



Press and Information

General Court of the European Union  
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Judgment in Case T-117/10  
Italy v Commission

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**The General Court confirms that the financial aid provided by the European Regional Development Fund to the Italian region of Apulia must be reduced by almost €80 million**

*Serious failings by the Italian authorities in the management and monitoring of the use of the EU funds are such as to lead to systemic irregularities*

In order to strengthen the economic, social and territorial cohesion and reduce the disparities in the development of various regions and the backwardness of the least favoured regions, the EU takes action by means of Structural Funds<sup>1</sup>, such as, *inter alia*, the European Regional Development Fund (ERDF).

In 1999, Italy submitted to the Commission a draft operational programme for the region of Apulia ('POR Puglia'). In 2000, the Commission approved that draft and made available to the Italian authorities €1.72 thousand million under the ERDF. To that end, the Commission made preliminary and intermediate payments of a total amount of €1.23 thousand million.

In 2007, the Commission carried out an audit of the management and monitoring systems put in place by the Italian authorities and concluded that they had not established a system ensuring the sound financial management of the funds. A new audit carried out in 2007 on the measures taken by the Italian authorities to remedy the deficiencies noted by the previous audit showed that Italy had not complied with its obligations. The Commission therefore suspended the intermediate payments of the ERDF and set Italy a time-limit within which to conduct the necessary controls and to make the necessary corrections.

In 2009, a third audit showed that the requirements set out in the suspension decision had not been met within the prescribed time-limits. A number of irregularities were noted in the first and second-level controls and in the functioning of the payment authority. The Commission concluded that the effective functioning of the management and monitoring of POR Puglia was not adequately guaranteed.

By decision of 22 December 2009, the Commission reduced the financial aid granted to Italy by applying a flat-rate correction of 10% to the certified expenditure, that is, a reduction of €127.17 million. Having regard to the effect of the correction already applied by the Italian authorities to the ERDF's contribution, the Commission reduced the financial aid by €79.33 million.

Italy brought an action against that Commission decision before the General Court, with a view to obtaining its annulment.

In its judgment delivered today, the General Court first points out that **only expenditure incurred by the national authorities in conformity with the EU rules is to be charged to the EU budget**. In order to ensure the sound financial management of the Structural Funds, **it is crucial that the Member States set up management and monitoring systems** enabling the delivery of the products and services co-financed and the reality of expenditure claimed to be verified. The

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<sup>1</sup> Articles 174 to 176 TFEU, Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) and Regulation No 438/2001 laying down detailed rules for its implementation (OJ 2001 L 63, p. 21)

Member States must also **organise, on the basis of appropriate samples, regular controls covering at least 5% of the total expenditure** incurred.

On the other hand, **the Commission must, in order to justify its decision, prove that there has been an infringement of the rules governing the Structural Funds.** It is not required to demonstrate exhaustively that the national controls are inadequate, or that there are irregularities in the figures submitted, but must adduce evidence of **serious and reasonable doubt on its part regarding those controls or figures.** The obligation on the Commission as regards evidence is nevertheless mitigated, given that it is the Member State which is best placed to collect and verify the data required for the clearance of the accounts. Consequently, it is for the Member State to adduce the most detailed and comprehensive evidence that it has carried out controls and that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect.

The General Court takes the view that, in the present case, **the EU auditors noted a number of irregularities** giving rise to serious doubts as regards the controls and whether the expenditure was admissible. In addition to the lack of staff in the bodies comprising the payment authority, those irregularities concern delays in carrying out first and second-level controls, in the transmission of reports, in the follow-up to controls, in keeping the monitoring table and in the checks which the payment authority was supposed to make. A number of irregularities were not pointed out by those performing the national controls, while other controls were considered to have been terminated without examination of the necessary documents. The Commission also disputed the reliability of the percentage of the expenditure monitored and the corrections suggested by the Italian authorities and held that the payment authority was not functioning properly.

**Italy, for its part, did not adduce any evidence which could call into question the Commission's findings.**

The General Court also observes that, since the first audit mission, the Commission has continued negotiations with the Italian authorities. Those authorities have therefore had the opportunity to present their point of view and have been correctly involved in the procedure which led to the adoption of the decision. According to the General Court, the Commission did not infringe its obligation to state reasons, bearing in mind in particular that Italy was sufficiently involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the Fund.

The General Court also takes the view that the flat-rate correction of 10% complies with the rules of administrative conduct<sup>2</sup>.

**Lastly, the General Court considers that the failings noted by the Commission call into question the effectiveness of the entire system for the management and monitoring of POR Puglia and therefore represent a significant risk of loss for the EU budget.** The Commission was thus fully entitled to apply a correction rate of 10%, that rate reflecting the seriousness, the nature and the duration of the inadequacies by which the key elements of the system for monitoring POR Puglia were affected.

On those grounds, the General Court **dismisses Italy's action.**

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**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.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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<sup>2</sup> The 'Guidelines' drawn up by the Commission on the principles, criteria and indicative scales to be applied by its departments in determining financial corrections (Document C(2001) 476 of 2 March 2001)

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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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