



The General Court dismisses three cotton ginning undertakings' actions for compensation

The undertakings have not established that there was a causal link between the infringement of the principle of proportionality by the Council in adopting the 2004 aid scheme for cotton and the losses alleged

On the accession of Greece to the European Communities, a support scheme for cotton was introduced. That support scheme was extended when Spain and Portugal acceded to the European Communities. As part of the reform of the common agricultural policy in 2003, the Council adopted new rules for direct support schemes and established certain support schemes for farmers. In that context, in 2004 the Council adopted a new scheme of aid for cotton ('the 2004 aid scheme for cotton').

On 7 September 2006, following an action brought by Spain¹, the Court of Justice annulled that scheme.

By its judgment in *Spain v Council*, the Court held that the principle of proportionality had been infringed since the Council had not shown that the 2004 aid scheme for cotton had been adopted in an effective exercise of its discretion. The Court thus observed that the information submitted by the Community institutions did not enable it to ascertain whether the Community legislature had been able, without exceeding the bounds of the broad discretion it enjoys in the matter, to reach the conclusion that fixing the amount of the specific aid for cotton at 35% of the total existing aid under the previous support scheme would have sufficed to guarantee the profitability and, hence, the continuation of that crop.

Following that judgment, Sungro SA, Eurosemillas SA and Surcotton SA, three cotton ginning undertakings established in Spain which had benefited from the 2004 aid scheme for cotton, brought these actions for compensation for the losses they allegedly suffered because of the adoption and application, during the 2006/07 marketing campaign, of that scheme². By their actions, those three undertakings claimed compensation from the Council and Commission in total amounts of €37 188 as regards Sungro, €2.66 million as regards Eurosemillas, and €1.73 million as regards Surcotton.

In today's judgment, the General Court notes that the Community's non-contractual liability for unlawful conduct of its institutions is subject to the satisfaction of three cumulative conditions, namely the unlawfulness of the conduct of which the Community institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of. In that respect, the Court reviews, first, the relationship of causation between the unlawful act committed by Community institutions in adopting the 2004 aid scheme for cotton and the losses alleged by the companies.

¹ [C-310/04](#) *Spain v Council*, Press Release [68/06](#).

² 15 other cotton ginning undertakings had brought actions for compensation. However, by letter lodged at the Court Registry on 18 July 2008, those 15 undertakings abandoned their actions. Their 15 cases were therefore removed from the Court's register (see Joined Cases [T-217/07](#), [T-218/07](#), [T-244/07](#) to [T-246/07](#), [T-253/07](#) to [T-255/07](#), [T-258/07](#) to [T-260/07](#), [T-268/07](#) to [T-270/07](#) and [T-394/07](#)).

On that point, the Court finds that the evidence put forward by the companies is intended to show that there is a link between the decrease in the volume of cotton sales during the 2006/07 marketing campaign and the entry into force of the 2004 aid scheme for cotton and not between that decrease and the unlawful act committed by the Council in adopting that scheme. Therefore, **the Court finds that the companies have not established that the losses alleged are directly connected to the infringement of the principle of proportionality by the Council in adopting the 2004 aid scheme for cotton.**

Indeed, the Court observes that it is clear from the judgment in *Spain v Council* that it was not the 2004 aid scheme for cotton itself, but the failure to take account, before its adoption, of all the relevant factors and circumstances, which was criticised from the point of view of an infringement of the principle of proportionality. It was therefore for the companies to provide evidence to show that the rates of coupled and decoupled aid adopted in the 2004 reform, namely 35% and 65%, respectively, which caused the losses they allege, would have been different if the Community institutions had, in accordance with that judgment, found all the relevant data (impact on cotton production, labour costs linked to cotton growing and the effect of the scheme on the ginning sector).

The Court finds that the companies have not shown that, in the absence of the unlawful act found by the Court in *Spain v Council*, the 2004 aid scheme for cotton would not have been adopted or would necessarily have been different in content. In that regard, the Court recalls that the aid scheme in question forms part of the process of reform of the common agricultural policy one of the essential elements of which is the decoupling of direct support for producers and the introduction of a single payment scheme. Consequently, it was for the three undertakings to show that, by adopting a new scheme in compliance not only with the law by carrying out a study of the reform's impact, but also with the objectives underlying the reform of the common agricultural policy, the Council was inevitably led to adopt a system and rate of decoupling aid to producers different from those provided for by the 2004 aid scheme for cotton.

In addition, the new proposal for an aid scheme for cotton submitted by the Commission and dated 9 November 2007 states that the studies carried out conclude that the percentages of 35% of aid coupled to production and of 65% of aid decoupled from production should be maintained. Likewise, the new aid scheme for cotton adopted in 2008 retains those same percentages of coupled and decoupled aid.

Consequently, the General Court concludes that the companies have not established that the losses they suffered are connected, by reason of a relationship of cause and effect, with the infringement of the principle of proportionality which vitiated the annulled 2004 aid scheme for cotton. Therefore, the actions must be dismissed as unfounded, without there being any need to examine whether the other conditions required for establishing the Community's non-contractual liability are satisfied.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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