Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 13 October 2022[1]

Case C-31/21

Eurocostruzioni Srl
v
Regione Calabria

(Request for a preliminary ruling from the Corte suprema di cassazione (Supreme Court of Cassation, Italy))

(Reference for a preliminary ruling – Structural Funds – Co-financing – Regulation (EC) No 1685/2000 – Eligibility of expenditure – Requirement for proof of payment – Receipted invoices – Accounting document of equivalent probative value – Construction undertaken directly by the final beneficiary)

1. In this reference for a preliminary ruling, the Court of Justice will be required to interpret Regulation (EC) No 1685/2000[2] in order to determine the scope of the requirement to submit receipted invoices or, where that is not possible, accounting documents of equivalent probative value, which provide evidence of the amount of expenditure incurred, in a situation where the beneficiary of aid co-financed by EU Structural Funds has constructed a building using its own materials, tools and labour.

[1] Original language: Spanish.

[2] Commission Regulation 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 amending Regulation (EC) No 1685/2000 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the eligibility of expenditure of operations co-financed by the Structural Funds and withdrawing Regulation (EC) No 1145/2003 (OJ 2004 L 72, p. 66).

I. Legislative framework

A. European Union law

1. Regulation (EC) No 1260/1999[3]

2. Recitals 35 and 43 provide as follows:

‘(35) Whereas such decentralised implementation of the operations of the Structural Funds by the Member States should provide sufficient guarantees as to the details and quality of implementation, the results of operations and their evaluation and sound financial management and its supervision;

…

(43) Whereas sound financial management should be assured by providing that expenditure is to be duly justified and certified, and by linking payments to compliance with essential responsibilities as to the monitoring of programming, financial controls and the application of Community law;

…’.

3. Paragraph 3 of Article 30 (‘Eligibility’) establishes as follows:

‘The relevant national rules shall apply to eligible expenditure except where, as necessary, the Commission lays down common rules on the eligibility of expenditure in accordance with the procedure referred to in Article 53(2).’

4. According to the third subparagraph of paragraph 1 of Article 32 (‘Payments’):

‘Payments may take the form of payments on account, interim payments or payments of the final balance. 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.’

5. In Chapter II of Title IV (‘Financial Control’), paragraph 1 of Article 38 (‘General provisions’) establishes the following:

‘1. Without prejudice to the Commission’s responsibility for implementing the general budget of the European Communities, Member States shall take responsibility in the first instance for the financial control of assistance. To that end, the measures they take shall include:

…

(c) ensuring that assistance is managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

[3] Council Regulation of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

(d) certifying that the declarations of expenditure presented to the Commission are accurate and ensuring that they result from accounting systems based on verifiable supporting documents;

…'

2. Regulation No 1685/2000

6. Recital 5 is as follows:

'… For certain types of operation the Commission considers it necessary in order to guarantee the uniform and equitable implementation of the Structural Funds across the Community to adopt a common set of rules on eligible expenditure. The adoption of a rule relating to a particular type of operation does not prejudge under which of the abovementioned Funds such operation may be co-financed. The adoption of these rules should not prevent Member States, in certain cases which should be indicated, from applying stricter national provisions. …'

7. Pursuant to paragraph 2 ('Proof of expenditure') of Rule No 1 ('Expenditure actually paid out') of the Annex ('Eligibility Rules'):

'2.1. As a general rule, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equivalent probative value.

…'

B. Italian law

1. Law No 59 of 15 March 1997[4]

8. Article 4(4)(c) of the law devolved the administrative functions and tasks relating to EU regional, structural and cohesion policies to the regions.

[4] Legge 15 marzo 1997, n. 59, Delega al Governo per il conferimento di funzioni e compiti alle regioni ed enti locali, per la riforma della pubblica amministrazione e per la semplificazione amministrativa (Law authorising the Government to confer functions and tasks on the regions and local authorities for the purposes of reform of the public administration and administrative simplification). The devolution was subsequently implemented by Legislative Decree No 123 (Disposizioni per la razionalizzazione degli interventi di sostegno pubblico alle imprese, a norma dell'articolo 4, comma 4, lettera c), della legge 15 marzo 1997, n. 59), of 31 March 1998 (Provisions for the rationalisation of public support measures for business in accordance with Article 4(4)(c) of Law No 59 of 15 March 1997).

