JUDGMENT OF THE COURT (Second Chamber)

15 September 2005 *

In Case C-199/03,

ACTION for annulment under Article 230 EC, brought on 13 May 2003,

Ireland, represented by D. O'Hagan, acting as Agent, and by P. Gallagher SC and P. McGarry BL, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by L. Flynn, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta (Rapporteur), R. Schintgen, G. Arestis and J. Klučka Judges,

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 January 2005,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2005,

gives the following

Judgment

1 By its application, Ireland seeks the annulment of Commission Decision C (2003) 99 of 27 February 2003 reducing assistance granted by the European Social Fund by Commission Decisions C (94) 1972 of 29 July 1994, C (94) 2613 of 15 November 1994 and C (94) 3226 of 29 November 1994 ('the contested decision').

Relevant provisions

Regulation (EEC) No 2052/88

2 Article 4(1) of 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), as amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5) (hereinafter 'Regulation No 2052/88)', states as follows:

'Community operations shall be such as to complement or contribute to corresponding national operations. They shall be established through close consultations between the Commission, the Member State concerned and the competent authorities and bodies — including, within the framework of each Member State's national rules and current practices, the economic and social partner, designated by the Member State at national, regional, local or other level, with all parties acting as partners in pursuit of a common goal. These consultations shall hereinafter be referred to as the "partnership". The partnership shall cover the preparation and financing, as well as the ex ante appraisal, monitoring and ex post evaluation of operations.

The partnership will be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners.'

3 Article 13(3) of that regulation provides that, in the case of measures carried out in the regions eligible for assistance under Objective 1, the Community contribution granted by the Structural Funds in respect of the various objectives listed in Article 1 is set at a maximum of 75% of the total cost and, as a general rule, at least 50% of public expenditure.

Regulation (EEC) No 4253/88

4 Article 9(1) of 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), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20) (hereinafter 'Regulation No 4253/88'), provides that the appropriations of the Structural Funds may not replace public expenditure on structural or comparable expenditure undertaken by the Member State in the whole of the territory eligible under an objective.

5 Under Article 17(2) of that regulation, the financial contribution from the Funds is to be calculated in relation to either the total eligible cost of, or the total public or similar eligible expenditure (national, regional or local, and Community) on, each measure (operational programme, aid scheme, global grant, project, technical assistance, study).

6 Article 23 of Regulation No 4253/88, entitled 'Financial control', provides:

'1. In order to guarantee completion of operations carried out by public or private promoters, Member States shall take the necessary measures in implementing the operations:

— to verify on a regular basis that operations financed by the Community have been properly carried out,

— to prevent and to take action against irregularities,

— to recover any amounts lost as a result of an irregularity or negligence. Except where the Member State and/or the intermediary and/or the promoter provide proof that they were not responsible for the irregularity or negligence, the Member States shall be liable in the alternative for reimbursement of any sums unduly paid. ...

Member States shall inform the Commission of the measures taken for those purposes and, in particular, shall notify the Commission of the description of the management and control systems established to ensure the efficient implementation of operations. They shall regularly inform the Commission of the progress of administrative and judicial proceedings.

Member States shall keep and make available to the Commission any appropriate national control reports on the measures included in the programmes or other operations concerned.

As soon as this Regulation enters into force, the Commission shall draw up detailed arrangements for implementation of this paragraph in accordance with the procedures referred to in Title VIII and inform the European Parliament thereof.

2. Without prejudice to checks carried out by Member States, in accordance with national laws, regulations and administrative provisions and without prejudice to the provisions of Article 206 of the Treaty or to any inspection arranged on the basis of Article 209(c) of the Treaty, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural Funds and management and control systems.

Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. If the Commission carries out on-the-spot checks without giving notice, it shall be subject to agreements reached in accordance with the provisions of the Financial Regulation within the framework of the partnership. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the regularity of payment requests. Commission officials or servants may take part in such checks and must do so if the Member State concerned so requests.

The Commission shall 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. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.

3. For a period of three years following the last payment in respect of any operation, the responsible body and authorities shall keep available for the Commission all the supporting documents regarding expenditure and checks on the operation.'

7 Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance', 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. Any sum received unduly and to be recovered shall be repaid to the Commission. ...'

