JUDGMENT OF THE COURT (First Chamber)

8 March 2007 *

In Case C-289/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Rovaniemen hallinto-oikeus (Finland), made by decision of 15 July 2005, received at the Court on 19 July 2005, in the proceedings

Länsstyrelsen i Norrbottens län

v

Lapin liitto,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, E. Juhász, J.N. Cunha Rodrigues (Rapporteur) and K. Schiemann, Judges,

* Language of the case: Finnish.

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Länsstyrelsen i Norrbottens län, by P.-O. Eriksson and L. Anttila, acting as Agents,

— the Finnish Government, by E. Bygglin, acting as Agent,

— the Commission of the European Communities, by P. Aalto and L. Flynn, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of point 1.8 of Rule No 1 in the Annex to Commission Regulation (EC) No 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds (OJ 2000 L 193, p. 39), as amended by Commission Regulation (EC) No 448/2004 of 10 March 2004 (OJ 2004 L 72, p. 66, hereinafter 'Regulation No 1685/2000').

2 That reference was made in the course of proceedings between the Länsstyrelsen i Norrbottens län (County administrative board) of Norrbotten (Sweden), hereinafter 'the Administrative Board') and Lapin liitto (Regional Council of Lapland (Finland)) concerning the Administrative Board's application for financial support for the technical support costs of the Interreg III A North Programme, co-financed by the European Regional Development Fund (ERDF) (hereinafter 'the programme'), relating to the years 2001 and 2002.

Legal background

3 The third subparagraph of Article 32(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), provides:

'... Interim payments and payments of the balance shall relate to expenditure actually paid out, which must correspond to payments effected by the final beneficiaries, supported by receipted invoices or accounting documents of equivalent probative value.'

4 The Annex to Regulation No 1685/2000, in its initial version, entitled 'Eligibility rules', provides:

'Rule No 1: expenditure actually paid out

1 Payments by final beneficiaries

1.1 Payments effected by final beneficiaries within the meaning of the third subparagraph of Article 32(1) of Regulation (EC) No 1260/1999 ... shall be in the form of cash subject to the exceptions indicated in point 1.4.

...

1.4 Under the conditions set out in points 1.5 to 1.7, depreciation, contributions in kind and overheads can also form part of the payments referred to in point 1.1. However, the Structural Funds' co-financing of an operation shall not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation.

...

1.7 Overheads are eligible expenditure provided that they are based on real costs which relate to the implementation of the operation co-financed by the Structural Funds and are allocated pro rata to the operation, according to a duly justified fair and equitable method.

...

1.9 Member States may apply stricter national rules for determining eligible expenditure under points 1.5 to 1.7.

2 Proof of expenditure

As a rule, payments by final beneficiaries shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equal probative value.

...'

5 Under Article 2 and the third paragraph of Article 3 of Regulation No 448/2004, points 1.4, 1.7 and 1.9 of Rule No 1 in the Annex to Regulation No 1685/2000, in its initial version, became, with effect from 5 August 2000, respectively points 1.5, 1.8 and 1.10 of Rule No 1 in the Annex to Regulation No 1685/2000.

6 Article 19 of Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21) provides:

'In the case of forms of assistance where there are beneficiaries in more than one Member State, the Member States concerned shall agree with one another the necessary common arrangements to ensure sound financial management, taking account of national law, and shall inform the Commission of the arrangements agreed. The Commission and the Member States concerned shall provide one another with any necessary administrative assistance.'

7 In implementation of Article 19, cited above, the Republic of Finland and the Kingdom of Sweden signed, on 24 and 31 October 2002, a 'Memorandum of understanding on the implementation of the Community Initiative programme Interreg III A North'.

The main proceedings and the question referred for a preliminary ruling

8 By letter received by Lapin liitto on 30 October 2002, the Administrative Board applied for support for the costs of technical support under the programme, in a sum of SEK 95 880.72 for the year 2001. The amount of that support was arrived at by applying to the wage costs arising from the technical support for that programme a percentage calculated by reference to the proportion of the overheads incurred by the administration responsible for the programme (wages and other costs paid in respect of its horizontal activities, including such costs connected with the programme) to the wages arising from that administration's ordinary activities, which corresponds to the difference between the total cost of the wages paid in that respect and the above mentioned wages.

