Reports of Cases

ORDER OF THE GENERAL COURT (Fifth Chamber)

13 September 2017*

[Text rectified by order of 27 October 2017]

(Actions for annulment — ERDF — Reduction of financial assistance — Programme Interreg II/C 'Rhine-Meuse flood protection' — Non-compliance with the period prescribed for the adoption of a decision — Infringement of essential procedural requirements — Action manifestly well founded)

In Case T-119/10,

Kingdom of the Netherlands, represented initially by Y. de Vries, J. Langer and C. Wissels, and subsequently by J. Langer, M. Bulterman and B. Koopman, acting as Agents,

applicant,

supported by

Kingdom of Belgium, represented initially by M. Jacobs and T. Materne, and subsequently by M. Jacobs and J.-C. Halleux, acting as Agents,

and by

French Republic, represented initially by G. de Bergues and B. Messmer, and subsequently by J. Bousin and D. Colas, acting as Agents,

interveners,

v

[As rectified by order of 27 October 2017] **European Commission**, represented by W. Roels and A. Steiblytė, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial assistance granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008),

THE GENERAL COURT (Fifth Chamber),

* Language of the case: Dutch.

composed of D. Gratsias, President, I. Labucka (Rapporteur) and I. Ulloa Rubio, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal framework

1 For the programming periods of 1989-1993 and 1994-1999, the rules on structural funds (in particular as regards objectives, programming, payments, management and control and financial corrections) were set out, in particular, in Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), which was amended inter alia by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5), and in Council Regulation (EEC) No 4253/88 of 19 December 1988, 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 (OJ 1988 L 374, p. 1), which was amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20).

2 Article 24 of Regulation No 4253/88 provides:

‘1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission’s approval has not been sought.

…’

3 Regulation Nos 2052/88 and 4253/88 were replaced, with effect from 1 January 2000, by Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

4 According to Article 52(1) of Regulation No 1260/1999, that regulation is not to affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of Regulation Nos 2052/88 and 4253/88 or any other legislation which applied to that assistance on 31 December 1999.

5 Regulation No 1260/99 was repealed by Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (OJ 2006 L 210, p. 25).

6 Article 100 of Regulation No 1083/2006, headed ‘Procedure’, provides:

‘1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission’s assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a period of two months after the two-month period referred to in the first subparagraph.

2. The Commission shall take account of any evidence supplied by the Member State within the time limits referred to in paragraph 1.

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4. In case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

5. In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.’

7 Article 105 of Regulation No 1083/2006, headed ‘Transitional provisions’, states in paragraph 1:

‘This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance co-financed by the Structural Funds or of a project co-financed by the Cohesion Fund approved by the Commission on the basis of Regulations (EEC) No 2052/88 [...], (EEC) No 4253/88 [...], (EC) No 1164/94 [...] and (EC) No 1260/1999 or any other legislation which applies to that assistance on 31 December 2006, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.’

8 Article 108 of Regulation No 1083/2006, headed ‘Entry into force’, provides:

‘This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

The provisions laid down in Articles 1 to 16, 25 to 28, 32 to 40, 47 to 49, 52 to 54, 56, 58 to 62, 69 to 74, 103 to 105 and 108 shall apply from the date of entry into force of this Regulation only for programmes for the period 2007 to 2013. The other provisions shall apply from 1 January 2007.’

9 Regulation No 1083/2006 was repealed by Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general

provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ 2013 L 347, p. 320 and corrigendum OJ 2013 L 200, p. 140).

10 As regards financial corrections, Article 145 of Regulation No 1303/2013 provides:

'1. Before taking a decision on a financial correction, the Commission shall launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months.

2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3. The Commission shall take account of any evidence supplied by the Member State within the time limits set out in paragraphs 1 and 2.

4. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

5. In the event of an agreement, and without prejudice to paragraph 7 of this Article, the Member State may reuse the Funds concerned or the [European Maritime and Fisheries Fund (EMFF)] in accordance with Article 143(3).

