

Case T-196/01

Aristoteleio Panepistimio Thessalonikis

v

Commission of the European Communities

(EAGGF — Withdrawal of financial assistance — Article 24 of Regulation (EEC) No 4253/88 — Error of assessment — Principle of proportionality — Reasonable duration — Statement of reasons)

Judgment of the Court of First Instance (Third Chamber), 30 September 2003 II - 3994

Summary of the Judgment

1. *Economic and social cohesion — Structural assistance — Community financing granted for national operations — Withdrawal of financial assistance from the EAGGF on account of irregularities — Commission obliged to demonstrate the existence of irregularities in the carrying out of the project — Beneficiary obliged to demonstrate that the project complied with the applicable provisions — Commission obliged to formulate the various complaints precisely in the letter opening the procedure — Duty of applicants for, and beneficiaries of, EAGGF assistance to provide information and act in good faith (Council Regulation No 4253/88, Art. 24)*

2. *Economic and social cohesion — Structural assistance — Community financing granted for national operations — Withdrawal of financial assistance from the EAGGF on account of irregularities — Community and national co-financing of a national project — Legal context of the decision withdrawing the assistance — Community law — Justification on the ground that the project was carried out in accordance with national rules — Not permissible*
(Council Regulation No 4253/88, Art. 24(2))

3. *Economic and social cohesion — Structural assistance — Community financing — Commission's right to ask beneficiaries of Community financial assistance for additional information beyond that already supplied*

4. *Economic and social cohesion — Structural assistance — Community financing — Withdrawal of financial assistance from the EAGGF on account of irregularities — Commission obliged to give the beneficiary precise indications as to what supporting documents and additional explanations it must provide*
(Council Regulation No 4253/88, Art. 24)

5. *Economic and social cohesion — Structural assistance — Community financing — Withdrawal of financial assistance from the EAGGF on account of irregularities — Obligation on the Commission to verify whether an operation has actually been carried out — None*
(Council Regulation No 4253/88, Art. 24)

6. *Community law — Principles — Proportionality — Withdrawal of financial assistance from the EAGGF on account of irregularities — Decision to withdraw assistance partially vitiated by errors of assessment — Annulment of the decision in its entirety — Commission's obligations in the light of the proportionality principle*
(Art. 233 EC; Council Regulations Nos 2052/88 and 4253/88, Art. 23)

7. *Economic and social cohesion — Structural assistance — Community financing — Procedure for withdrawing financial aid — Obligations of the Commission — Duty to act within a reasonable time — Criteria for assessment — Breach — Consequences*
(Council Regulation No 4253/88, Art. 24)

1. Whilst the Commission is required, as part of the procedure laid down in 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, to demonstrate, following a suitable examination of the project, that there are irregularities in the way the project has been carried out which justify withdrawal of the assistance, it is none the less up to the beneficiary to carry out the project as approved and to ensure full compliance with the conditions under which the assistance has been awarded, as set out in the award decision and in the annexes thereto. Consequently, if during its examination the Commission discovers evidence of such irregularities the beneficiary of the assistance must be capable of showing that the project has been carried out in full compliance with the relevant provisions and, in particular, with the award decision. In particular, it is up to the beneficiary to show that expenditure has actually been incurred, that it relates directly to the various operations provided for under the project and that that expenditure is appropriate in the light of the objectives of the project.

In that context, the letter initiating the procedure plays a vital role. At that stage of the administrative procedure the Commission must, following its investigation, set down the various complaints regarding the way in which

the project has been carried out in a manner that is sufficiently precise to enable the beneficiary to adduce the evidence described above.

For that purpose, in accordance with its duty to act in good faith, which stems from the obligation to carry out the project in a spirit of partnership and mutual trust, the beneficiary must provide the Commission with all the supporting documents and explanations which, in view of the special features of the project and the financial conditions laid down in the annexes to the award decision, may appear to it to be required in order to dispel the doubts the Commission has expressed. It is essential for the effective functioning of the system of inspection and evidence introduced in order to verify whether the conditions for granting assistance are met that applicants for, and beneficiaries of, such assistance submit to the Commission reliable information which is not liable to mislead it.

Therefore, when examining the legality of a decision withdrawing Community financial aid, it also has to be determined whether the beneficiary has fulfilled its obligation to provide the Commission with all the supporting documents and explanations which, in view of the special features of the project and the financial conditions

laid down in the annexes to the award decision, may appear to it to be required in order to ensure that the project has been carried out properly.