2. Calabria Regional Law No 7 of 2 May 2001 [5]

9. Article 31 *quater* established that, with regard to the Calabria Regional Operational Programme (ROP) 2000-2006, approved by the European Commission in Decision C(2000) 2345 of 8 August 2000, the Region of Calabria would promote the creation and development of small and medium-sized enterprises in the industry, trade, craft, tourism and services sectors, by means of aid granted in accordance with Regulation (EC) No 70/2001. [6]

II. Facts, dispute and questions referred for a preliminary ruling

10. By Regional Executive Decision No 398 of 14 May 2002, the Region of Calabria published the notice inviting applications for the assistance provided for in the Calabria Regional Operational Programme (ROP) 2000-2006 under 'axis IV – Measure 4.4.b'. Applications for that assistance were open to small and medium-sized enterprises which were planning initiatives in the tourism sector.

11. Article 8 of that notice referred to Regulation No 1685/2000 'as regards eligibility of expenditure in respect of operations co-financed by the Structural Funds'. Eligible expenditure included expenditure in connection with: (1) land; (2) buildings and equipment; (3) furnishings and fittings; (4) planning and surveys.

12. According to Article 9 of that notice:

– With regard to buildings and equipment, sums in respect of works had to be quantified within the limits set by the 1994 price list (Office for Public Works for the Region of Calabria) plus 15%.

– For any items not included in that list, limits were to be set by reference to current market prices as estimated by the architect.

13. By Decree No 4457 of 20 April 2004, aid was granted to Eurocostruzioni Srl for the construction of a hotel and associated leisure facilities in Rossano (Region of Calabria, Italy). As a result, that undertaking obtained capital funding equating to 47% of the investment, amounting to a total of EUR 4 918 080.

14. According to the referring court, Decree No 4457:

– listed the documents to be produced by the beneficiary, making no specific provision for works [7] other than 'the production of accounting records for the works (measurement book and accounting ledger, duly signed on each page by the director of works and the beneficiary)'; [8]

[5] Legge regionale 2 maggio 2001, n. 7. Disposizioni per la formazione del bilancio annuale 2001 e pluriennale 2001/2003 della Regione Calabria (Legge finanziaria).

[6] Commission Regulation of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33).

[7] To be understood as meaning works carried out by the beneficiary.

[8] Order for reference, paragraph 3.6.

– specified (Article 4) that, within the limits allowed by the decree, assistance for the works would be calculated 'on the basis of the measurement booklet and the accounting ledger, with the prices referred to in Article 9(b) of the notice, subject to audit by the inspection committee'. [9]

15. Eurocostruzioni carried out the works, purchased the furnishings and provided the Region of Calabria with the measurement booklet and accounting ledger, thus obtaining the certificate of conformity from the inspection committee, following a review of the works.

16. The Region of Calabria paid Eurocostruzioni the sum of EUR 1 661 638 in respect of the expenses incurred for furnishing and fittings, of which the undertaking had provided proof by submitting receipted invoices.

17. Eurocostruzioni sought payment of the remaining balance; this amounted to EUR 1 675 762 since, following the conformity inspection, it had been awarded a final payment of EUR 3 337 470 net, after deduction of the advance and the first progress payment.

18. The Region of Calabria refused payment of the EUR 1 675 762 sought, because Eurocostruzioni had not provided receipted invoices or accounting documents of equivalent probative value, in accordance with point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000, referred to in the notice of 14 May 2002. [10]

19. Eurocostruzioni lodged an application with the Tribunale di Catanzaro (District Court, Catanzaro, Italy) for an order for payment, which was granted by the court by judgment of 4 April 2012.

20. The Region of Calabria appealed against the judgment at first instance in the Corte d'Appello di Catanzaro (Court of Appeal, Catanzaro, Italy).

21. In its judgment of 27 October 2014, the appeal court found in favour of the Region of Calabria, taking the view that:

– it was not necessary to verify whether the planned works had actually been carried out, in view of the approval by the inspection committee and the absence of any complaints from the Region of Calabria regarding the works carried out;

– however, according to the invitation for applications for assistance, which referred to Regulation No 1685/2000, payment of the assistance was to be regarded as contingent on the submission of receipted invoices or accounting documents of equivalent probative value, even where the works had been carried out directly by the beneficiary undertaking;

– the documents supplied by Eurocostruzioni were necessary but not sufficient, in the absence of the aforesaid invoices, because there was no evidence that the sums had actually been paid at the stated prices in respect of the works carried out;

– Eurocostruzioni had to produce appropriate accounting records for the works directly carried out by it, as evidence of the disbursements made (purchase of materials, plant hire, payroll expenses, subcontracting, and details of the labour used).