6. In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

7. Where the Commission in carrying out its responsibilities under Article 75, or the European Court of Auditors, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Funds or the EMFF to the operational programme.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

(a) had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial Regulation, or in other audit reports of the audit authority submitted to the Commission and appropriate measures taken; or

(b) had been the subject of appropriate remedial measures by the Member State.

The assessment of serious deficiencies in the effective functioning of management and control systems shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

(a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;

(b) for the purpose of applying a flat-rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been the subject of an adjustment in the accounts in accordance with Article 139(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 137(2);

(c) take into account flat-rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the budget of the Union.

8. The Fund-specific rules for the EMFF may lay down additional rules of procedure for financial corrections referred to in Article 144(7).'

11 Under Article 152 of Regulation No 1303/2013:

'1. This Regulation shall not affect either the continuation or modification, including the total or partial cancellation of assistance approved by the Commission on the basis of Regulation (EC) No 1083/2006 or any other legislation applying to that assistance on 31 December 2013. That Regulation or such other applicable legislation shall consequently continue to apply after 31 December 2013 to that assistance or the operations concerned until their closure. For the purposes of this paragraph assistance shall cover operational programmes and major projects.

2. Applications to receive assistance made or approved under Regulation (EC) No 1083/2006 shall remain valid.

3. Where a Member State makes use of the option set out in Article 123(3), it may submit a request to the Commission for the managing authority to carry out the functions of the certifying authority by way of derogation from … Article 59(1)[(b)] of Regulation (EC) No 1083/2006 for the corresponding operational programmes implemented on the basis of Regulation (EC) No 1083/2006. The request shall be accompanied by an assessment made by the audit authority. Where the Commission is satisfied on the basis of information made available from the audit authority and from its own audits that the management and control systems of those operational programmes function effectively and that their functioning will not be prejudiced by the managing authority carrying out the functions of the certifying authority, it shall inform the Member State of its agreement within two months of the date of receipt of the request.'

12 Article 153 of Regulation No 1303/2013 provides as follows:

'1. Without prejudice to the provisions laid down in Article 152, Regulation (EC) No 1083/2006 is hereby repealed with effect from 1 January 2014.

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex XIV.'

13 Article 154 of Regulation No 1303/2013 provides:

'This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Articles 20 to 24, Article 29(3), … Article 38(1)[(a)], Articles 58, 60, 76 to 92, 118, 120, 121 and Articles 129 to 147 shall apply with effect from 1 January 2014.

The second sentence of the seventh subparagraph of Article 39(2) and the fifth paragraph of Article 76 shall apply with effect from the date on which the amendment to the Financial Regulation relating to the decommitment of appropriations has entered into force.'

Background to the dispute

14 By Decision C(97) 3742 of 18 December 1997, the Commission of the European Communities approved the single programming document on the grant of assistance from the European Regional Development Fund (ERDF) to an operational programme in the framework of Community initiative Interreg II/C in favour of the zones complying with objectives Nos 1, 2 and 5(b) and other zones in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, setting the maximum amount for the ERDF at EUR 137 118 000.

15 Commission Decision C(2000) 300 of 25 February 2000 brought that ceiling to EUR 141 077 000.

16 By letter of 21 March 2003, the Dutch authorities presented their request for the final instalment.

17 Between June 2004 and June 2005, the Commission carried out several inspections in the course of its closure audit of programmes co-financed by the ERDF during the 1994-1999 programming period.

18 By letters of 7 September 2005 and 24 January 2006, the Commission submitted its audit report. The Dutch language version was sent to the Dutch authorities on 7 February 2006, finding certain irregularities.

19 The Dutch authorities submitted their comments on the audit report and provided further evidence.

20 By letter of 14 May 2008, the Commission submitted the final audit report to the Dutch authorities pursuant to Article 24 of Regulation No 4253/88. The Dutch version was sent to them on 15 September 2008.