The facts

8 By Decision 94/626/EC of 13 July 1994 on the establishment of the Community support framework for Community structural assistance for the Irish regions concerned by Objective 1, which is the whole country (OJ 1994 L 250, p. 12), the Commission approved that framework for the period 1 January 1994 to 31 December 1999.

9 On the basis of that decision, the Commission then adopted decisions C (94) 1972 of 29 July 1994, C (94) 2613 of 15 November 1994 and C (94) 3226 of 29 November 1994 by which it granted financial assistance from the European Social Fund ('the ESF') for the sum of EUR 1 897 206 226 to operational programmes in respect of tourism, industrial development and human resources development ('the operational programmes').

10 The managing authority designated by Ireland to implement those operational programmes was the Department of Enterprise, Training and Employment ('the DETE').

11 From 6 to 10 November and from 4 to 6 December 2000, Commission staff went to Dublin to carry out, under Article 23(2) of Regulation No 4253/88, on-the-spot checks and investigations in respect of operations co-financed by the ESF between 1994 and 1998. Those operations were carried out by the National Training and Development Institute (NTDI) and the Central Remedial Clinic, under the responsibility of the National Rehabilitation Board. The Commission staff also checked the audit trail provided by the DETE in order to reconcile the amounts paid by the Commission with the amounts claimed by the different final beneficiaries participating in the operational programmes.

12 Following those checks, the Commission drew up an audit report which it sent to the Irish authorities by letter of 13 February 2001, inviting them to submit their observations. According to that report, the claims for co-financing made in connection with the operational programmes showed the following irregularities:

— instead of declaring the total amount of national funds intended for the financing of projects, NDTI declared only national funding resources up to an amount equal to 25% of the total cost of the funding, that is, the minimum percentage of national funding required to benefit from ESF co-financing under 'Objective 1';

— after applying the ecu conversion mechanism laid down in Article 5(2) of Commission Regulation (EEC) No 1866/90 of 2 July 1990 on arrangements for

using the ecu for the purposes of the budgetary management of the Structural Funds (OJ 1990 L 170, p. 36), the DETE adjusted the amounts obtained after conversion, transferring a part of the non-co-financed public funding to the co-financed funding;

— the abovementioned irregularities gave rise to excessive Community co-financing and led to a break in the audit trail of the operations co-financed by the ESF.

13 By letter of 20 December 2001, the DETE informed the Commission of the result of their investigations as to the irregularities and responded to the findings of the audit report.

14 In the Commission's view, those investigations brought no new facts to light and therefore, by letter of 28 February 2002, it opened the procedure provided for in Article 24 of Regulation No 4253/88 and invited the Irish authorities to submit their observations.

15 In their reply of 18 June 2002, supplemented by a letter of 25 July 2002, the Irish authorities conceded that the claims for co-financing submitted by NTDI had not been drawn up in accordance with ESF best practice. They stated in that regard that, following checks, NDTI submitted revised claims for co-financing for 1997 and 1998, but that, on the other hand, adjustment of the claims for co-financing could not be conducted to the same level of detail for the years 1994 to 1996, mainly owing to the loss of data related to the change in NDTI's computer system.

16 Likewise, the Irish authorities accepted that the adjustments of the claims for co-financing made by the DETE were not appropriate. They stated, however, that those adjustments had not led to any undue or over-financing by the Community since they were made only in cases where eligible expenditure was sufficiently high and where failure to take account of the conversion mechanism led to under-claiming of co- financing.

17 Finally, by demonstrating the existence of sufficient eligible expenditure, the exercise of adjustment and revision of the claims for co-financing remedied the unintended breaks in the audit trail.

18 Having examined the observations of the Irish authorities, the Commission reduced, by the contested decision, the total amount of financial assistance initially granted by the Community under the operational programmes by EUR 15 614 261.

The action

19 In support of its application, Ireland relies on four pleas in law, alleging manifest error of assessment, infringement of the legal rules governing the application of the Treaty, breach of the principle of proportionality and breach of the principles of legal certainty and the protection of legitimate expectations.

