article 7(4) of Regulation (EC) No 1258/1999⁽¹⁾ and Article 31 of Regulation

(EC) No 1290/2005,⁽²⁾ read in conjunction with Article 5 of Regulation (EC) No 1868/94,⁽³⁾ Article 11 of Regulation (EC) No 97/95,⁽⁴⁾ Article 10 of Regulation (EC) No 2236/2003⁽⁵⁾ and Article 26 of Regulation (EC) No 2237/2003⁽⁶⁾ as a result of the exclusion of expenditure from financing, although the conditions for the grant of the premium and the aid were fulfilled, the minimum price for the amount applied for having been paid.

2. Second plea in law, alleging deficient reasoning

By this plea in law the applicant claims that Article 296(2) TFEU has been infringed because the Commission failed to provide adequate and non-contradictory reasoning explaining why on the basis of Article 11 of Regulation No 97/95, Article 10 of Regulation No 2236/2003 and Article 26 of Regulation No 2237/2003, taking all language versions into account, it should be a condition of payment of the premium or aid that the starch undertaking must already have paid the minimum price for the all the potato deliveries in the financial year.

3. Third plea in law, alleging breach of the obligation to notify complaints within 24 months

The applicant alleges infringement of subparagraph 1 of Article 7(4), read in conjunction with point (a) of subparagraph 5 of Article 7(4) of Regulation No 1258/1999, and Article 8(1) of Regulation (EC) No 1663/95⁽⁷⁾ and subparagraph 1 of Article 31(3), read in conjunction with Article 31(4)(a), of Regulation No 1290/2005, and Article 11(1) of Regulation (EC) No 885/2006,⁽⁸⁾ because the Commission failed effectively to communicate the complaint (absence of 'key controls'), on which it based the exclusion of the expenditure, to the Federal Republic of Germany, in writing, within 24 months following the date when the expenditure was incurred.

4. Fourth plea in law, alleging excessive length of proceedings

In this context, the applicant alleges infringement of Article 7(4) of Regulation No 1258/1999, Article 8 of Regulation No 1663/95, Article 31 of Regulation No 1290/2005 and Article 11 of Regulation No 885/2006, in conjunction with the general legal principle that administrative proceedings should be conducted within a reasonable time, and infringement of the rights of the defence, since the proceedings before the Commission lasted too long.

5. Fifth plea in law: infringement of subparagraph 4 of Article 7(4) of Regulation No 1258/1999, Article 31(2) of Regulation No 1290/2005 and of the principle of proportionality

The applicant alleges in this context that, by imposing a flat-rate correction of 10 %, the Commission failed to take appropriate account of the nature and the clearly limited

scope of the supposed infringement and ignored the fact that not only was no financial damage actually caused to the Union, but that there was never even a real danger that such damage would occur.

- (¹) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).
- (²) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).
- (³) Council Regulation (EC) No 1868/94 of 27 July 1994 establishing a quota system in relation to the production of potato starch (OJ 1994 L 197, p. 4).
- (⁴) Commission Regulation (EC) No 97/95 of 17 January 1995 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the minimum price and compensatory payment to be paid to potato producers and of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch (OJ 1995 L 16, p. 3).
- (⁵) Commission Regulation (EC) No 2236/2003 of 23 December 2003 laying down detailed rules for the application of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch (OJ 2003 L 339, p. 45).
- (⁶) Commission Regulation (EC) No 2237/2003 of 23 December 2003 laying down detailed rules for the application of certain support schemes provided for in Title IV of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2003 L 339, p. 52).
- (⁷) Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L158, p. 6).
- (⁸) 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 (OJ 2006 L 171, p. 90).

Action brought on 24 October 2013 — *Isotis v European Commission*

(Case T-562/13)

(2014/C 9/42)

Language of the case: Greek

Parties

Applicant: Information Society open to Impairments — ISOTIS (Athens, Greece) (represented by: S. Skliris, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- declare that the Commission, by seeking from the applicant the sum of EUR 47 197,93 which the Commission paid within the framework of the REACH 112 agreement No 238940, is in breach of the agreement in question;
- declare that the applicant is under no obligation to repay the amount which the Commission paid;
- declare that, in any event, the abovementioned request by the Commission, to the extent of the amount of EUR 13 821,12, is wholly unfounded;
- declare that the general conditions of FP6 contracts are not applicable within the framework of the REACH 112 agreement No 238940 and that, consequently, the applicant is, under the agreement in question, in no way obliged to pay any amount of liquidated damages;
- declare that the Commission, by indicating its intent to claim liquidated damages on the basis of the general conditions of FP6 contracts, is in breach of REACH 112 agreement No 238940;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, which is based on (1) the arbitration clauses in the agreement in question and (2) on Belgian law, which governs the agreement in question, the applicant puts forward three arguments.

1. The first argument is based on the Commission's failure to respect the principles of good faith and fair dealing. Specifically, the applicant maintains that the Commission sought differing amounts, but failed to provide concrete and specific reasons for the creation of each claim, and that the Commission's way of doing business is contrary to the provisions of the Charter of Fundamental Rights. Further, the applicant maintains that the Commission's intention to make claims on the basis of the general conditions of a different type of contract (FP6) which differ from those which apply in the REACH 112 (CIP) agreement also reveals that the Commission's conduct is contrary to accepted standards.
2. The second argument is based on the infringement of the provisions of Article II.28, paragraphs 1 and 5, of the REACH 112 agreement No 238940. Specifically, the applicant maintains that the Commission made claims when there had been no prior audit procedure within the framework of the agreement in question and relied on general and indeterminate audit findings which do not relate to the REACH 112 agreement in question.
3. The third argument, in the alternative, is that the making of the claim for repayment by the Commission was in bad faith and abusive.