21 Following a hearing held on 23 February 2009, the Dutch authorities provided further evidence.

22 By Decision C(2009) 10712 of 23 December 2009 on the reduction in the assistance granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the ERDF pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008), the Commission reduced the total assistance granted by the EFDF by EUR 7 066 643 ('the contested decision').

Procedure and forms of order sought

23 By application lodged at the Court Registry on 5 March 2010, the Kingdom of the Netherlands brought this action.

24 On 11 August 2010, the Court sought the views of the parties on a potential suspension of the procedure in the present case, either until the period for bringing an appeal against the final decisions of the Court in Cases T-265/08, *Germany* v *Commission*, and T-270/08, *Germany* v *Commission* had expired, or until the decisions of the Court of Justice on appeals brought against the decisions of the General Court in those cases had been delivered.

25 By order of the President of the Fourth Chamber of the Court of 13 September 2010, the Court ordered that the procedure in the present case be suspended, either until the period for bringing an appeal against the final decisions of the Court in Cases T-265/08, *Germany* v *Commission*, and T-270/08, *Germany* v *Commission* had expired, or until the decisions of the Court of Justice on appeals brought against the decisions of the General Court in those cases had been delivered.

26 On 24 June 2015, the Court of Justice delivered its judgment in *Germany* v *Commission* (C-549/12 P and C-54/13 P, 'the judgment under appeal', EU:C:2015:412), in which it annulled the financial correction decisions in question in those cases in respect of finance programmes before 2000 by raising of its own motion the Commission's failure to comply with the period of six months laid down in Article 100(5) of Regulation No 1083/2006.

27 In the judgment under appeal, the judgments of 19 September 2012, *Germany* v *Commission* (T-265/08, EU:T:2012:434), and of 21 November 2012, *Germany* v *Commission* (T-270/08, not published, EU:T:2012:612), were also set aside in so far as the General Court had dismissed the actions brought by the Federal Republic of Germany.

28 On 2 July 2015, the Court requested the parties to submit their observations on the impact on the present case of the judgment under appeal.

29 On 13 and 15 July 2015, the Kingdom of the Netherlands and the Commission each submitted their observations.

30 In its observations, the Kingdom of the Netherlands submits that the contested decision must be annulled inasmuch as the Commission did not, it claims, comply with the six-month period laid down in Article 100(5) of Regulation No 1083/2006.

31 The Commission, on the other hand, has drawn the attention of the Court to the appeals brought against the judgments of 20 January 2015, *Spain* v *Commission* (T-111/12, not published, EU:T:2015:28), and of 20 January 2015, *Spain* v *Commission* (T-109/12, not published, EU:T:2015:29), in which the Court annulled the financial correction decisions at issue in respect of finance programmes before 2000 for non-compliance by the Commission with the period of six months laid down in Article 100(5) of Regulation No 1083/2006.

32 By separate documents lodged at the Court Registry on 20 and 28 May 2015 respectively, the Kingdom of Belgium and the French Republic applied for leave to intervene in the present proceedings in support of the form of order sought by the Kingdom of the Netherlands. By decisions of 4 August 2015, the President of the Fourth Chamber of the Court granted leave to intervene.

33 The Kingdom of Belgium and the French Republic lodged their statements in intervention and the principal parties lodged their observations on those statements within the prescribed period.

34 On 16 December 2015, the Court requested the parties to submit their observations, with a view to a potential stay of proceedings, on the impact on the present case of the appeals brought by the Commission against the judgments of 20 January 2015, *Spain* v *Commission* (T-111/12, not published, EU:T:2015:28), of 20 January 2015, *Spain* v *Commission* (T-109/12, not published, EU:T:2015:29), and of 15 July 2015, *Portugal* v *Commission* (T-314/13, not published, EU:T:2015:493).