The first plea: manifest error of assessment

20 By its first plea, Ireland claims that, by refusing to take account of the corrections made to the claims for co-financing which were intended to show that the irregularities found did not give rise to any overclaim or over-financing and by reducing the ESF financial assistance, the Commission made a manifest error of assessment in fact and in law. To the extent that the irregularities complained of by the Commission were in fact procedural errors of a purely technical nature with no impact on the Community budget, the Commission's refusal to take account of the revised claims for co-financing was unjustified. Furthermore, the fact that the financial tables were definitively closed on 31 December 1999 does not justify such a refusal either.

21 The Commission states, first, that Ireland does not dispute that there were irregularities in the claims for co-financing.

22 It submits, next, that the corrections made to the claims for co-financing were inadmissible since they had not passed through a regular certification process and had been introduced after the date on which the financial tables were definitively closed.

23 Furthermore, the Commission believes that, in so far as the corrections made to the claims for co-financing for the years 1994 to 1996 were based on extrapolations and were not covered by supporting documents, they did not satisfy the requirement laid down in Article 23(3) of Regulation No 4253/88.

24 Finally, the Commission contends that the irregularities which justified the adoption of the contested decision do not involve the eligibility of expenditure but the source of financing, and that, in addition, they had an impact on the financial tables and on the programming of funds.

25 Under Article 274 EC the Commission is to implement the budget on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management, and the Member States are to cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

26 In that respect, the Court has already held that financing by the European Agricultural Guidance and Guarantee Fund of expenditure incurred by national authorities is governed by the rule that only expenditure incurred in conformity with the Community rules is to be charged to the Community budget (Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 67). That principle applies equally to the grant of financial assistance under the ESF.

27 In particular, pursuant to Article 24(2) of Regulation No 4253/88, if the examination in respect of an operation or measure for which Community assistance was granted reveals an irregularity, the Commission may reduce, suspend or cancel that assistance.

28 In this case, it is common ground that, in the observations which it submitted under the examination procedure provided for in Article 24(1) of Regulation No 4253/88 and during the proceedings before the Court, Ireland did not deny the existence of the irregularities found by the Commission or provide evidence capable of calling into question their veracity.

29 Moreover, Ireland's comments that those irregularities are of a 'technical' nature and are not prejudicial to the Community budget cannot be accepted.

30 Article 24 of Regulation No 4253/88 does not make any distinction of a quantitative or qualitative nature concerning the irregularities which may give rise to reductions in assistance.

31 Furthermore, as the Advocate General observed in paragraph 36 of his Opinion, even irregularities which do not have a specific financial impact may be seriously prejudicial to the financial interests of the Union and to compliance with Community law and for that reason justify the application of financial corrections on the part of the Commission.

32 It follows that the Commission was justified in reducing the financial assistance granted initially to the operational programmes.

33 Moreover, in respect of the date of definitive closure of the financial tables, it is clear from both the Community support framework for Community structural assistance for the Irish regions concerned by Objective 1 for the period 1 January 1994 to 31 December 1999 and Decisions C (94) 1972, C (94) 2613 and C (94) 3226 that no change to the financial tables or any financial commitment could be made after 31 December 1999.

34 Accordingly, in so far as the revised claims for co-financing submitted by Ireland after that date involved a reprogramming of ESF commitments for the period concerned, the Commission was also justified in declaring those claims inadmissible.

35 It follows that Ireland's first plea is not well founded and must be rejected.

The second plea: infringement of the legal rules governing application of the Treaty

36 By its second plea, Ireland submits, first, that by failing to draw up detailed arrangements for financial control before 1997, and secondly, by retroactively applying Commission Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Regulation No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (OJ 1997 L 290, p. 1) to a situation arising in connection with the ESF financial assistance granted to Ireland for the years 1994 to 1997, the Commission infringed Article 23(1) of Regulation No 4253/88.

37 Secondly, Ireland takes the view that the Commission infringed Article 24 of Regulation No 4253/88. It did not carry out a suitable examination of the case and the matters identified during that examination were not serious irregularities justifying a reduction in financial assistance.

38 Finally, according to Ireland, the Commission also infringed the principle of partnership provided for in Article 4(1) of Regulation No 2052/88.

39 The Commission maintains that the late adoption of detailed financial control arrangements has no bearing on the contested decision and that, in any event, Ireland should have brought an action for failure to act under Article 232 EC, or an action for annulment under Article 230 EC, within two months of their adoption.

