

# Joined Cases T-44/01, T-119/01 and T-126/01

Eduardo Vieira, SA and Others

v

Commission of the European Communities

(Fisheries— Fisheries agreement with Argentina — Community financial aid —  
Reduction — Actions for annulment — Actions for damages)

Judgment of the Court of First Instance (Third Chamber), 3 April 2003 . . . II-1216

## Summary of the Judgment

1. *Fisheries — Common structural policy — Fisheries agreement between the EEC and Argentina — Encouragement of the creation of joint enterprises — Community financial aid — Decision reducing or withdrawing the aid — Community competence notwithstanding the absence of a specific provision*  
(*Agreement between the Community and the Argentine Republic on relations in the sea fisheries sector; Council Regulation No 3447/93*)

2. *Fisheries — Common Structural policy — Fisheries agreement between the EEC and Argentina — Encouragement of the creation of joint enterprises — Community financial aid — Reduction of the aid — Commission obligation to consult the Joint Committee and obtain the approval of the Argentinian authorities — None*  
*(Agreement between the Community and the Argentine Republic on relations in the sea fisheries sector)*
  
3. *Fisheries — Common structural policy — Fisheries agreement between the EEC and Argentina — Encouragement of joint enterprises — Community financial aid — Vessels abandoning Argentinian waters without prior agreement of the Commission — Clear breach of a condition for granting aid*  
*(Agreement between the Community and the Argentine Republic on relations in the sea fisheries sector)*
  
4. *Fisheries — Common structural policy — Fisheries agreement between the EEC and Argentina — Reduction of financial aid for non-compliance, by the joint enterprise which received the aid, with the obligation to fish in Argentinian waters for a set period — Reduction pro rata temporis — Breach of the principle of proportionality — None*  
*(Agreement between the Community and the Argentine Republic on relations in the sea fisheries sector)*
  
5. *Fisheries — Common structural policy — Commission decision to reduce the amount of Community financial aid — Voluntary consultation of a committee despite its non-binding character — No bearing on the lawfulness of the decision*
  
6. *Fisheries — Common structural policy — Fisheries agreement between the EEC and Argentina — Encouragement of the creation of joint enterprises — Community financial aid — Decision to reduce the aid — Calculation of the final amount of the aid — Application by analogy of the provisions of Regulation No 3699/93 — Permissible*  
*(Agreement between the Community and the Argentine Republic on relations in the sea fisheries sector; Council Regulation No 3699/93)*
  
7. *Community law — Principles — Must act within a reasonable time — Commission obligation in administrative proceedings — Breach — Effects*

8. *Community law — Principles — Legal certainty — Protection of legitimate expectations — Reduction of financial aid for non-compliance with a primary condition for granting it — Breach — None — Beneficiary not able to rely on previous irregularities not prosecuted*
9. *Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision to reduce the amount of Community financial aid — Reasoning based on alterations made to the initial project — Considerations relating to those alterations not sufficient on their own*  
(Art. 253 EC)
10. *Non-contractual liability — Conditions — Damage — Suspension of financial aid during the administrative procedure leading to a decision to reduce aid*  
(Art. 288, second para., EC)
11. *Actions for damages — Independent of actions for annulment — Action seeking withdrawal of an individual decision which has become definitive — Inadmissible*  
(Art. 235 EC)

1. Even if the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector, and Regulation No 3447/93, whereby that agreement was approved on behalf of the Community, do not contain any provision specifically relating to a possible reduction or withdrawal of financial aid granted under that Agreement, where, under Article 7 of the Agreement and Article 3(1) of its Protocol, the Community has granted financial aid for the creation of joint enterprises it must also have the power to reduce that aid if the conditions under which it was granted have not been observed.

Any other interpretation of the fisheries agreement would be contrary to the general principles of law common to the legal systems of the Member States, such as the principle which prohibits unjust enrichment or that which allows bilateral commitments to be unilaterally terminated when one of the contracting parties fails to comply with its obligations. It follows that, on the basis of Regulation No 3447/93 and the fisheries agreement, the Community had general competence to adopt those decisions reducing or withdrawing aid.

(see paras 84-87)