35 By letters of 22 December 2015 and of 4 January 2016, the Commission and the Kingdom of the Netherlands each stated that they did not oppose the stay of proceedings in the present case pending the delivery of the decisions of the Court of Justice in Cases C-139/15 P and C-140/15 P, *Commission* v *Spain*, and C-495/15 P, *Commission* v *Portugal*.

36 By decision of 12 January 2016, the President of the Fourth Chamber of the Court decided to stay the proceedings in the present case until the delivery of the decisions of the Court of Justice in Cases C-139/15 P and C-140/15 P, *Commission* v *Spain*, and C-495/15 P, *Commission* v *Portugal*.

37 In judgments of 21 September 2016, *Commission* v *Spain* (C-139/15 P, EU:C:2016:707), and of 21 September 2016, *Commission* v *Spain* (C-140/15 P, EU:C:2016:708), the Court of Justice dismissed the appeals brought against the judgments of 20 January 2015, *Spain* v *Commission* (T-111/12, not published, EU:T:2015:28), and of 20 January 2015, *Spain* v *Commission* (T-109/12, not published, EU:T:2015:29).

38 Following modification of the composition of the chambers of the Court, the Judge-Rapporteur was assigned to the Fifth Chamber, to which this case was therefore also assigned.

39 By letter of 27 October 2016, the Kingdom of the Netherlands lodged an application before the Court for the proceedings to be reopened, in which it reiterates the position it adopted in its letter of 13 July 2015 and requests the Court to base its decision in the present case on Article 132 of the Rules of Procedure of the Court.

40 By order of the President of the Court of Justice of 10 November 2016, *Commission* v *Portugal* (C-495/15 P, not published, EU:C:2016:907), Case C-495/15 P was removed from the register of the Court of Justice following the withdrawal of the Commission.

41 On 11 November 2016, the Commission informed the Court that it did not oppose the re-opening of the procedings.

42 By decision of 1 December 2016, the President of the Fifth Chamber of the Court informed the parties of the re-opening of the procedings.

43 On 20 December 2016, the Court requested the parties to submit their observations on the impact on the present case of the judgments of 21 September 2016, *Commission* v *Spain* (C-139/15 P, EU:C:2016:707), and of 21 September 2016, *Commission* v *Spain* (C-140/15 P, EU:C:2016:708).

44 By letter of 22 December 2016, in its observations, the Commission claimed that the Court had before it all the information necessary for delivering judgment in the present case.

45 By letter received on the same day, the Kingdom of the Netherlands, first, informed the Court that it did not wish to make oral representations at a hearing and, second, again requested the Court to base its decision in the present case on Article 132 of the Rules of Procedure, by finding that the Commission had not complied with the period of six months laid down in Article 100(5) of Regulation No 1083/2006.

46 By letters of 5 and 9 January 2017, the Kingdom of Belgium and the French Republic stated that they also took the view that the Commission had not complied with the prescribed period and that the contested decision must therefore be annulled on that ground.

47 On 10 March 2017, the Court requested the parties to submit their observations on the Court raising of its own motion under Article 132 of the Rules of Procedure a plea based on non-compliance by the Commission with essential procedural requirements.

48 On 21 March 2017, the Kingdom of the Netherlands and the Commission submitted their observations.

49 The Commission claimed that the Court could, by order, declare the action manifestly well founded under Article 132 of the Rules of Procedure. As far as concerns the Kingdom of the Netherlands, it also submitted that the Court could, by order, declare the action manifestly well founded under Article 132 of the Rules of Procedure.

50 On the same day, the Kingdom of Belgium claimed that the Court should, of its own motion, raise the plea based on non-compliance by the Commission with essential procedural requirements.

51 On 22 March 2017, the French Republic submitted its observations and claimed that the Court could, in such circumstances, declare the action manifestly well founded by order under Article 132 of the Rules of Procedure.

