

**Action brought on 21 April 2010 — Spain v Commission****(Case T-178/10)**

(2010/C 161/82)

*Language of the case: Spanish***Parties***Applicant:* Kingdom of Spain (represented by: N. Díaz Abad)*Defendant:* European Commission**Form of order sought**

— Annul the decision of the European Commission of 22 February 2010, declaring the suspension of the interim payment applications made by the Kingdom of Spain between 17 November and 30 December 2009 and, alternatively, partially annul that decision in relation to the following interim payment applications:

- 2007ES161PO008 Andalucía EUR 94 370 752,75
- 2007ES161PO008 Andalucía EUR 479 712 483,22
- 2007ES162PO001 Cantabria EUR 4 697 332,79
- 2007ES162PO006 Catalunya EUR 5 392 569,98
- 2007ES162PO008 Aragon EUR 12 451 358,48

— uphold the claimed payment of interest by the European Commission, due to the delay in the actual payment of the interim sums applied for and improperly suspended, and

— order the Commission to pay the costs

**Pleas in law and main arguments**

This action is directed against the decision of the European Commission to interrupt the payment deadline of the above-mentioned payment applications, made by the Kingdom of Spain between 17 November and 30 December 2009. That interruption affects twenty interim payment applications with a total value of EUR 1 890 708 859,51 .

In support of its claims the applicant relies on the following pleas in law:

— Infringement of Article 91(1)(a) of Regulation 1083/2006, <sup>(1)</sup> since the Commission, without any report from a national or Community audit body to suggest the existence of significant deficiencies in the functioning of the management and control systems and in the absence of any such deficiencies, by means of the contested

decision interrupted the payment deadline of the above-mentioned interim payment applications submitted by the Kingdom of Spain.

— Infringement of the control strategies approved by the Commission, in as much as the Commission interrupted the payment deadline for those interim payments on the ground that the absence of systems audits constitutes a significant failure in the implementation of strategies, when those strategies enabled the Kingdom of Spain to submit those systems audits until 30 June 2010.

— Infringement of the principle of legal certainty, since the contested decision requires the Kingdom of Spain to produce the systems audits in advance of the timetable agreed with the Commission itself, a requirement which therefore the Spanish authorities could not have foreseen.

— Infringement of the principle of protection of legitimate expectations, since the national authorities acted in reliance on auditing timetables which the Commission had approved in the strategies, timetables which were being met, without any indication from the Commission at any time that this represented any deficiency in the management and control system.

— Infringement of the principle of proportionality, since the measure adopted by the Commission is disproportionate and contrary to efficient financial management and there are other less onerous legal instruments capable of attaining the same objective.

Alternatively, the applicant seeks the partial annulment of the contested decision on the ground of an infringement of Article 87(2) of Regulation 1083/2006, since payment in respect of the above-mentioned applications was not made within the period of two months following presentation of the applications.

Lastly, the Kingdom of Spain claims default interest under Article 87(2) of Regulation 1083/2006, Article 83 of Regulation 1605/2002 <sup>(2)</sup> and Article 106(5) of Commission Regulation 2342/2002. <sup>(3)</sup>

<sup>(1)</sup> Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, p. 25).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 25, p. 43).

<sup>(3)</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, p. 1).