

its decision C(2009) 1961 of 12 March 2009, the operation by which the applicant acquires control of the whole CIBA Holding AG ('Ciba') compatible with the common market.

The applicant puts forward the following pleas in law in support of its application for annulment.

It claims, in the first place, that by rejecting the proposed purchaser the defendant violated Article 6(2) of the Regulation No 139/2004⁽¹⁾, paragraphs 418 and 419 of the decision approving BASF's acquisition of Ciba, clause 4(a)(b), 13, 14 and 34 and Schedule B of the commitments attached thereto and paragraphs 31, 48, 73 and 102 of the remedies notice⁽²⁾.

In particular, the applicant argues that the defendant has based its rejection of the proposed purchaser on inaccurate facts and has committed a manifest error of assessment with regard to the incentive for Roquette Frères to maintain and develop the Divestment Business. Furthermore, the applicant argues that the defendant has relied on inaccurate facts and committed a manifest error of assessment with regard to the applicant's request to modify the commitments according to the review clause of the commitments.

Secondly, the applicant claims that the contested decision breaches the principle of proportionality since, in the applicant's opinion, the rejection of its proposal was not necessary to achieve the purpose of the commitments to avoid the creation or strengthening of a dominant position.

Thirdly, the applicant claims that the defendant violated the principle of sound administration and Article 296 TFEU by failing to hear the applicant before taking the contested decision and by failing to state adequate reasons for the contested decision.

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ 2004 L 24, p. 1

⁽²⁾ Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ 2004 L 133, p. 1

Action brought on 4 March 2010 — Spain v Commission

(Case T-106/10)

(2010/C 113/105)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

— annul Decision C(2009) 10136 final of 18 December 2009 applying financial corrections to the support from the Guidance Section of the EAGGF allocated to the Community initiative CCI 2000 ES.060.0.PC.003 (Spain — Leader + Aragon), and

— order the defendant to pay the costs.

Pleas in law and main arguments

Pursuant to the contested decision, the Commission applied a net financial correction of a flat rate of 2 % to the expenditure declared by the Spanish authorities until 4 June 2008, which involves a reduction of the support from the Guidance Section of the EAGGF of EUR 652 674,70 with respect to expenditure for the programme mentioned below which was initially granted in accordance with Commission Decision C(2001) 2067 of 31 July 2001.

The Kingdom of Spain submits that the decision should be annulled on the basis of two grounds:

The first ground is based on an infringement owing to the incorrect application of Article 39 of Regulation (EC) No 1260/1999⁽¹⁾, in so far as the alleged irregularities justifying the financial correction imposed by the Commission do not in fact constitute an infringement of Article 4 of Regulation (EC) No 438/2001⁽²⁾, because the obligation imposed by that provision, according to which the records relating to on-the-spot verifications must state the work done, does not necessarily require those records to contain a list of the checks made, where they may be easily ascertained.

The second ground concerns the infringement of the principle of proportionality laid down in Article 39(3) of Regulation (EC) No 1260/1999, applied in relation to the guidelines defining the principles, criteria and indicative scales to be applied by the Commission staff in order to determine the financial corrections referred to in Article 39(3) of Regulation (EC) No 1260/1999⁽³⁾. First, by applying that correction of 2 % of the expenditure, even though the information provided by the Spanish authorities to the Commission showed that the risk to the Fund was substantially less than that percentage. Second, by extending the period concerned by the correction, so that not only the expenditure declared until the period covered by the Commission audit (17 December 2004) was included, but also the expenditure up until the date of the bilateral meeting (4 June 2008).

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

⁽²⁾ Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

⁽³⁾ Document C (2001) 476 of 2 March 2001.

Action brought on 3 March 2010 — Portugal v Commission

(Case T-111/10)

(2010/C 113/106)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: N. Mimoso Ruiz and P. Moura Pinheiro, lawyers, and L. Inez Fernandes, Agent)

Defendant: European Commission

Form of order sought

On 3 March 2010 the Portuguese Republic brought an action pursuant to Article 263 of the Treaty on the functioning of the European Union against the European Commission for annulment of European Commission Decision C(2009) 10624

of 21 December 2009 reducing the assistance granted through the European Regional Development Fund to the Operational Programme 'Modernisation of the economic fabric' CCI: 1994 PT 16 1 PO 004 (ex ERDF ref. 94.12.09.004), in so far as it concerns the financing of the Closed Tourist Real Property Investment Fund (FIIT).

Pleas in law and main arguments

A real property investment fund, set up by the authorities following approval by the European Commission of the Community support framework (CSF II) for action by the structural funds in regions concerned by Objective 1, for the period from 1 January 1994 to 31 December 1999, has been adapted in order to carry out the tasks of the European Regional Development Fund (FEDER).

Regulation (EEC) No 4254/88, amended by Regulation (EEC) No 2083/93, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the scope of the ERDF,⁽¹⁾ provides that that fund is to participate in the development of indigenous potential in the regions by measures improving access of small and medium-sized enterprises [sic] to the capital market. In the same way as the provision of guarantees and equity participation, activities mentioned merely by way of example in Regulation (EEC) No 2083/93, a real property investment fund is a funding mechanism appropriate for the purpose of encouraging and developing the activities of small and medium-sized undertakings.

The FIIT is intended, in particular, to fund small and medium-sized undertakings active in the tourism sector in Portugal, which generally own significant real property assets and encounter difficulties in access to the sources of finance available on the market.

The FIIT's activities during the period concerned played a part in supporting the development and modernisation of supply in the tourism sector in Portugal, by means of purchasing tourist establishments and then renting them to small and medium-sized undertakings.

The FIIT's activities are in strict keeping with the European Commission's Decision C(94) 464 approving, within the framework of CSF II, the operational programme 'Modernisation of the economic fabric' and Subprogramme 4 'Tourism and cultural heritage'. That decision provided for the creation of a tourism investment fund whose sphere of priority action included, in particular, the financial restructuring, modernisation and resizing of hotels.