52 The Kingdom of the Netherlands, supported by the Kingdom of Belgium and the French Republic, claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

53 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order the Kingdom of the Netherlands to pay the costs.

Law

54 As a preliminary point, the observations of the Kingdom of the Netherlands must be regarded as claims for annulment of the contested decision in so far as it affects the Kingdom of the Netherlands to the extent that the pleas raised by the Kingdom of the Netherlands concern its own situation.

55 Under Article 132 of the Rules of Procedure, where the Court of Justice or the General Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the action and the General Court finds that the facts have been established, it may, after the written part of the procedure has been closed, after hearing the parties, decide by reasoned order in which reference is made to the relevant case-law to declare the action manifestly well founded.

56 In the present case, the Court considers that the conditions for applying Article 132 of the Rules of Procedure have been met and has decided to give a decision without taking further steps in the proceedings.

57 In the first place, the Kingdom of the Netherlands, supported by the Kingdom of Belgium and the French Republic, claims that the contested decision must be annulled inasmuch as it was adopted after the six-month period laid down in Article 100(5) of Regulation No 1083/2006 had expired.

58 The Commission, for its part, considers, first of all, that Regulation No 1083/2006 does not constitute the relevant legal framework for assessing the procedural rules applicable to the financial correction decisions for programmes prior to 2007-2013.

59 It submits that the relevant regulation for assessing whether or not essential procedural requirements have been complied with in the present case is Regulation No 4253/88, Article 24 of which does not lay down any period for the adoption of a financial correction decision.

60 Next, in the event that Regulation No 1083/2006 were to be applicable in the present case, the Commission submits that the periods laid down in Article 100(5) of the regulation concern only programmes implemented after 1 January 2007 and cannot apply to programmes before that date.

61 It adds that it follows from Article 105 of Regulation No 1083/2006 that co-financed projects approved under an earlier regime continue to be governed by that regime until their closure.

62 Similarly, the Commission submits that the procedural rules form a whole inseparable from the substantive rules and that the time limits set out in Article 100(5) of Regulation No 1083/2006 cannot be applied retroactively.

63 In that regard, the Kingdom of the Netherlands relies on a plea alleging non-compliance with Article 100(5) of Regulation No 1083/2006 raised, not in the application but in its observations on the impact on the present case of the judgment under appeal, so that that plea must be regarded as a new plea.

64 Nevertheless, irrespective of the matter of the admissibility of such a plea, according to the case-law, failure to comply with the procedural rules relating to the adoption of an act having an adverse effect constitutes an infringement of essential procedural requirements, which it is a matter for the judicature of the European Union to raise, even of its own motion (see judgments of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 103 and the case-law cited, and of 4 September 2014, *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 103 and the case-law cited).

65 The Court points out in that regard that it is settled case-law that, except in particular cases such as, inter alia, those provided for by the Rules of Procedure of the Courts of the European Union, those Courts may not base their decisions on a plea raised of their own motion, even one involving a matter of public policy, without first having invited the parties to submit their observations on that plea (see the judgment under appeal, paragraph 93 and the case-law cited).

66 In the present case, in so far as concerns, first, the point relating to the time limit within which a decision on a financial correction must be adopted, the Court sought the views of the parties by way of measure of organisation of the procedure adopted following the delivery of the judgment under appeal, in which the Court of Justice annulled the relevant financial correction decisions in respect of finance programmes before 2000 by raising of its own motion the Commission's failure to comply with the period of six months laid down in Article 100(5) of Regulation No 1083/2006.

67 Second, the Court adopted a second measure of organisation of the procedure following the judgments of 21 September 2016, *Commission* v *Spain* (C-139/15 P, EU:C:2016:707), and of 21 September 2016, *Commission* v *Spain* (C-140/15 P, EU:C:2016:708).

68 The fact therefore remains that the parties were able to present their observations on the application of the time period laid down in Article 100(5) of Regulation No 1083/2006.