[9] *Ibidem.*

[10] Article 2 ('Procedure and relevant legislation') of the invitation referred, specifically, to Regulations No 1260/1999 and No 1685/2000.

22. On 27 October 2015, Eurocostruzioni lodged an appeal in cassation with the referring court, alleging, among other things, breach of Regulation No 1685/2000.

23. In its appeal, Eurocostruzioni argued that:

– since point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000 includes the expression 'as a general rule', it does not make exhaustive provision for submission of proof of payment, but merely establishes a general principle;

– the refusal by the Region of Calabria to grant the aid pursuant to Regulation No 1685/2000 breaches the principles of good faith, fairness and legitimate expectations, since the undertaking had carried out the planned works properly and submitted the accounting documents required by the decree granting the assistance.

24. In that context, the Corte suprema de cassazione (Supreme Court of Cassation, Italy) refers the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Commission Regulation (EC) No 1685/2000 …, and in particular the provisions of point 2.1 of Rule No 1 of the Annex thereto ("proof of expenditure"), require that proof of payment by final beneficiaries must necessarily be furnished by means of receipted invoices, even if the funding was granted to the beneficiary to construct a building using its own materials, tools and labour, or may there be a derogation, other than the one specifically provided for where this is not possible, which requires the presentation of "accounting documents of equivalent probative value"?

(2) What is the correct interpretation of the phrase "accounting documents of equivalent probative value"?

(3) Specifically, do the abovementioned provisions of [Regulation (EC) No 1685/2000] preclude national and regional law and consequent implementing measures which, in the event that funding has been granted to the beneficiary in order to construct a building using its own materials, tools and labour, provide for a system of auditing the publicly funded expenditure consisting of:

(a) prior quantification of the works on the basis of a regional price list for public works and, for items not provided for therein, the current market prices estimated by the architect;

(b) a subsequent report, with presentation of the accounts for the works, consisting of the measurement booklet and the accounting ledger, duly signed on each page by the director of works and the beneficiary undertaking, and the audit and confirmation of the works carried out, on the basis of the unit prices referred to in point (a), by an inspection committee appointed by the competent regional administrative authority?'

III. Proceedings before the Court of Justice

25. The request for a preliminary ruling was lodged with the Court on 19 January 2021.

26. Observations were submitted by Eurocostruzioni, the Region of Calabria, the Italian Government and the European Commission.

27. The Court did not consider it necessary to hold a hearing, but asked the parties to submit written comments – which they did – on the arguments put forward by the Italian Government concerning the concept of 'accounting document of equivalent probative value'.

IV. Assessment

A. Preliminary point

28. The debate centres on determining whether an economic operator which has constructed a building using its own resources (materials, tools and labour) can provide proof of the expenditure it has incurred by means of 'accounting documents of equivalent probative value [to that of an invoice]' where those documents (a) consist of the measurement booklet and the accounting ledger; (b) have been duly signed on each page by the director of works and the beneficiary undertaking; (c) contain a statement of the expenditure, which is within the limits established by a standard scale of unit prices plus 15%. It should also be noted that the services of the administrative authority audited and confirmed the works carried out by the beneficiary undertaking.

29. Before resolving that issue, it is necessary to make a preliminary point. If there is shown to be a breach of the requirements for proof of payment required by the EU rules which apply in this case,[11] it would not be possible to pay the sum claimed by Eurocostruzioni out of the EU Structural Funds (allocated to Italy) under the Regional Operational Programme.

30. However, as the Commission has pointed out, that would not mean that Eurocostruzioni could not be entitled to payment of the sum it is claiming if, in the view of the referring court, it qualifies under the Italian legislation, having not only built the hotel but also complied with the requirements concerning accounting records stipulated in the provisions governing the award of the assistance.[12]

31. In that case, payment to Eurocostruzioni would be chargeable to the national budget but not the EU budget.

B. Admissibility of the questions referred for a preliminary ruling

32. According to the Region of Calabria, the first question referred is inadmissible, because the applicability of Regulation No 1685/2000 was not raised in the referring court and the court cannot raise it of its own motion, given the nature of the appeal before it (an appeal in cassation). The Region of Calabria argues that, consequently, no evidence has been provided of the connection between the dispute and Regulation No 1685/2000, nor has there been any explanation of the reasons for referring the question to the Court of Justice for a preliminary ruling.

