

The second ground of appeal alleges a distortion of the evidence adduced before the General Court. That evidence describes the effectively implemented EDF capital restructuring measure and does not enable identification of the alleged tax exemption identified by the General Court.

The third ground of appeal alleges disregard of the nature and scope of the obligation to conduct a diligent and impartial examination laid down in the recent case-law of the Court, in particular the judgment in *Frucona Košice* of 20 September 2007 (C-300/16 P), which was in fact the subject matter of written observations before the General Court.

The fourth ground of appeal alleges disregard by the General Court of the obligation to state reasons, both as regards the identification of the measure at issue and the lack of discussion of the applicant's arguments based on the *Frucona Košice* judgment.

Finally, one ground of appeal raised in the alternative alleges an error of law in the identification of the alleged aid as new aid when it should have been classified as existing aid.

⁽¹⁾ OJ 2016 L 34, p. 152.

**Appeal brought on 9 April 2018 by the Italian Republic against the judgment of the General Court
(Fifth Chamber) delivered on 25 January 2018 in Case T-91/16, Italy v Commission**

(Case C-247/18 P)

(2018/C 182/21)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri, Agent, and P. Gentili, avvocato dello Stato)

Other party to the proceedings: European Commission

Form of order sought

The Italian Republic claims that the Court should:

- set aside, pursuant to Articles 56 and 58 of the Statute of the Court of Justice, the judgment of 25 January 2018, notified on 29 January 2018, delivered by the General Court of the European Union in Case T-91/16, concerning the annulment of Commission Decision C(2015) 9413 of 17 December 2015, notified on 18 December 2015, concerning the reduction of the European Social Fund contribution for the operational programme for the Region of Sicily, which forms part of the Community support framework for structural interventions in the Italian regions covered by objective No 1 (POR Sicily 2000-2006); and to annul that Commission decision.

Grounds of appeal and main arguments

The Italian Republic has appealed to the Court of Justice against the judgment of 25 January 2018 in Case T-91/16, by which the General Court of the European Union dismissed Italy's action brought against **Commission Decision C(2015) 9413 of 17 December 2015, notified on 18 December 2015, concerning the reduction of the European Social Fund contribution for the operational programme for the Region of Sicily, which forms part of the Community support framework for structural interventions in the Italian regions covered by objective No 1 (POR Sicily 2000-2006)**

First ground of appeal. Infringement of Article 39 of Regulation No 1260/99,⁽¹⁾ of Articles 4, 6 and 10 of Regulation No 438/[2001],⁽²⁾ of Article 317 TFEU, and of the principle of the burden of proof.

The General Court failed to find that the facts which it had accepted show that the audit reopened by the Commission in 2008 concerned the same expenditure as that which had already been the subject of a successful audit in 2005 and 2006, without new facts having emerged.

Second ground of appeal. Infringement of Article 39 of Regulation No 1260/99, of Article 100 of Regulation No 1083/2006, ⁽³⁾ of Article 145 of Regulation No 1303/2013, ⁽⁴⁾ and of the principles of good administration, the right to be heard and the protection of legitimate expectations.

The General Court found, without stating reasons, that the fact that the correction procedure had taken over seven years in total was justified, during which time the Commission acted, essentially, in such a way that the mandatory period of six months after the hearing — during which a final decision had to be adopted at a time within the Commission's discretion — had lapsed, thereby nullifying its peremptory nature.

Third ground of appeal. Infringement of Article 39(2) and (3) of Regulation No 1260/99 and of Article 10 of Regulation No 438/2001. Distortion of the facts.

The General Court established that the error rate found in the circumstances of the case was appreciably different in respect of the periods before and after 31 December 2006, as was the error rate in respect of expenditure for 'coherent' projects by contrast with other projects. However, it wrongfully accepted as accurate the correction based on the extrapolation of the single error rate of 32,65 %, applied indiscriminately in respect of all the years in which the programme was operational and to all types of projects, and thereby infringed the principles of proportionality of the corrections and representative nature of the samples.

⁽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⁾ 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 2006 L 210, p. 25).

⁽⁴⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).