9 By decision of 20 February 2003, Lapin liitto refused the application. It considered that the payments made should have been vouched for by receipts and invoices or accounting documents of equivalent probative value. The overheads should have been based on real costs, whereas the costs at issue in the main proceedings, calculated by means of a percentage, were not allocated to the programme in accordance with a duly justified fair and equitable method within the meaning of point 1.8 of Rule No 1 in the Annex to Regulation No 1685/2000.

10 It is apparent from the order for reference that Lapin liitto received, on 26 September 2003, an application from the Administrative Board again seeking support for the costs relating to the programme as regards the years 2001 and 2002, respectively of sums of SEK 56 854 and SEK 186 982. Those costs related to overheads in respect of information technology, personnel administration, postage, financial management and premises.

11 By decision of 24 November 2003, Lapin liitto rejected that application as regards the entirety of the costs connected with information technology, personnel administration, postage and financial management on the ground that, even after a request for additional information dated 2 October 2003, the Administrative Board had not provided any explanation based on a record of hours worked as regards wages nor any explanation concerning the connection of the other costs with the programme.

12 In Lapin liitto's submission, it has not been provided with any information as regards the floor areas of the offices of the people taking part in that programme to calculate the costs relating to premises. For that reason, it took a floor space of 15 m^2 per office to assess the costs relating to premises in place of the figure of 20 m^2 in the application. Consequently, Lapin liitto paid, in respect of the costs relating to the premises occupied by the participants in the programme in 2001 and 2002, respectively, SEK 6 558.98 and SEK 22 203.30.

13 In its objection to the rejection decision of 24 November 2003, the Administrative Board maintained that, following a meeting it had with Lapin liitto and the Ministry of the Interior, it had used a new calculation model, by which the costs (overheads),

the reimbursement of which is claimed, are based on the real costs according to the accounts, allocated, according to a duly justified fair and equitable method, in proportion to the annual workforce.

14 That objection was rejected by decision of 6 February 2004, on the ground that the Administrative Board had used as the basis of calculation of the eligible overheads, the annual costs arising from information technology services, financial services and staff services, divided by the average number of employees of the administration responsible for the programme during the year in question. The monthly price of a service was the same for all staff. In the second application, the costs were entered as costs of the programme in proportion to the time each person worked. With that method, it was not possible to identify costs as costs arising from that programme. As regards the wage costs included in the amount claimed, since they were not attributed to individuals in accordance with a record of hours worked, they could not be taken into account as technical support costs of that programme.

15 The referring court, before which the Administrative Board brought an action for payment of the costs at issue, states that, in its application, the Administrative Board divided the costs of the technical support referred to by the average number of staff of the whole administration concerned for the year in question, so that it was possible to calculate the proportion of costs per person, per year and per month. The use of that average basis of calculation enabled the above mentioned costs to be passed as costs of the programme in proportion to the time actually worked by each person who had worked on the programme.

16 Lapin liitto submits that the Administrative Board did not show with sufficient precision what was the proportion of technical support in the costs generated by that programme. So far as wages are concerned, in order to enable the costs to be passed as costs of that programme in compliance with Regulation No 1685/2000, Lapin liitto requires there to be a daily time-record of hours worked by each person who has worked part-time for the purposes of the programme.

17 In those circumstances the Rovaniemen hallinto-oikeus decided to stay the proceedings and to refer a question to the Court for a preliminary ruling on the interpretation of point 1.8 of Rule No 1 in the Annex to Regulation No 1685/2000.

The question referred

18 By its question, the national court wishes, in essence, to ascertain whether point 1.8 of Rule No 1 in the Annex to Regulation No 1685/2000 is to be interpreted as precluding a method of calculating overheads as eligible expenditure for the purposes of a project co-financed by the Structural Funds, on the sole ground that such method is based on a percentage or proportion, in particular, of wage costs or time worked.