[11] That is, Article 32(1) of Regulation No 1260/1999 and point 2.1 of Rule 1 of the Annex to Regulation No 1685/2000.

[12] That is, the provisions in the Executive Decision of the Region of Calabria of 14 May 2002 and in the Decree of 20 April 2004 granting the assistance. Eurocostruzioni's claims concerning breach of the principles of good faith, fair dealing and legitimate expectations could, if applicable, be asserted under Italian law, and it would be for the Italian courts to rule on them.

33. The objection cannot be upheld. The order for reference notes that the reference specifically concerns the requirements to provide proof of the expenditure incurred by Eurocostruzioni, as the final beneficiary of assistance co-financed by EU Structural Funds. Regulation No 1685/2000 therefore applies, as the Region of Calabria itself acknowledges in its written observations (paragraph 12). The referring court explains in that order why it requires an interpretation of the regulation. Whether or not it is able to introduce that consideration in an appeal in cassation is solely for the referring court to decide.

34. The Region of Calabria also believes that the third question referred is inadmissible, because the referring court has failed to explain the link between Regulation No 1685/2000 and the 'national legislation' or 'regional legislation', which it has not fully addressed. The Region of Calabria argues that the content of the regional legislation and the Executive Decision of the Region of Calabria of 14 May 2002 goes beyond that described in the order for reference.

35. Once again, the objection should be dismissed. It is for the referring court to set out the scope of the relevant domestic legislation and its relationship with EU law. In this case, the court's description of the national and regional legislative framework is succinct but sufficient, and includes reference to the notice inviting applications for assistance and to the decree by which the Region of Calabria granted the assistance. The relationship between that legislative framework and the EU legislation is set out in the order for reference.[13]

1. First question referred for a preliminary ruling

36. The assistance at issue was granted on 20 April 2004. Proof of expenditure is therefore governed by Regulation No 1260/1999 (the basic regulation)[14] and Regulation No 1685/2000 (the implementing regulation),[15] as amended by Regulation No 448/2004, which applied retrospectively from 5 July 2003 and, in the case of some provisions, from 5 August 2000.

37. In accordance with the principle of subsidiarity, both regulations state that 'the relevant national rules shall apply to eligible expenditure except where, as necessary, the Commission lays down common rules on the eligibility of expenditure …'.[16]

[13] There is no contradiction between these comments and the considerations I set out below in my examination of the substance of the third question referred.

[14] That basic regulation was replaced 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 and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25), which was in turn 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 and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

[15] That regulation was replaced by Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (OJ 2006 L 371, p. 1), which has been amended several times.

[16] Article 30(3) of Regulation No 1260/1999. According to recital 41 of that regulation, 'in accordance with the principle of subsidiarity, the rules on eligible expenditure should be the relevant national rules where there are no Community rules, although they may be laid down by the Commission where they are clearly needed for the uniform and equitable implementation of the Structural Funds across the Community'.

38. The Commission availed itself of that option in order to issue common rules on the eligibility of expenditure, through Regulation No 1685/2000. [17] In consequence, Member States had to follow the common provisions on proof of expenditure laid down in Regulation No 1685/2000 unless they decided, exceptionally, to apply stricter national provisions.

39. The referring court does not state that the Italian State had introduced stricter national provisions, and that is confirmed by the Italian Government. [18] Therefore, evidence of the expenditure incurred by Eurocostruzioni is governed by Regulation No 1685/2000.

40. As I noted earlier, by its first question referred for a preliminary ruling, the referring court wishes to know, in summary, whether point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000:

– requires that proof of payment by a final beneficiary which has constructed a building using its own materials, tools and labour must necessarily be furnished by means of receipted invoices;

– or whether, in such a situation, where it is not possible to provide invoices, it allows for the submission of accounting documents of equivalent probative value.

41. Article 32 of Regulation No 1260/1999 draws a distinction between the financial management of payments on account [19] and that of interim payments and payments of the final balance. With regard to the latter, the third subparagraph of Article 32(1) stipulates that these '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'.

