Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

28 September 2016*

(EAGGF, Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Integrated administration and control system — Reductions and exclusions where the rules on cross-compliance are not observed — Flat-rate financial correction imposed by the Commission in accordance with internal guidelines — Burden of proof — Interpretation of Annexe II to Regulation (EC) No 73/2009)

In Case T-437/14,

United Kingdom of Great Britain and Northern Ireland, represented by M. Holt and J. Kraehling, acting as Agents, and V. Wakefield, Barrister,

applicant,

supported by

Kingdom of the Netherlands, represented by M. Bulterman and B. Koopman, acting as Agents,

intervener,

v

European Commission, represented by K. Skelly and D. Triantafyllou, acting as Agents,

defendant,

APPLICATION based on Article 263 TFEU for the annulment of nine entries from the Annex to Commission Implementing Decision 2014/191/EU of 4 April 2014 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 104, p. 43), insofar as concerns the item, in the Annex to the decision, relating to the financial corrections applied to expenditure incurred by the United Kingdom of Great Britain and Northern Ireland in Scotland during the financial years 2008, 2009 and 2010 totalling EUR 5606459.48 because that expenditure did not comply with EU rules,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka (Rapporteur) and V. Kreuschitz, Judges,

Registrar: S. Spyropoulos, Administrator,

* Language of the case English

having regard to the written procedure and further to the hearing on 11 November 2015,

gives the following

Judgment

Legal context

1 On 29 September 2003, the Council of the European Union adopted Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

2 Article 3(1) of Regulation No 1782/2003 provided that: 'a farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III'.

3 Article 4 of Regulation No 1728/2003 provided as follows:

'1. The statutory management requirements referred to in Annex III shall be established by Community legislation in the following areas:

— public, animal and plant health;

— environment;

— animal welfare.

2. The acts referred to in Annex III shall apply within the framework of this Regulation in the version as amended from time to time and, in case of Directives, as implemented by the Member States.'

4 Article 6 of Regulation No 1782/2003, entitled 'Reduction or exclusion from payments', provided as follows:

'1. Where the statutory ... requirements ... are not complied with, as a result of an action or omission directly attributable to the individual farmer, the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs ... shall be reduced or cancelled in accordance with the detailed rules laid down under Article 7.

...'

5 Article 7(1) of Regulation No 1782/2003 provided that the detailed rules regarding reductions and exclusions referred to in Article 6 were to be laid down taking account of 'the severity, extent, permanence and repetition of the non-compliance found as well as of the criteria set out in paragraphs 2, 3 and 4'. Article 7(2), (3) and (4) provided, inter alia, as follows:

'2. In case of negligence, the percentage of reduction shall not exceed 5% and, in case of repeated non-compliance, 15%.

3. In case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20% and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.

...'

6 Annex III to Regulation No 1782/2003, which sets out the statutory management requirements ('SMR'), was amended by Council Regulation No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ 2004 L 5, p. 8), which added a new SMR, SMR 8 bis, to the annex, worded as follows:

'Regulation No 21/2004 ... Articles 3, 4 and 5.'

7 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16) repealed and replaced Regulation No 1782/2003 with effect from 1 January 2009 (see Articles 146(1) and 149). Regulation No 73/2009 was repealed by Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Regulation No 73/2009 (OJ 2013 L 347, p. 608). Article 74 thereof provides that Regulation No 1307/2013 is to apply from 1 January 2015.

8 Recital 3 of Regulation No 73/2009 states as follows:

'Regulation ... No 1782/2003 established the principle that farmers who do not comply with certain requirements in the areas of public, animal and plant health, environment and animal welfare are subject to reductions of or exclusion from direct support. This "cross-compliance" system forms an integral part of Community support under direct payments and should therefore be maintained. However, experience has shown that a number of the requirements within the scope of cross compliance are not sufficiently relevant to farming activity or farm land or concern national authorities rather than farmers. It is therefore appropriate to adjust the scope of cross-compliance.'

9 Article 4 of Regulation No 73/2009 provided as follows:

'1. A farmer receiving direct payments shall respect the [SMR] listed in Annex II ...'

10 Article 5 of Regulation No 73/2009, concerning SMR, was worded as follows:

'1. The [SMR] listed in Annex II shall be established by Community legislation in the following areas:

(a) public, animal and plant health;

(b) environment;

(c) animal welfare.

