



Reports of Cases

Case T-671/11

IPK International — World Tourism Marketing Consultants GmbH
v
European Commission

(Financial assistance for an ecological tourism project — Repayment of the amounts recovered — Decision taken following the annulment by the General Court of the earlier decision cancelling the assistance — Compensatory interest — Default interest — Calculation)

Summary — Judgment of the General Court (First Chamber), 10 April 2013

1. *Own resources of the European Union — Repayment of amounts recovered — Annulment of a Commission decision to withdraw financial assistance — Decision taken by the Commission following that annulment — Legal basis*
2. *Own resources of the European Union — Payment of a debt incumbent on the Commission — Interest due — Calculation independent of whether compensatory interest or default interest — Aim to avoid unjustified enrichment of the Union*
3. *Own resources of the European Union — Payment of a debt incumbent on the Commission — Interest due — Compensatory interest — Default interest — Distinction — Basis of calculation of default interest — Principal amount of the debt plus compensatory interest accrued*

1. Where the Commission acknowledges by decision that it owes an applicant a certain amount, including compensatory interest, the fact that, in an earlier judgment annulling a previous Commission decision, the General Court found irregularities by the applicant in connection with financial assistance for an ecological tourism project cannot call into question the existence of the principal debt or the fact that, to that extent, the Commission is liable to pay interest which must be calculated in accordance with the relevant rules. Even though the General Court confirmed the Commission's factual findings relating to irregularities committed which, in principle, justified the cancellation of the financial assistance at issue, it confined itself to annulling that decision on account of the Commission's failure to act within the relevant prescribed period, so that there is no obligation on it to repay that assistance to the applicant. Thus, the Commission's subsequent decision nevertheless acknowledging the total amount to be paid to the applicant, including compensatory interest and its method of calculation, constitutes the sole legal basis for the principal financial claim at issue.

(see paras 33, 34)

2. The Commission's obligation to pay a debt following a judgment annulling one if its decisions covers not only the principal amount of the debt but also the interest produced by that amount. In that regard, regardless of the whether the interest is described as compensatory interest or default interest, the interest must always be calculated on the basis of the interest rate applied by the European Central Bank for its main refinancing operations, plus 2 percentage points. That is a standard increase which is applicable to all sets of circumstances, there being no need to determine in the specific case whether or not that increase is justified in the light of the inflation, during the period at issue, in the Member State

in which the creditor is established. Failure to pay such interest could result in the unjust enrichment of the European Union, which would be contrary to the general principles of EU law. The standard increase of the interest rates by 2 percentage points arose from the need to avoid such unjust enrichment in every possible situation.

(see paras 36-38)

3. Where the Commission is required to compensate or repay a creditor, it is under an unconditional obligation to pay default interest. In a case where the Commission has, following a judgment of the General Court annulling an earlier Commission decision, acknowledged in a decision taken by itself that it is required to pay the principal amount owed and where there is a common agreement between the parties on that point, the default interest is to be calculated as from delivery of the judgment of the General Court. That applies irrespective of the fact that the decision in which the Commission acknowledged the debt constitutes the sole legal basis for the principal financial claim at issue.

Furthermore, the Commission is also required to calculate default interest on the basis of the principal amount payable plus such compensatory interest as had already accrued. Even if it is not, in principle, permitted to capitalise either the compensatory interest accrued before, or of default interest accrued after, the delivery of a judgment recognising the existence of a debt, the Commission must nevertheless determine the default interest accruing until full payment on the basis of the principal amount of the debt plus such compensatory interest as has already accrued. That approach makes a distinction between pre-litigation compensatory interest and post-litigation default interest, since the latter must take into account the entirety of the accumulated financial loss, including loss owing to inflation.

(see paras 41, 42)