42. Therefore, in the case of payments of the final balance (the type of payment claimed in this case by Eurocostruzioni), accounting evidence of the expenditure actually paid out by the beneficiary of the assistance is required before payment can be made.

43. This requirement is reiterated in point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000, which applies to operations co-financed by the Structural Funds; the wording of the provision was set out above and I reproduce it here: 'As a general rule, payments by final beneficiaries, declared as interim payments and payments of the final balance, shall be supported by receipted invoices. Where this cannot be done, payments shall be supported by accounting documents of equivalent probative value.'

44. The wording of these two provisions is clear:

– The *general rule* is that the beneficiary must provide proof of expenditure by means of receipted invoices.

[17] Recital 5 of that regulation states: '… for certain types of operation the Commission considers it necessary in order to guarantee the uniform and equitable implementation of the Structural Funds across the Community to adopt a common set of rules on eligible expenditure. … The adoption of these rules should not prevent Member States, in certain cases which should be indicated, from applying stricter national provisions.'

[18] Paragraph 28 of its written observations.

[19] Article 32(2) provides that, when the first commitment is made, the Commission is to make a payment on account to the paying authority of 7% of the contribution from the Funds to the assistance in question. Naturally, payment on account may be made without first requiring the beneficiary to provide any form of accounting proof of expenditure. See, in that regard, the judgment of 24 November 2005, *Italy* v *Commission* (C-138/03, C-324/03 and C-431/03, EU:C:2005:714; 'the judgment in *Italy* v *Commission*') paragraphs 47 to 49.

– The *exception* is that, where the provision of proof of expenditure 'cannot be done' by means of receipted invoices, it may be done by means of 'documents of equivalent probative value'. I stress that this latter option is an exception, and must therefore be interpreted narrowly.

45. The context for these two provisions also points in the same direction. That is evidenced by recital 43 of Regulation No 1260/1999, [20] which supports a narrow interpretation of Rule No 1 of the Annex to Regulation No 1685/200.

46. The objective of sound financial management, which underpins management of the Structural Funds, [21] confirms this interpretative approach. According to Article 38(1) of Regulation No 1260/1999, Member States are to take responsibility in the first instance for the financial control of assistance and, to that end, the measures they take are to include:

'(c) ensuring that assistance is managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

(d) certifying that the declarations of expenditure presented to the Commission are accurate and ensuring that they result from accounting systems based on *verifiable supporting documents*' (italics added).

47. The Court has declared that the system established in Article 32 of Regulation No 1260/1999 and in Rule No 1 of the Annex to Regulation No 1685/2000 is based on the principle of reimbursement of expenses, which must be justified and certified. [22]

48. The fact that the beneficiary of the assistance has constructed the building using its own resources does not excuse it from complying with the evidential provisions in Regulations No 1260/1999 and No 1685/2000.

49. If the beneficiary is unable to submit invoices as evidence of the construction of a building, because it carried out the construction using its own resources without recourse to third parties – it is for the competent national court to judge whether it is impossible to provide invoices – it must, in any event, provide evidence of the expenditure incurred by means of accounting documents of equivalent probative value to that of a receipted invoice. [23]

50. There is, therefore, no middle way. Article 32 of Regulation No 1260/1999 and point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000 do not provide for any form of evidence other than receipted invoices or, where they cannot be produced, accounting documents of equivalent probative value. The same applies where the beneficiary of the assistance has constructed a building using its own materials, tools and labour.

[20] 'Sound financial management should be assured by providing that expenditure is to be duly justified and certified …'

[21] See recitals 35 and 43 of Regulation No 1260/1999.

[22] The judgment in *Italy* v *Commission*, paragraphs 44 to 46. Paragraph 46 states that '…as a rule, eligibility for a contribution from the Structural Funds of expenditure paid out by national bodies is conditional on submitting to the Commission proof of its use for the project financed by the European Union. Such proof can be provided by means of receipted invoices or, where that is not possible, by accounting documents of equivalent probative value.'

[23] In the Commission's view, in such a situation the beneficiary could have submitted evidence of expenditure, for example, by means of invoices for purchase of materials or payroll records for workers. It could also have submitted accounting documents of equivalent probative value in respect of expenditure for which it cannot obtain invoices, such as contributions in kind or amortisation or depreciation of assets used in carrying out the work.

51. The fact that those accounting documents of equivalent probative value may include documents which are specifically a matter of dispute in these proceedings is a separate issue. Those documents are addressed in the third question referred for a preliminary ruling.

