



Reports of Cases

Case T-116/11

European Medical Association (EMA)

v

European Commission

(Arbitration clause — Sixth framework programme for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) — Dicoems and Cocoon contracts — Non-compliance with the contractual requirements of part of the expenditure declared — Termination of the contracts — Repayment of part of the sums paid — Damages — Counterclaim — Non-contractual liability — Undue enrichment — Action for annulment — Act not amenable to an action — Act forming part of a purely contractual framework from which it is inseparable — Debit note — Inadmissibility)

Summary — Judgment of the General Court (Second Chamber), 11 December 2013

1. *Actions for annulment — Action relating in reality to a contractual dispute — Annulment of a debit note issued by the Commission — No jurisdiction of the EU judicature — Inadmissibility*
(Arts 263 TFEU and 288 TFEU)
2. *EU budget — EU financial assistance — Obligation of the beneficiary to comply with the conditions for grant of the aid — Financing covering only expenses actually incurred — No proof of the reality of the expenses declared — Ineligible expenses*
(Art. 317 TFEU)
3. *EU law — Principles — Principle of sound administration*
4. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision taken by virtue of a contract*
(Art. 296 TFEU)
5. *EU law — Principles — Principle that the Union may not be enriched without cause — Concept*
6. *Judicial proceedings — Admissibility of actions — Action against a letter drawn up by the Research Executive Agency within the scope of its powers — Action in non-contractual liability against the Commission — Research Executive Agency having legal personality — Inadmissibility*
(Council Regulation No 58/2003, Arts 4(2) and 21; Commission Decision 2008/46)
7. *Judicial proceedings — Subject-matter of the dispute — Alteration once proceedings have been started — Prohibition*

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

1. See the text of the decision.

(see paras 72, 74, 75)

2. See the text of the decision.

(see paras 236, 263)

3. The EU institutions are subject to obligations flowing from the general principle of sound administration in regard to the public only in the exercise of their administrative responsibilities. On the other hand, when the relationship between the Commission and the applicant is clearly contractual, the latter can complain, in regard to the Commission, only of breaches of the terms of the contract or of the law applicable to it.

(see para. 245)

4. The duty to state reasons imposed on the EU institutions under Article 296 TFEU applies only to unilateral means of action. It does not therefore apply to means of action by virtue of a contract between the institution in question and the opposite party.

(see para. 275)

5. See the text of the decision.

(see para. 282)

6. A letter bearing the letterhead of the Research Executive Agency (REA), signed by its head of unit, and sent by it in the exercise of its powers, cannot be considered to have been sent by the Commission or to be imputable to it.

Regulation No 58/2003, laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, confers on the Commission power to create executives and to entrust to them certain tasks relating to the management of a number of Community programmes. Although the Commission continues to perform tasks requiring discretionary powers in translating political choices into action, the agency may be entrusted with managing the phases of the project, adopting the instruments of budget implementation and, on the basis of the power delegated by the Commission, carrying out the activities required to implement a Community programme, and in particular activities linked to the awarding of contracts and grants. In addition, Article 4(2) of Regulation No 58/2003 provides that an executive agency is to have legal personality. It follows from Article 21 of that regulation that the contractual liability of the agency is to be governed by the law applicable to the contract and that, in the case of non-contractual liability, the agency is to make good any damage caused by it or its servants, in accordance with the general principles common to the laws of the Member States.

In application of the said regulation, the Commission established the REA, by Decision 2008/46. Article 1 of that decision provides that the statute of the REA is to be governed by Regulation No 58/2003. It follows that the REA has legal personality. Similarly, it is apparent from Decision 2008/46 in conjunction with Article 21 of Regulation No 58/2003 that, in the case of non-contractual liability, the REA must make good any damage caused by it or its servants in the performance of their duties.

(see paras 292-296, 299, 300)

7. Where proceedings have been instituted pursuant to an arbitration clause, the Court must resolve the dispute on the basis of the substantive rules of the national law applicable to the contract.

On the other hand, according to the generally accepted principle of law that every court applies its own rules of procedure, jurisdiction and the admissibility of the heads of claim must be assessed solely on the basis of EU law. Thus, where a counterclaim is formulated in the context of the rejoinder in a case before the General Court, its admissibility must be determined in accordance with Article 48 of the Rules of Procedure of the General Court. That provision prohibits the introduction of new pleas in law in the course of proceedings, but allows it in certain circumstances. However, it does not authorise a party to modify the actual subject-matter of the dispute in the course of proceedings. Article 48 of the Rules of Procedure makes no distinction in that regard between the applicant and the defendant. Moreover, an objection of inadmissibility or a plea that has been raised for the first time in the rejoinder and is not based on matters of law or of fact which have come to light in the course of the procedure must be regarded as inadmissible.

(see paras 310-316)