19 Under that provision, overheads constitute eligible expenditure provided that they are based on real costs which relate to the implementation of the operation co-financed by the Structural Funds and are allocated pro rata to the operation, according to a duly justified fair and equitable method.

20 Although the Finnish version of that provision contains no reference to the requirement that overheads be allocated 'pro rata' to the operation in question, that fact is of no consequence, since it follows from settled case-law that Community provisions must be interpreted and applied uniformly in the light of the versions existing in all the Community languages and since, in this case, the language versions other than the Finnish expressly refer to the requirement that overheads be allocated pro rata or proportionally to the operation in question (see by analogy, in particular, Case C-219/95 P *Ferriere Nord* v *Commission* [1997] ECR I-4411, paragraph 15).

21 Under point 1.10 of Rule No 1 in the Annex to Regulation No 1685/2000, Member States are authorised to apply stricter national rules for determining eligible expenditure under points 1.6 to 1.8 of that rule.

22 Without prejudice to national rules laying down stricter requirements, overheads paid out by final beneficiaries accordingly constitute eligible expenditure, under point 1.8 of that rule, where they meet three requirements, that is to say, they are based on real costs, that those costs relate to the implementation of the operation co-financed by the Structural Funds and that the said overheads are allocated pro rata to the operation, according to a duly justified fair and equitable method.

23 So far as the first requirement for eligibility is concerned, it is sufficient to observe, as the Commission puts it, that overheads are based on real costs if they were

actually paid out by final beneficiaries and are supported by receipted invoices or accounting documents of equal probative value within the meaning of the first and third subparagraphs of Article 32(1) of Regulation No 1260/1999.

24 So far as the second requirement for eligibility is concerned, it is appropriate to note that, under Article 30(1) of Regulation No 1260/1999, expenditure in respect of operations is to be eligible for a contribution from the Structural Funds only if those operations form part of the assistance concerned. Consequently, overheads arising from resources and services which the final beneficiaries need for the purposes of carrying out the operation co-financed by those Funds are covered as eligible expenditure.

25 So far as the third requirement for eligibility is concerned, on the scope of which the parties to the main proceedings disagree, its purpose is not to impose a single method of calculation, but it leaves to the Member States a discretion in the calculation of eligible expenditure. That requirement is intended only to make the taking into account of overheads as eligible expenditure subject to such overheads being allocated 'pro rata to the operation, according to a duly justified fair and equitable method'.

26 Consequently, point 1.8 of Rule No 1 in the Annex to Regulation No 1685/2000 cannot be interpreted as precluding methods of calculating eligible overheads based on a percentage or proportion, in particular, of wage costs or time worked, provided however that the final beneficiary is in a position to show that those overheads are

allocated to the project according to a method which complies with the criteria set forth in that provision.

27 It must be made clear, as the Commission correctly pointed out, that the allocation to the project concerned of overheads, such as, for example, wage costs, costs connected to real property or those relating to information technology, must, in the light of the above mentioned criteria, take account of the relation between the number of persons working on carrying out the project, the number of working hours which they devote to it or the amount of wages paid on that account, and the average number of persons working for the organisation concerned, the average number of hours worked or the average amount of wages paid.

28 Consequently, the reply to the question referred must be that point 1.8 of Rule No 1 in the Annex to Regulation No 1685/2000 does not preclude a method of calculating overheads as eligible expenditure for the purposes of a project co-financed by the Structural Funds, on the sole ground that such method is based on a percentage or proportion, in particular, of wage costs or time worked.

Costs

29 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Point 1.8 of Rule No 1 in the Annex to Commission Regulation (EC) No 1685/2000 of 28 July 2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards eligibility of expenditure of operations co-financed by the Structural Funds, as amended by Commission Regulation (EC) No 448/2004 of 10 March 2004, does not preclude a method of calculating overheads as eligible expenditure for the purposes of a project co-financed by the Structural Funds, on the sole ground that the method is based on a percentage or proportion, in particular, of wage costs or time worked.

[Signatures]