2. Second question referred for a preliminary ruling

52. The second question concerns the meaning of the expression 'accounting documents of equivalent probative value', which is used – but not defined – in Regulations No 1260/1999 and No 1685/2000. Nor is its meaning clarified in the regulations which have replaced those two pieces of legislation.

53. The Commission believes that the expression refers to the forms of proof of payment acknowledged and accepted by the Commission in cases where issuing an invoice in respect of a disbursement is not relevant under a Member State's tax and accountancy rules. [24]

54. In its opinion, the expression refers to genuine and reliable supporting documents which, like receipted invoices, are capable of demonstrating that the expenditure was actually made. [25]

55. I agree with the Commission that proof of expenditure under this option (that is, where receipted invoices cannot be provided) may be provided by accounting documents recognised under a Member State's national law, provided they give a true and fair view of the disbursements actually made.

56. Such documents would include, for example:

– Accounting entries which demonstrate use of a percentage of indivisible overhead costs, contributions in kind or depreciation costs. [26] These three elements cannot be invoiced directly in connection with a project, and it must be possible for them to be charged indirectly to the project.

– Documentary evidence of the wages of the workers involved in implementing the project, and of the pro rata allocation of overheads (rent, electricity, heating or telecommunications). [27]

[24] In relation to VAT, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) provides for invoices to be used as a means to obtain the deduction of VAT, and it regulates some of the components and characteristics required of such invoices, while leaving remaining aspects as a matter for the law of Member States. See, among others, the judgments of 15 September 2016, *Senatex* (C-518/14, EU:C:2016:691, paragraphs 28 and 29); of 21 November 2018, *Vădan* (C-664/16, EU:C:2018:933, paragraphs 39 and 40); and of 11 November 2021, *Ferimet* (C-281/20, EU:C:2021:910, paragraphs 26 to 28).

[25] Commission Decision 97/324/EC of 23 April 1997 modifying the decisions approving the Community support frameworks, the single programming documents and the Community initiative programmes in respect of Ireland (Only the English text is authentic) (OJ 1997 L 146, p. 15).
'Datasheet No 4: … Details on the principle of real cost
…
3. In cases where issuing an invoice is not relevant under national tax and accountancy rules, "accounting document of equivalent probative value" means any document submitted to prove that the book entry gives a true and fair view of the actual transaction in accordance with current accountancy law.
…'

[26] See, in Regulation No 1303/2013, Article 68 on proof of indirect costs, and Article 69 on proof of contributions in kind in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices, or documents of equivalent probative value, has been made, and depreciation costs.

[27] According to point 1.8 of Rule No 1 of the Annex to Regulation No 1685/2000, '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'.

57. However, the Italian Government puts forward a broader interpretation of the concept at issue here, which would cover situations where works or a project are carried out using own resources. In its view:

– The probative value of an invoice arises from its having been issued by a person whose interest does not coincide with that of the person submitting the invoice as evidence of expenditure.

– Applying the same logic to accounting documents of equivalent probative value, the only documents which could be accepted as such are those containing declarations by third parties. This would render the concept 'too narrow and difficult to apply' to expenditure incurred by a developer which uses its own resources to carry out the works.

– This difficulty could be overcome through recourse to point 1.7 of Rule No 1 of the Annex to Regulation No 1685/2000, which provides for evidence of contributions in kind. [28]

– Evidence of own resources used by the developer could therefore be provided in a similar way to contributions in kind, provided that their value was certified by an independent qualified professional or duly authorised official body.

58. The Court asked the parties to the proceedings and the Commission to comment on the interpretation put forward by the Italian Government. In response to that request:

– Eurocostruzioni takes the view that it is acceptable. Prior quantification of the works based on a regional price list for public works and subsequent oversight achieved by submitting the accounts for the works (measurement booklet and accounting ledger) constitute documentation which is capable of being audited and independently evaluated, as was done in this case by the inspection committee appointed by the regional administrative authority. That committee can be considered an independent qualified professional or duly authorised official body within the meaning of point 1.7(d) of Rule No 1 of the Annex to Regulation No 1685/2000.

– The Region of Calabria rejects the interpretation. In its view, the application by analogy of the evidence required for contributions in kind to the own resources contributed by a developer requires the evidence to be audited by an independent qualified professional or duly authorised official body. Such verification is only possible if the developer has documentary evidence of the expenditure, which is not the case here.