69 In the second place, as regards the legislation applicable to the present case, the Court recalls that Regulation No 4253/88 was repealed by Regulation No 1260/1999 with effect from 1 January 2000. The latter regulation was repealed by Regulation No 1083/2006 with effect from 1 January 2007, which was repealed by Regulation No 1303/2013 with effect from 1 January 2014.

70 First, it should thus be noted that Regulation No 1303/2013 cannot apply to the present case in so far as the contested decision was adopted in 2009.

71 Second, as regards Regulation No 1083/2006, although it certainly appears from the second paragraph of Article 108 of the regulation that some of its provisions apply to finance programmes for the 2007-2013 period, the fact remains that that regulation also provides that Article 100 of the regulation laying down the procedural time limits is applicable as of 1 January 2007 without specifying the finance period covered.

72 It should be added that Article 100 of Regulation No 1083/2006 also applies to programmes before the 2007-2013 period, in keeping with the principle that rules of procedure apply immediately after their entry into force (judgments of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 98; of 4 September 2014, *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 98; of 22 October 2014, *Spain* v *Commission*, C-429/13 P, EU:C:2014:2310, paragraph 31; of 4 December 2014, *Spain* v *Commission*, C-513/13 P, not published, EU:C:2014:2412, paragraph 48, and of 24 June 2015, *Spain* v *Commission*, C-263/13 P, EU:C:2015:415, paragraph 53; see also, to that effect, the judgment under appeal, paragraph 84).

73 That case-law was, furthermore, confirmed in the judgments of 21 September 2016, *Commission* v *Spain* (C-139/15 P, EU:C:2016:707, paragraph 89), and of 21 September 2016, *Commission* v *Spain* (C-140/15 P, EU:C:2016:708, paragraph 89), which is not disputed by the Commission.

74 In the present case, the administrative procedure having led to the adoption of the contested decision, amending the financial assistance granted to the Kingdom of the Netherlands for the 1994-1999 finance period, took place between 2004 and 2009.

75 The Commission should therefore, for the purposes of the adoption of the contested decision, have complied with the six-month time limit laid down in Article 100(5) of Regulation No 1083/2006.

76 In that regard, the Court adds that, under that provision, the Commission must take a decision on the financial correction within six months of the date of the hearing for the representatives of the Member State concerned in the event that that Member State does not accept its provisional conclusions. If no hearing takes place, the six month period is to begin to run two months after the date of the letter of invitation sent by the Commission.

77 Thus, where the Member State does not accept the provisional conclusions of the Commission, the latter's sending of a letter of invitation to the hearing or the holding of a hearing, as the case may be, constitutes the starting point from which that period begins to run.

78 First, it is clear from the case file in the present case that a hearing was held in Brussels (Belgium) on 23 February 2009 between the Commission and the representatives of the Kingdom of the Netherlands.

79 Second, the fact remains that the contested decision was adopted on 23 December 2009, that is ten months after the hearing, which the Commission does not dispute.

80 Consequently, the Commission did not observe the six-month time limit laid down in Article 100(5) of Regulation No 1083/2006.

81 The present action must therefore be declared manifestly well founded and the contested decision must be annulled in so far as it applies to the Kingdom of the Netherlands.

Costs

82 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

83 The Kingdom of Belgium and the French Republic are to bear their own costs, pursuant to Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby orders:

1. **Commission Decision C(2009) 10712 of 23 December 2009 on the reduction in the financial assistance granted to the Rhine-Meuse flood protection programme under Community initiative programme Interreg II/C in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands by the European Regional Development Fund (ERDF) pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008) is annulled in so far as it concerns the Kingdom of the Netherlands.**

2. **The European Commission is ordered to pay its own costs and pay those incurred by the Kingdom of the Netherlands.**

3. **The Kingdom of Belgium and the French Republic are ordered to bear their own costs.**

Luxembourg, 13 September 2017.

E. Coulon
Registrar

D. Gratsias
President