40 It submits that Regulation No 2064/97 merely formalises audit and control practices already applied and that, even before 1997, any break in the audit trail was contrary to the provisions of Regulations Nos 2052/88 and 4253/88.

41 So far as concerns the infringement of Article 24 of Regulation No 4253/88, according to the Commission Ireland is merely repeating the grounds already put forward under the first plea. In any event, the Commission denies that it infringed that provision. First, the investigation it carried out and the dialogue it established with Ireland were adequate. Secondly, the Commission is of the opinion that the irregularities found were particularly serious and therefore justified its decision to reduce the Community financial assistance granted to the operational programmes.

42 Finally, the Commission considers that the argument regarding infringement of Article 4(1) of Regulation No 2052/88 is inadmissible because Ireland merely relies on that provision without specifying how it was infringed.

43 Ireland's argument that Article 23(1) of Regulation No 4253/88 was infringed by the Commission cannot be accepted.

44 In that regard, it must be stated, first, that bringing an action under Article 230 EC for the annulment of a decision reducing Community financial assistance is not the appropriate means to challenge the late adoption of the detailed financial control arrangements referred to in Article 23(1) of Regulation No 4253/88. To that end, Ireland could have challenged the Commission's inaction on the basis of an action for failure to act under Article 232 EC, before the adoption of Regulation No 2064/97, or it could have challenged the validity of that regulation by bringing an action for annulment under Article 230 EC, within two months of its adoption.

45 Secondly, as regards the alleged retroactive application of Regulation No 2064/97, the contested decision does not refer to any provision of that regulation, but is based on provisions in force at the relevant time, namely, in particular, Articles 4(1) and 13 (3) of Regulation No 2052/88 and Articles 9(1) and 17(2) of Regulation No 4253/88.

46 Furthermore, as the Advocate General observed in point 45 of his Opinion, before the adoption of Regulation No 2064/97, the body of the relevant provisions in force already required the Member States receiving Community financial assistance under the Structural Funds to ensure it was possible to establish the exact reconciliation of the expenditure actually incurred under the co-financed projects with the respective claims for Community financial assistance. For that purpose, those provisions were alone sufficient to enable action to be taken against the irregularities committed by the Irish authorities. In particular, Article 23 of Regulation No 4253/88, on the basis of which Regulation No 2064/97 was adopted, required the Member States to take the necessary measures to verify on a regular basis that operations financed by the Community had been properly carried out, to prevent and to take action against irregularities and to recover any amounts lost as a result of an irregularity or negligence.

47 Ireland's argument that the Commission infringed Article 24 of Regulation No 4253/88 cannot be accepted either.

48 According to the case file, it is clear that the procedure laid down by that provision has been complied with. Thus, after the Commission had carried out on-the-spot checks in November and December 2000, it pointed out in an audit report which it sent to the Irish authorities on 13 February 2001 several irregularities brought to light by those checks. On the basis of those findings, by letter of 28 February 2002 the Commission informed the Irish authorities that it intended to reduce the ESF financial assistance concerning the irregular claims for co-financing and asked them to submit their observations within two months, in accordance with Article 24(1) of Regulation No 4253/88.

49 Moreover, inasmuch as it claims that the Commission's findings do not constitute sufficiently serious irregularities to justify a reduction in ESF financial assistance, that argument is a repetition of the first plea examined in this action.

50 Finally, in respect of the infringement of the principle of partnership relied on by Ireland, it is clear from Article 38(1)(c) of the Rules of Procedure of the Court of Justice, and from the case-law relating to that provision, that an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based, and that that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application. It is therefore necessary for the basic legal and factual particulars on which a case is based to be indicated coherently and intelligibly in the application itself (Case C-178/00 *Italy* v *Commission* [2003] ECR I-303, paragraph 6, and Case C-55/03 *Commission* v *Spain*, not published in the ECR, paragraph 23).

51 That is not the case with Ireland's argument relating to an infringement of the principle of partnership by the Commission. In its application, Ireland merely pleads an infringement of the principle without stating the legal and factual particulars on which it bases that allegation.

52 Accordingly, to the extent that it relates to infringement of the principle of partnership, the second plea is inadmissible and must be rejected.