2. The Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector is divided into two parts: the international component, concerning cooperation between the Community and the Argentine Republic, and the Community component, which includes, *inter alia*, the financing granted by the Commission to Community shipowners for the creation of joint enterprises under the fisheries agreement. The selection and evaluation of projects to create joint enterprises fall under the international component of the fisheries agreement. The creation of such enterprises is an instrument of cooperation between the Community and the Argentine Republic in the fisheries sector. As such, under paragraphs 2 to 5 of Annex III to the Agreement, the selection of projects requires an evaluation by the Joint Committee and approval by both the Community and the Argentinian authorities. By contrast, the grant of financial aid to Community shipowners for projects which are selected is a unilateral measure by the Community and therefore comes under the Community component of the fisheries agreement. Those provisions provide no ground for inferring that the Commission is required to consult the Joint Committee and to obtain the approval of the Argentinian authorities before taking a decision to reduce financial aid granted to a Community shipowner for the creation of a joint enterprise.
3. Where a joint enterprise which obtained financial aid from the Commission under the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector abandons waters under Argentinian jurisdiction or sovereignty, and thus ceases fishing activity in those waters without the prior authorisation of the Commission, that constitutes a clear breach of a condition for granting that aid. One of the principal objectives of the Community in entering into the fisheries agreement was to obtain access to Argentinian fishery resources for Community shipowners. In order to attain that objective, the agreement encourages the creation of joint enterprises. It follows that joint enterprises created within the framework of the fisheries agreement are required to exploit and, where appropriate, process Argentinian fishery resources. Only fishery products caught in Argentinian waters constitute Argentinian fishery resources, and it cannot be claimed that fishery products caught both within and beyond the waters of the Argentinian Exclusive Economic Zone (EEZ) by a vessel flying the Argentinian flag must also be so regarded, since the objective of the fisheries agreement is to obtain Community access to new fishing zones within the Argentinian EEZ.

(see paras 101-106)

Even if the departure from Argentinian waters were necessary as the result of depletion of fish stocks in the Argenti-

nian EEZ, or of fishing prohibitions or limitations imposed by the Argentinian authorities, the recipients of the aid, who are under an obligation to provide information and act in good faith that is inherent in the system of Community financial aid and essential to its functioning, should have informed the Commission of the problems they encountered in carrying out their projects.

without Commission authorisation therefore necessarily involves an infringement of the other primary obligations which are binding on the recipient of aid, namely the creation of the joint enterprise and the priority supply of the Community market.

(see paras 142-143)

(see paras 116, 117, 119, 120, 122-124)

4. The reduction *pro rata temporis* of financial aid granted by the Commission to a joint enterprise within the framework of the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector, in respect of the period when the vessel was not active in the Argentinian EEZ is wholly proportionate to the alleged infringement, that is, the cessation of fishing activities in that zone. Since the main purpose pursued by the fisheries agreement so far as the Community is concerned is access for Community owners to the Argentinian EEZ, the requirement to exploit and process Argentinian fishery resources must be regarded as a primary obligation which forms an integral part of the system of subsidies for joint enterprises, and the departure from Argentinian waters

5. In the context of the procedure for granting Community financial aid, voluntary consultation by the Commission of a committee which need not be consulted does not affect the legality of the decision to reduce the financial aid, which, moreover, was adopted in compliance with the obligatory procedures laid down for its adoption.

(see para. 158)

6. In a proceeding for the reduction of Community financial aid granted for the creation of a joint fishing enterprise under the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector, the Commission, which was bound only by the principle of proportionality in calculating the definitive amount of aid, was

fully entitled to be guided, by analogy, by the provisions of Regulation No 3699/93 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products in order to establish the amount due for the transfer of the vessel. In acting in that way, it took care to harmonise the treatment accorded to a joint enterprise created under the fisheries agreement with that accorded to joint enterprises falling within the scope of that regulation.

8. In a situation where a recipient of Community financial aid does not comply with a primary condition to which the grant of aid was made subject, that recipient may not rely on the principle of the protection of legitimate expectations or the principle of legal certainty in order to prevent the Commission from reducing the aid granted to it. The possible existence of earlier irregularities which were not prosecuted can in no case serve as a basis for a legitimate expectation on the part of the applicant.

(see paras 177, 179)

(see para. 163)

7. Observance of a reasonable time-limit is a general principle of Community law which the Commission must observe in administrative proceedings. None the less, the breach of the principle of a reasonable time-limit, if proved, does not justify automatic annulment of the contested decision.

9. The statement of reasons required by Article 253 EC must be appropriate to the legal nature of the measure in question and the reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review.

In the case of a decision reducing Community financial aid for a project not carried out as specified, the statement of the reasons for such a measure must include an indication of the reasons why the alterations taken into account have been judged to be unacceptable. Considerations relating to the extent of those alterations or their lack

(see paras 167, 170)

of prior authorisation cannot, by themselves, constitute sufficient reasoning in that respect. However, the question whether the statement of reasons for a measure complies with the requirements of Article 253 EC must be assessed in the light not only of its wording, but also of its context and of the body of legal rules which govern the matter concerned.

It cannot be excluded that a suspension of financial aid during the administrative procedure intended to result in the adoption of a decision reducing financial aid will give rise to a loss for one or other of the parties covered by that procedure before the decision to reduce the aid is adopted.

(see paras 202, 207)

(see paras 193-195)

10. In order for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 288 EC, a number of conditions must be satisfied concerning the illegality of the conduct alleged against the Community institutions, the fact of the damage and the existence of a causal link between that conduct and the damage complained of.

11. Whilst the action for compensation based on the second paragraph of Article 288 EC is an independent action in the context of the legal remedies available under Community law, so that the fact that an application for annulment is inadmissible does not in itself render a claim for damages inadmissible, an action for damages must nevertheless be held to be inadmissible when it is in fact aimed at securing the withdrawal of an individual decision which has become definitive, and would, if successful, cause the legal effects of that decision to be nullified.

(see para. 213)