

Case T-180/01

Euroagri Srl

v

Commission of the European Communities

(EAGGF — Withdrawal of financial assistance — Articles 24 and 25 of
Regulation (EEC) No 4253/88)

Judgment of the Court of First Instance (Second Chamber), 28 January
2004 II - 374

Summary of the Judgment

1. *Acts of the institutions — Temporal scope — Immediate application of a new procedural rule — Retroactive effect of a substantive rule — Conditions — Rules concerning Community assistance*
(Council Regulations Nos 2052/88 and 4253/88, Art. 24, and 4256/88 and 2082/93)

2. *Economic and social cohesion — Structural assistance — Community funding — Commission's powers of review — Scope*
(Council Regulations Nos 2052/88 and 4253/88, Art. 23(2))
3. *Economic and social cohesion — Structural assistance — Community funding — Obligation on applicants for, and beneficiaries of, EAGGF assistance to provide information and act in good faith — Compliance with the conditions laid down in the decision to grant assistance — Compliance with the information contained in the application for assistance*
(Council Regulation No 4253/88, Art. 24(2))
4. *Economic and social cohesion — Structural assistance — Community funding — Commission's powers to carry out on-the-spot checks and inspections — Option for the Commission to use the results of a check carried out in the context of national criminal proceedings — Non-binding nature of those results*
(Council Regulation No 4253/88, Arts 23(2) and 24)
5. *Economic and social cohesion — Structural assistance — Community funding — Correspondence between the financing and a service essential for the implementation of the project — Burden of proof on the beneficiary*
(Council Regulation No 4253/88, Art. 24)
6. *Economic and social cohesion — Structural assistance — Community funding — Withdrawal of assistance — Need for a clear and unequivocal legal basis*
(Council Regulation No 4253/88, Art. 24(2))

1. The procedural rules are generally considered to apply to all proceedings pending at the time when they enter into force, although this is not the case with substantive rules. The latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them. The conditions for granting Community assistance, the

obligations incumbent on the beneficiary and the conditions under which assistance may be withdrawn constitute substantive rules. Those aspects are therefore, in principle, governed by the regulations applying at the time when the assistance was granted. However, the provisions concerning the inspections carried out by the Commission and the obligations incumbent on the Commission and the Member States in connection with the monitor-

ing of projects are procedural provisions, applying in their new version, from their entry into force.

The withdrawal of Community assistance due to the irregularities alleged against a beneficiary is by way of being a penalty when it goes beyond repayment of amounts that have been wrongly paid as a result of those irregularities and is imposed in order to serve as a deterrent. It is therefore only permissible if it is justified both under the regulations applying at the time when the assistance was granted and those in force at the time when the decision to withdraw that assistance was made.

(see paras 36, 37)

That provision is indeed intended to avoid repeated checks on the same project. It thus requires the Commission to organise its checks according to the principles of good administration. It does not, however, prohibit repeated checks as such.

It is in particular legitimate for the Commission to repeat its checks where fresh evidence reveals that more detailed checks are needed on certain projects. At any event, it is normal for an inspection instigated because of new evidence that has given rise to suspicion of fraud in connection with certain projects to be more detailed and to produce results that differ from those of a routine inspection undertaken in the absence of any suspicion.

(see paras 57-59)

2. The last subparagraph of Article 23(2) 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, as amended, provides that the Commission is to ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period.
3. The system of subsidies provided for by the Community legislation relies in particular on the beneficiary complying with a series of obligations which entitle it to obtain the proposed financial assistance. If the beneficiary does not comply with all those obligations, Article 24(2) 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 reconsider the extent of the obligations it assumes under the decision awarding that assistance.

Similarly, applicants for, and beneficiaries of, Community assistance are required to satisfy themselves that they are submitting to the Commission reliable information which is sufficiently accurate, since otherwise the system of controls and evidence set up to determine whether the conditions for granting assistance are fulfilled cannot function properly. In the absence of sufficiently accurate information projects which do not fulfil the conditions required could obtain assistance. It follows that the obligation on applicants for, and beneficiaries of, assistance to provide information and act in good faith is inherent in the EAGGF assistance system and essential for its effective functioning. Infringement of those obligations must therefore be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended.

Furthermore, the grant of financial assistance is subject not only to compliance with the conditions laid down by the Commission in the award decision but also to compliance with the terms of the application for assistance in respect of which that decision was given. The applicant for the Com-

munity assistance applied for it in respect of a specific project, which it described in detail in its application. That description played a decisive part as regards the award decision.

It is incumbent on the beneficiary to prove that the information contained in the application for assistance is correct. As the originator of that application, it is in the best position to do so and must establish that the receipt of resources from public funds is justified.

If it proves subsequently that the information did not correspond to the facts, the award decision is vitiated by an error of fact and must therefore be considered to be unlawful. Such unlawfulness may, provided that the administration does not infringe either the principle of legal certainty or that of the protection of legitimate expectations justify retroactive withdrawal of the award decision.

(see paras 82-85, 87, 92, 112)

4. Although the Commission may legitimately use the results of a check carried out by the national authorities as its basis for determining whether the existence of irregularities justifying a penalty under 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, has been established, that option does not mean, however, that the Commission is bound by the results of such national checks. The checks carried out in the context of national criminal proceedings have a different purpose and the fact that they reach the conclusion that there has been no conduct constituting an offence within the meaning of national criminal law does not justify the conclusion that there is no irregularity within the meaning of that Article 24 which could give rise to measures at an administrative level under that provision.

(see para. 94)

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 cannot be ruled out on the ground that the penalties laid down in that provision only apply where the operation being financed has not been carried out in whole or in part. It is not enough for the beneficiary of assistance to show that the project approved by the Commission in the award decision has been carried out correctly in substance. The beneficiary must also be in a position to prove that every part of the Community contribution relates to a service actually provided which was essential for the implementation of the project.

(see para. 95)

6. Withdrawal of Community assistance due to an irregularity is a penalty in that it goes beyond repayment of amounts that have been wrongly paid as a result of that irregularity. It cannot be imposed unless it rests on a clear and unequivocal legal basis.

5. The application of Article 24 of Regulation No 4253/88, laying down provisions for implementing Regulation No 2052/88 as regards coordination

(see para. 188)