– The Commission also opposes the interpretation propounded by the Italian Government, because it would restrict the concept of 'accounting documents of equivalent probative value' to documents issued by third-party verification bodies with powers of certification, which is an unjustified restriction.

[28] According to point 1.7 of Rule No 1 of the Annex to Regulation No 1685/2000, 'in kind, contributions are eligible expenditure provided that:
(a) they consist in the provision of land or real estate, equipment or materials, research or professional activity, or unpaid voluntary work;
(b) they are not made in respect of financial engineering measures referred to in Rules 8, 9 and 10;
(c) their value can be independently assessed and audited;
(d) in the case of the provision of land or real estate, the value is certified by an independent qualified valuer or duly authorised official body;
(e) in the case of unpaid voluntary work, the value of that work is determined taking into account the amount of time spent and the normal hourly and daily rate for the work carried out;
(f) the provisions of Rules 4, 5 and 6 are complied with where applicable.'

59. In my view, the interpretation put forward by the Italian Government stretches the evidential provisions in point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000 too far. In the same vein, in applying the exemption at issue it adopts broad, rather than narrow, interpretive criteria.

60. As I noted earlier, the option of providing proof in the form of 'accounting documents of equivalent probative value' is an exception which may be used only where it is not feasible to submit duly receipted invoices. An interpretation such as that suggested by the Italian Government does not comply with Article 32 of Regulation No 1260/1999 and point 2.1 of Rule No 1 of the Annex to Regulation No 1685/2000.

61. If, where a building has been constructed using own resources, evidence could be provided in the form of certification of the value of the contribution by an independent qualified professional or duly authorised official body, this would provide scope for double counting of expenditure or potential fraud in the evidence required in order to obtain money from the EU Structural Funds.

62. Moreover, as argued by the Commission, that interpretation would unjustifiably restrict the scope for submitting 'accounting documents of equivalent probative value' to documents issued by auditors or official audit bodies. Under point 1.7(d) of Rule No 1 of the Annex to Regulation No 1685/200, such a requirement is imposed only in the case of the provision of land or real estate and does not apply to other contributions in kind. I do not see why that restriction should be extended to cover contributions from developers of works financed by EU Structural Funds made from own resources.

63. The principles of sound financial implementation and reimbursement of expenditure by which the European Union is governed in this matter point to a rejection of the interpretation argued for by the Italian Government.

3. Third question referred for a preliminary ruling

64. The referring court wishes to know whether Regulation No 1685/2000 precludes national and regional legislation and consequent administrative acts which, where funding has been granted to the beneficiary in order to construct a building using its own materials, tools and labour, provide for a system of auditing expenditure consisting of:

– prior quantification of the works on the basis of a regional price list for public works and, for items not provided for therein, the current market prices estimated by the architect;

– a 'subsequent report, with presentation of the accounts for the works, consisting of the measurement booklet and the accounting ledger, duly signed on each page by the director of works and the beneficiary undertaking'; and

– audit and confirmation of the works carried out, on the basis of the unit prices listed in the regional price list, by an inspection committee appointed by the competent regional administrative authority.

65. I shall begin by addressing the question as worded in general terms – that is, without considering the particular circumstances of the assistance granted to Eurocostruzioni – before going on to examine the details of that assistance, in order to provide the referring court with the most helpful response possible.

(a) Compatibility, in the abstract, of the national rule with Regulation No 1685/2000

66. Without prejudice to the assessment to be carried out by the referring court, the expenditure review method it describes in its third question appears to derive from the decree granting the assistance rather than deriving directly from a national or regional law. [29]

67. In determining whether that system complies with Regulation No 1685/2000, the problem lies in knowing the precise content of the two documents (that is, 'the measurement booklet and the accounting ledger') [30] required as proof of the construction expenditure where this is borne by a beneficiary which is using its own resources.

68. On an initial consideration, I can agree with the Commission and the Region of Calabria that those two documents do not in themselves have equivalent probative value to that of an invoice.

69. Indeed, if the measurement booklet and the accounting ledger simply record progress on the various stages of the works, [31] and they are 'signed on each page' by the director of works and the beneficiary solely for that purpose, they would not be sufficient to provide proper proof of the monetary values for the entire construction of the hotel.

