

Pleas in law and main arguments

In the contested decision the Commission reduced the amount of financial assistance from the European Regional Development Fund (ERDF) for the RESIDER-North Rhine-Westphalia Programme.

In support of its action the applicant claims infringement of Article 24 of Regulation 4253/88 ⁽¹⁾ since the requirements for a reduction are not met. In that context it claims, in particular, that the divergences from the indicative financing plan do not constitute a significant change to the programme.

Even if there were a significant change to the programme, the applicant submits that the Commission gave prior consent in the form of its 'Guidelines for the financial closure of operational measures (1994 to 1999) of the Structural Funds' (SEC (1999) 1316).

Assuming that the requirements for a reduction are met, the applicant claims that the defendant did not make use of its discretionary power in relation to the specific programme. In the applicant's view the Commission should have weighed up whether a reduction of the ERDF assistance was proportionate.

Finally, the contested decision infringes the principle of sound administration in that it required the applicant to bring a new action against the decision, against which an action was already pending.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374 of 31.12.1988, p. 1).

Action brought on 5 December 2006 — Dura Vermeer Groep v Commission

(Case T-351/06)

(2007/C 20/30)

Language of the case: Dutch

Parties

Claimant: Dura Vermeer Groep NV (represented by: M.M. Slotboom, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul Articles 1(d) and 2(d) of the decision in so far as the liability of Dura Vermeer Groep is concerned; and
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The claimant is challenging the Commission's decision of 13 September 2006 relating to a proceeding under Article 81 EC (Case No COMP/38.456 — Bitumen — NL), by which a fine was imposed on the claimant for breach of Article 81 EC.

In support of its application the claimant first submits that the Commission has breached Article 81(1) EC and Article 23(2) of Regulation No 1/2003. In the claimant's view, the Commission's analysis is incorrect with regard to the case-law of the Court of Justice and Court of First Instance on parent company liability for an alleged breach by subsidiaries. The Commission for that reason imposed an excessively strict test on the claimant. Furthermore, the claimant alleges, the Commission misrepresented the factual description of the applicable relationships within the Dura Vermeer concern. The Commission therefore failed to demonstrate that the claimant exercised a determining influence over the conduct of Vermeer Infrastructuur BV.

Second, the claimant alleges infringement of the essential procedural requirements set out in Article 253 EC and of the principle that reasons must be given.

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Claimant: Dura Vermeer Infra BV (represented by: M.M. Slotboom, lawyer)

Defendant: Commission of the European Communities