



Reports of Cases

Joined Cases T-99/09 and T-308/09

Italian Republic
v
European Commission

(ERDF — Campania Regional Operational Programme (ROP) 2000-2006 — Regulation (EC) No 1260/1999 — Article 32(3)(f) — Decision not to make interim payments in connection with the ROP measure concerning waste management and disposal — Infringement procedure against Italy)

Summary — Judgment of the General Court (First Chamber), 19 April 2013

1. *Economic, social and territorial cohesion — Structural assistance — EU financing — Regulation No 1260/1999 — Applications for interim payments — Infringement procedure — Consequence — Provisional inadmissibility of interim payment applications — Criteria for application — Concept of ‘measures’ forming the subject matter of the payment applications — Relationship between the subject matter of the infringement procedure and the said measures — Direct link — Scope*

(Council Regulation No 1260/1999, Arts 32(3), first subpara., (f), and 39(2) and (3))

2. *Proceedings — Production of new pleas during the proceedings — Plea raised for the first time at the reply stage — Inadmissibility*

(Rules of Procedure of the General Court, Art. 48(2))

3. *Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision on the provisional unacceptability of interim payment applications in the context of implementing the ERDF — Reference to the context of that decision — Admissibility*

(Art. 253 EC)

1. According to the second condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999, laying down general provisions on the Structural Funds, the concept of a ‘measure’ is of general application, linked to a prioritising strategy defined by a ‘priority’ which it is the means of implementing over a period of several years, enabling ‘operations’ to be financed. As a number of ‘operations’ may be covered by such a ‘measure’, a measure accordingly has a much wider ambit than an ‘operation’, a term which connotes projects or actions which may receive assistance from the Funds.

In order to arrive at a finding that a payment application is unacceptable, the second condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999 requires that the matters covered by the infringement procedure initiated by the Commission be compared with the matters covered by ‘the measure(s)’ – not by the ‘operations’ – ‘that is or are the subject of [that] application’. The mere fact that a payment application may refer to a number of specific operations implemented under a single measure (over a period of several years) does not permit a *contra legem*

interpretation of the clear and precise wording of the second condition laid down in point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999, to the effect that it is necessary to carry out that comparison in relation to the matters covered by each of the various operations, rather than in relation to the ‘measure(s)’ in question. None the less, the Commission must establish a sufficiently direct link between the ‘measure’ in question, on the one hand, and the matter covered by the infringement procedure, on the other.

Those considerations are consistent with the aims of the relevant provisions of Regulation No 1260/1999. Although it is true that the second condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999 is designed to prevent the Structural Funds from being used to finance Member State operations which are contrary to EU law, it in no way follows that the attendant risk of an unacceptable loss of Community funds must be specifically attributed to the inherent unlawfulness or the unlawful implementation of specific operations (projects or actions) to which the payment application relates; nor does it follow that the Commission is obliged to show that that risk is a direct and specific result of such unlawful operations, contested in an infringement procedure. A restrictive interpretation of that kind would diminish the useful effect of the provisions in question, which confer upon the Commission, on a purely provisional basis, the power to suspend payments under financial commitments of the Structural Funds made in the context of an operational programme, where it is faced with what is presumed to be an infringement of EU law by the recipient Member State which has a sufficiently direct link to the measure to which the envisaged financing relates, pending a judgment of the Court of Justice of the European Union confirming or rejecting the finding that the infringement took place.

Nor is that assessment undermined by the first condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999, which makes it possible, in a similar manner, for the Commission to trigger the suspension of interim payments using the suspension procedure provided for in Article 39(2) of that regulation, that is to say, outside the framework of an infringement procedure. Apart from the fact that Article 39(2) of Regulation No 1260/1999, too, does not refer to an ‘operation’, the first condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999, like the second condition, provides that ‘no suspension of payments’ must concern ‘the measure(s) that is or are the subject of the [payment] application’. Lastly, it clearly follows from the wording of the two conditions under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999 that it is sufficient for the Commission to rely on a single one of those conditions in order to be able provisionally to refuse an interim payment.

Therefore, in order to justify declaring interim payments unacceptable in the light of an ongoing infringement procedure, it is sufficient for the Commission to establish that the matter covered by that procedure has a sufficiently direct link with the ‘measure’ governing the ‘operations’ to which the payment applications concerned relate.

Accordingly, first, the Commission is entitled to base a decision that interim payments are inadmissible on the second condition under point (f) of the first subparagraph of Article 32(3) of Regulation No 1260/1999 and, in view of the power thus conferred upon the Commission provisionally to refuse interim payments, it is not obliged to follow the procedure referred to in the first condition under that provision, read in conjunction with Article 39(2) and (3) of Regulation No 1260/1999.

(see paras 45, 46, 49-51, 53, 54)

2. See the text of the decision.

(see para. 63)

3. The purpose of the obligation to state the reasons for an individual decision is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may make it possible for its validity to be contested, and to enable the Courts of the European Union to review its lawfulness. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted. Given that a Commission decision, adopted in the context of implementing the ERDF and concerning the provisional unacceptability of interim payment applications, will have negative financial consequences both for the applicant Member State and for the final recipients of those payments, that decision must show clearly the grounds justifying the declaration of unacceptability. However, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements under Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

(see para. 71)