

**Action brought on 8 February 2017 — Consorzio IB Innovation v Commission**

(Case T-84/17)

(2017/C 095/32)

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

*Applicant:* Consorzio IB Innovation (Bentivoglio, Italy) (represented by: A. Masutti and P. Manzini, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision, in part or in full, on the basis of the pleas in law relied on;
- order the Commission to pay the costs in their entirety.

**Pleas in law and main arguments**

The present action has been brought against the European Commission Directorate-General for Research and Innovation's decision of 30 November 2016 (ref: Ares 2016-6711369), whereby the Commission agreed with Lubbock Fine's Final Report No 14-BA259-027 of 21 November 2016 and consequently found that Consorzio IB Innovation ('the Consorzio' or 'IBI') was under an obligation to repay EUR 294 925.43 in relation to Contract No 261679-CONTAIN and EUR 155 482.91 in relation to Contract No 288383-ICARGO, and to verify whether there were systemic errors in relation to a series of subsequent contracts.

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

1. First plea in law, alleging an incorrect and contradictory interpretation of the terms 'beneficiary' and 'third parties', in breach of the General Agreement (GA) and the General Conditions contained in Annex II to the GA.
  - The applicant claims in that regard that, bearing in mind the characteristics of the Consorzio, the collective entity that is to be regarded as the beneficiary of the GA consists of all the members of the consortium. Therefore, the consortium members are not third parties in relation to the beneficiary, but part of the beneficiary itself. As such, staff made available by those members to the Consorzio for the tasks referred to in the GA should be regarded as staff of the beneficiary, and must not be mentioned in Annex I, as claimed in the contested decision.
2. Second plea in law, alleging that the contested decision has no legal basis, contains a contradictory statement of reasons and infringes the principle of sound administration.
  - The applicant claims in that regard that the contested decision must necessarily be based on an express legal rule and not, as in the present case, on a Guide on Financial Issues, issued by the services of the Commission and having no legal force. That decision also disregards the principle of sound administration, which prevents the Commission from adopting measures which are binding on their addressees and are based on an incomplete and contradictory report by an auditor from outside the Commission.
3. Third plea in law, alleging misinterpretation and misapplication of Article II.15.2.c of Annex II to the CONTAIN and ICARGO GAs.
  - The applicant claims in that regard that the IBI consultants the reimbursement of whose indirect costs was refused were professionals not engaged by any other body, that is, they were self-employed. Therefore, they are not in either of the situations in respect of which paragraph 2.c of the provision under consideration precludes the reimbursement of costs. If IBI consultants who telework are not in either of the two exceptional situations, they are necessarily subject to the general rule, that is, their indirect costs are subject to the 60 % flat rate rule.

4. Fourth plea in law, alleging infringement of the language rules applicable within the European Union.
  - The applicant claims in that regard that both the auditor's report and the defendant's decision adopting that report are drafted in English, that is, in a language other than IBI's national language. Therefore, Article 3 of Council Regulation (EEC) No 1 of 15 April 1958 determining the languages to be used by the European Economic Community has been infringed.
5. Fifth plea in law, alleging infringement of the principle of sound administration on the basis of a lack of diligence and care in the examination of the case.
  - The applicant claims in that regard that in a situation where the Commission delegates to an external auditor the task of analysing the accounting accuracy of projects, the duty of due diligence passes to that auditor. In addition, once the auditor's report has been received, the principle of sound administration requires the Commission to take particular care in analysing it and endows the Commission with the power to intervene, where appropriate, by altering its content. The Commission has breached that duty of due diligence.

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**Action brought on 13 February 2017 — Spain v Commission**

(Case T-88/17)

(2017/C 095/33)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: M. Sampol Pucurull and M. García-Valdecasas Dorrego, acting as Agents)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Annul in part, as regards the paying agency of Extremadura, Commission Implementing Decision (EU) 2016/2113 of 30 November 2016 on the clearance of accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) in the last execution year of EAFRD 2007-2013 programming period (16 October 2014-31 December 2015), under which that agency was not reimbursed in the sum of EUR 5 364 682.52.
- Order the European Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 69 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1), amended by Council Regulation No 473/2009 of 25 May 2009 (OJ 2009 L 144, p. 3), in so far as it does not allow the deduction of a sum of EUR 5 364 682.52 (non-reusable amounts) in the clearance of accounts concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) in the last execution year of EAFRD 2007-2013 programming period.
  2. Second plea in law, alleging, in the alternative, if the Court should hold that there is not an infringement of Article 69 of Regulation No 1698/2005, that the defendant's acts are arbitrary, exceeding the institution's discretion and also infringing the principle of the protection of legitimate expectations.
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