3. The Commission is entitled to ask beneficiaries of Community assistance for extra information in addition to that already supplied if it considers that it is needed in order to establish that the project has been properly implemented.

(see paras 47-50)

2. Although the project entitled 'Pilot project to accelerate the regeneration of forests devastated by fire in Greece' was co-financed by national resources and is therefore subject to national rules, the legal context of the contested decision is that determined by Community law, that is to say, in particular, Article 24(2) of Regulation No 4253/88 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, and the award decision. The beneficiary of Community aid cannot therefore claim before the Commission merely that it carried out the approved project in accordance with the national rules.

In that respect, the beneficiary of the assistance, being responsible for the management of the project, is in principle in the best position to know what information it should supply to the Commission in order to justify the expenses charged to the project. If, in a particular situation, the Commission considers that in order to carry out a suitable examination of the project it needs more detailed information than that already provided, it must give the beneficiary sufficiently precise indications to enable the latter to give it that information before the procedure is closed and the assistance withdrawn.

(see paras 112-113, 116)

4. The fact that the tasks indicated in the employment contract of a person working for a project financed by Community resources do not correspond with those actually carried out by that person, and for which expenses are charged, does not constitute irrebuttable evidence of an

(see para. 51)

irregularity within the meaning of Article 24 of Regulation No 4253/88 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.

The Commission cannot validly complain of a beneficiary's failure to provide it with documents justifying the travel expenses of a person working for a project financed by Community resources in relation to the project's objectives, if it has not given the beneficiary more precise indications as to what supporting documents and what additional explanations it should have provided.

(see paras 132, 138)

5. Article 24 of Regulation No 4253/88 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, which provides that the Commission

may decide to adopt measures for repayment of the financial assistance if, according to Article 24(2), 'the examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought', refers expressly to irregularities concerning the conditions under which the operation being financed has been implemented, which includes irregularities in the way it has been managed.

It cannot therefore be argued that the penalties under Article 24 of Regulation No 4253/88 apply only where the operation financed by the Community has not been carried out in full or in part.

Article 24 cannot therefore be interpreted as meaning that, when the Commission finds significant irregularities in the management of a project, it is required, before it withdraws assistance, to consider in every case whether an operation has actually been carried out or not.

(see paras 205-208)

6. In view of the very nature of the financial assistance granted by the Community, the obligation to comply with the financial obligations laid down in the award decision constitutes, as does the obligation actually to carry out the project concerned, one of the beneficiary's essential undertakings, and so the granting of Community assistance is dependent upon compliance with it.

In principle, where the Commission finds that a beneficiary of Community assistance has charged certain expenses to a project but failed to show that they were directly connected with the project or that they were appropriate, it may withdraw the assistance granted. In such circumstances, the Commission may reasonably take the view that any penalty other than total withdrawal of the assistance and repayment of sums paid by the EAGGF might constitute an invitation to commit fraud, since potential beneficiaries would be tempted either to inflate artificially the amount of the expenses charged to the project in order to evade their obligation to provide co-financing and obtain the maximum contribution from the EAGGF provided for in the award decision, or to supply incorrect information or conceal certain information in order to obtain assistance or to increase the amount of assistance sought, the only deterrent being that the assistance might be reduced to the level it should have been in the light of the actual expenses incurred by the

beneficiary and/or the accuracy of the information supplied by it to the Commission.

However, in a situation where the decision to withdraw Community assistance is annulled in its entirety, even though vitiated by errors of assessment in relation to only some of the irregularities found, it is for the Commission, in accordance with Article 233 EC, in the light of the ruling in respect of those irregularities, to decide, according to the principle of proportionality, whether the assistance should still be withdrawn or another measure be adopted with regard to the project.

(see paras 220, 222-226)

7. Article 24 of Regulation No 4253/88 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 does not lay down any specific time-limits with which the Commission should comply in the context of a procedure for the withdrawal of financial assistance.

According to a general principle of Community law, the Commission is required to carry out its administrative procedures within a reasonable time, the duration of which is to be determined in relation to the particular circumstances of each case, particularly its background, the various procedural stages followed, its complexity, and its importance for the various parties involved.

However, failure to comply with the principle that the Commission must act within a reasonable time, assuming it is established, does not justify automatic annulment of the contested decision.

(see paras 228-230, 233)