53 It follows from the foregoing that Ireland's second plea is in part inadmissible and in part unfounded.

The third plea: infringement of the principle of proportionality

54 By its third plea, Ireland claims that the decision to reduce the ESF financing is disproportionate. Other solutions would have enabled the Commission to reach the objective to be achieved. Accordingly, the Commission could, in particular, have taken into consideration the explanations and corrections submitted by the Irish authorities.

55 In the alternative, Ireland takes the view that the amount reclaimed is disproportionate.

56 The Commission contends that, having regard to the irregularities found in this case and in accordance with the principles of sound financial management to which it is bound under Article 274 EC, it had no choice but to reduce the Community financial assistance by at least the amount affected by those irregularities. In those circumstances, the contested decision is not therefore contrary to the principle of proportionality.

57 As far as concerns the Structural Funds, it is Article 24(2) of Regulation No 4253/88 which constitutes the legal basis for any claim for recovery by the Commission (Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraph 88).

58 In particular, when the examination of the case reveals that, on account of the existence of an irregularity, the financial assistance is in part unjustified, that provision enables the Commission to reduce the assistance.

59 In this case, it is common ground that by the contested decision the Commission reduced the ESF financial assistance by the amount affected by the irregularities found and for the sole purpose of excluding unlawful or unjustified expenditure from Community financing.

60 It follows that the reduction made in that manner is consistent with the principle of proportionality.

61 Ireland's third plea must therefore be declared unfounded.

The fourth plea: infringement of the principles of protection of legitimate expectations and legal certainty

62 By its fourth plea, Ireland claims that the Commission, by asking it to check and adjust the claims for co-financing during the contacts which followed the on-the-spot checks carried out by it, created a legitimate expectation that the Commission would take into consideration those revised claims for co-financing. Moreover, that legitimate expectation was strengthened by the fact that, in its previous practice, the Commission had authorised the revision of such claims when ineligible expenditure had been identified.

63 In addition, Ireland considers that, in disappointing those expectations and basing the contested decision on rules not provided for by the body of rules in force at the relevant time or on vague rules, the Commission infringed the principle of legal certainty.

64 The Commission submits that, given the irregularities found, there was no basis for the Irish authorities to entertain a legitimate expectation that the co-financing requested would be granted to them. First, the legitimate expectation that the recipient of assistance may have that the assistance would be paid to it is extinguished as soon as it commits an irregularity. Secondly, there is nothing to show that the Irish authorities received an assurance that the claims for co-financing did not involve any irregularities or that those irregularities would not give rise to a reduction in the financial assistance from the ESF.

65 It considers that the principle of legal certainty was complied with since, by the contested decision, it merely applied the legislation applicable at the relevant time, according to which the repayment of sums wrongfully paid by the ESF may be demanded when an irregularity is proven.

66 In this case, it is certainly not apparent from the Commission's file that the Commission gave precise assurances to Ireland which could lead it to entertain a legitimate expectation that the Commission would take account of the revised claims for co-financing and would not reduce the financial assistance relating to the irregularities found.

67 The Commission cannot therefore be regarded as having infringed the principle of protection of legitimate expectations by adopting the contested decision.

68 Furthermore, according to settled case-law, if the Commission did not carry out the correction due in respect of a previous year, but tolerated the irregularities on grounds of fairness, the Member State concerned does not acquire any right to demand that the same position be taken with regard to the irregularities with respect to the following financial year by virtue of the principle of legal certainty or the principle of protection of legitimate expectations (Case C-55/91 *Italy* v *Commission*, cited above, paragraph 67, *Germany* v *Commission*, cited above, paragraph 12, and Case C-373/99 *Greece* v *Commission* [2001] ECR I-9619, paragraph 56).

69 Nor can the principle of legal certainty, which requires that legal rules be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable (Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20), be regarded as having been infringed by the contested decision, since the legislation applicable at the relevant time provided that the Commission may reduce the financial assistance in the event of proven irregularity.

70 Accordingly, Ireland's fourth plea is not well founded.

71 In the light of all of the foregoing, the action must be dismissed in its entirety.

Costs

72 Under Article 69(2) 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 applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action;

2. Orders Ireland to pay the costs.

[Signatures]