70. If, on the other hand, the 'accounting ledger' of the beneficiary undertaking provided reliable and detailed information on the expenditure paid by the undertaking in staff wages or building materials, for example, among other similar cost items, then, in my opinion there would be no difficulty in classing that *accounting ledger* as a document of equivalent probative value to that of an invoice.

71. It is for the referring court to verify those points and, on the basis of its own assessment, to determine the extent to which those two accounting documents can provide a true and fair view of the expenditure paid by the beneficiary of the assistance, in the event that, objectively, it was not possible to issue receipted invoices.

72. With regard to confirmation of the work by an inspection committee appointed by the regional administrative authority, undertaken purely by reference to a predetermined price list, I do not consider that to be an appropriate method of verifying that, in a specific case, the expenditure actually incurred matches the costs which are provided, as abstract calculation parameters, in that list.

(b) Proof, specifically, of the expenditure incurred by Eurocostruzioni

73. The referring court appears to accept that the works which received funding (a hotel in Rossano) were actually carried out by Eurocostruzioni in accordance with the approved project, and conformed to the project in quantitative and qualitative terms. It therefore rules out any suggestion of defective implementation or fraud in the execution of a project co-financed by Structural Funds.

[29] This is inferred from paragraph 3.6 of the order for reference.

[30] In the original Italian, 'libretto delle misure' and 'registro della contabilità'.

[31] Which is what appears to be indicated by the appeal court in the judgment of 27 October 2014.

74. According to the information in the case record, the work for which assistance was granted was carried out; moreover, Eurocostruzioni received the funding for the furnishings, because it submitted the receipted invoices for the purchases in accordance with the notice of 14 May 2002 inviting applications and the decree of 20 April 2004 granting the assistance.

75. The doubts expressed by the referring court concern proof of the other expenditure incurred by the developer, resulting from the fact that it constructed the building using its own materials, tools and labour, as noted above. Eurocostruzioni did not submit receipted invoices for that expenditure.

76. In my view, the first point which must be confirmed is whether it was really feasible for proof of that expenditure to be provided by means of receipted invoices, as maintained by the Region of Calabria.

77. If duly receipted invoices could not be issued then, under Article 32 of Regulation No 1260/1999 and point 2.1 of Rule 1 of the Annex to Regulation No 1685/2000, proof of the expenditure could, exceptionally, be provided by means of accounting documents of equivalent probative value. [32]

78. Specifically, as I have already said, the documents containing the audit and confirmation of the work, which were carried out by an inspection committee appointed by the regional administrative authority, would not provide sufficient reliable proof of the expenditure incurred if they merely applied estimates in accordance with a standard scale which has no direct, objective connection with that expenditure but merely lays down abstract parameters.

79. Consequently, those documents do not in themselves provide a true and fair view of the operations that were actually carried out, nor do they reflect the added valued contributed to the project by the undertaking or eliminate the possibility of duplication.

80. Lastly, it is also relevant to note that, under Article 8 of the notice of 14 May 2002 inviting applications (referred to by the appeal court in the final part of its judgment of 27 October 2014), assistance would not be provided for expenditure on (construction) processes commissioned internally, non-capitalised expenditure and cash payments.

[32] See points 69 to 71 of this Opinion.

V. Conclusion

81. In the light of the considerations set out above, I propose to the Court that it should reply to the Corte suprema di cassazione (Supreme Court of Cassation, Italy) as follows:

'Article 32 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, and point 2.1 of Rule No 1 of 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 must be interpreted as meaning that:

(a) as a general rule, they allow for proof of expenditure to be provided by means of duly receipted invoices and, exceptionally, where that is not possible, by accounting documents of equivalent probative value, even where the beneficiary has constructed a building using its own materials, tools and labour;

(b) the concept of "accounting documents of equivalent probative value" includes documents recognised as such under the national law of the implementing Member State, provided that they give a true and fair view of the expenditure actually paid;

(c) documents containing nothing more than the measurement plan and mere accounting ledgers cannot be classed as accounting documents of equivalent probative value to duly receipted invoices unless they provide reliable and detailed evidence of the expenditure paid in staff wages or building materials, among other similar cost items, which is a matter for the national court to determine;

(d) an audit of the work by an administrative inspection committee does not provide sufficient reliable proof of the expenditure incurred if it merely applies estimates in accordance with a standard scale which has no direct, objective connection with that expenditure but merely lays down abstract parameters.'