

# Case T-306/00

Conserve Italia Soc. coop. rl

v

Commission of the European Communities

(Agriculture — EAGGF — Reduction of financial aid — Statement of reasons — Error of assessment as to the facts — Principle of proportionality)

Judgment of the Court of First Instance (Fifth Chamber), 11 December 2003 . . . . . II-5709

## Summary of the Judgment

1. *Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision entailing serious consequences for the beneficiary of Community aid (Art. 253 EC)*
2. *Community law — Principles — Rights of the defence — Fundamental principle — Scope*

3. *Economic and social cohesion — Structural assistance — Community funding — EAGGF financial assistance discontinued because of irregularities — Conditions — Compliance with the principle of proportionality*  
(Art. 5, third para., EC; Council Regulation No 4253/88, Art. 24)

4. *Economic and social cohesion — Structural assistance — Community funding — Works forming the subject-matter of aid financed by the EAGGF — Impossibility of starting those works before the date on which the Commission receives the application — Fundamental character — Works begun some days before that date of receipt — Automatic discontinuance or reduction of the aid — None*

1. Under Article 253 EC the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and so as to enable the Community judicature to exercise its supervisory jurisdiction. The extent of the obligation to state reasons must be assessed in the light of its context. Moreover, the statement of reasons required by Article 253 EC must be appropriate to the nature of the measure in question. In that regard, the grounds for a decision entailing serious consequences for the beneficiary of Community aid must clearly show the grounds justifying the measure adopted against it by the administration.
2. Observance of the rights of the defence is, in any procedure initiated against a person which is liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views.

(see para. 107)

(see paras 37-38)

3. Article 24 of Regulation No 4253/88 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the

other existing financial instruments authorises the Commission to reduce the Community aid allocated to a beneficiary where an operation or measure appears to justify only part of the aid allocated, if the appropriate investigation reveals an irregularity or a significant change affecting the nature or conditions of the operation.

If, in the exercise of its discretion, the Commission chooses in a decision reducing EAGGF aid to reduce the aid and not to discontinue it, it cannot subsequently rely on the possibility of discontinuance contained, for example, in explanatory notes concerning applications for EAGGF aid in order to justify that decision. The fact that Regulation No 4253/88 allows the Commission to discontinue aid in certain circumstances does not authorise it, when it decides to impose a reduction, to make that reduction without taking into account the requirements of the principle of proportionality laid down by the third paragraph of Article 5 EC, which requires that measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued.

In that regard, where the Commission adopts a method of calculating the reduction that consists in reducing not the amounts of the preparatory work begun before the date on which the Commission received the aid application but the total amount of all the installation work started after that

date, including the preparatory work, it clearly infringes the principle of proportionality in that that method does not take due account of the relationship between the seriousness and the amount of the infringement committed by the beneficiary and the reduction made.

(see paras 127, 129, 135-136, 148)

4. In the context of structural operations financed by the EAGGF, the system according to which work for which aid is granted should not start before the date on which the Commission receives the application is fundamental and its logical purpose is to enable the competent national authority to check that the application in question is indeed compatible with the purpose of the system established, as regards in particular whether the work for which financing is sought has not already been carried out by the applicant.

It is the national authorities which submit the aid project to the Commis-

sion and therefore the Commission receives the application on a date unknown to the applicant, and an unspecified period may elapse between the date the application is received by the Commission and the time the Commission notifies the applicant that it has received it. This situation is likely to place the applicant in a difficult position. On the one hand, if the applicant decides to start work before the notification it incurs the risk of having its aid discontinued due to the premature start of the work, if the date of receipt notified to it is after work has started. On the other hand, if the applicant decides to wait for the notification and suspends the proposed work and too long a period elapses between the date the application is received and the date on which the applicant is notified, the applicant may face difficulties with regard to its commitments to suppliers and the implementation of the project.

Therefore, since the system established by the EAGGF permits the applicant to start work after the date on which the Commission receives the aid application and before the aid is granted, but does not guarantee notification within a reasonable date of receipt, the view should be taken that the fact of embarking upon work a few days before the date of receipt by the Commission, where there is no fraudulent intent on the part of the applicant and once the national authorities have checked that the application is compatible with the purpose of the system, should not automatically result in discontinuance or reduction of the aid, and that exercise of that option should involve a conscientious assessment of those circumstances by the Commission.

(see paras 144-146)