2. The acts referred to in Annex II shall apply as in force and, in the case of Directives, as implemented by the Member States.'

11 Article 14 of Regulation No 73/2009 required Member States to set up and operate an integrated administration and control system for the purpose of, inter alia, the administration and control of the rules on cross-compliance.

12 Article 22 of Regulation No 73/2009 obliged Member States to carry out on-the-spot checks to verify whether a farmer adhered to his cross-compliance obligations.

13 Article 23 of that regulation provided that, when the requirements on cross-compliance were not adhered to and that non-compliance was directly attributable to the farmer who submitted an aid application, 'the total amount of direct payments granted or to be granted to that farmer, shall be reduced in accordance with the detailed rules laid down in Article 24'.

14 Article 24 of Regulation No 73/2009 provided that detailed rules on reductions and exclusions were to be laid down. It made clear that, in the case of negligence, the percentage reduction was not to exceed 5%, or, in the case of repeated non-compliance, 15%. In the case of intentional non-compliance, the percentage reduction could not, in principle, be less than 20% and could go as far as total exclusion from one or more aid schemes and apply for one or more calendar years.

15 In Annex II to Regulation No 73/2009, which is entitled '[SMR] referred to in Articles 4 and 5', the entry relating to SMR8 was worded as follows:

'Regulation ... No 21/2004 ... Articles 3, 4 and 5.'

16 Regulation No 21/2004, to which SMR8 bis of Regulation No 1782/2003 and SMR8 of Regulation No 73/2009 (together, 'SMR8') refer, establishes a system for the identification and registration of ovine and caprine animals, which, according to recital 20 thereof, made it necessary to amend Regulation No 1782/2003.

17 Article 3 of Regulation No 21/2004 provides as follows:

'1. The system for the identification and registration of animals shall comprise the following elements:

(a) means of identification to identify each animal;

(b) up-to-date registers kept on each holding;

(c) movement documents;

(d) a central register or a computer database.

2. The Commission and the competent authority of the Member State concerned shall have access to all information covered by this Regulation. The Member States and the Commission shall take the measures necessary to ensure access to that information for all parties having an interest, including consumers' organisations recognised by the Member State, provided that the data protection and confidentiality requirements prescribed by national law are complied with.'

18 Article 4 of Regulation No 21/2004 lays down the requirements relating to the means of identifying each animal. It refers to the identification requirements set out in Part A of the Annex to the regulation.

19 Article 5 of Regulation No 21/2004 lays down the requirements concerning registers and refers to the requirements set out in Part B of the Annex to the regulation.

20 Article 6 of that regulation lays down the requirements concerning movement documents and refers to the requirements set out in Part C of the Annex to the regulation.

21 Article 7 of Regulation No 21/2004 concerns the central register and Article 8 concerns the computer database and refers to the requirements set out in Part D of the Annex to the regulation.

Background to the dispute

22 The European Commission carried out a cross-compliance inspection in Scotland for claim years 2008, 2009 and 2010 (enquiry No XC/2010/002/GB United Kingdom (Scotland)) and communicated to the United Kingdom of Great Britain and Northern Ireland, in a letter dated 24 November 2010, the shortcomings which the auditors had identified in the Scottish cross-compliance system.

23 By letter of 23 February 2011, the United Kingdom responded and submitted its observations to the Commission.

24 On 19 December 2011, the Commission sent the United Kingdom a written invitation to a bilateral meeting scheduled on 21 February 2012. The United Kingdom accepted the invitation and set out its position on the issues raised by the Commission in a letter dated 14 February 2012.

25 By letter of 2 March 2012, the Commission sent the United Kingdom the minutes of the bilateral meeting.

26 Following the meeting, the Commission sent the letter dated 27 March 2013 in which it claimed that the implementation of the cross-compliance system in Scotland did not comply with EU rules in the years 2008, 2009 and 2010 and informed the United Kingdom of its proposal to exclude from EU financing an amount totalling EUR 5606459.48. In particular, the Commission identified for claim years 2009 and 2010: (i): deficiencies regarding the effective control of SMR2 and SMR4; (ii) deficiencies regarding the effective control of good agricultural and environmental conditions ('GAEC') 4, 16 and 18; and (iii) failure to adequately control and impose penalties in respect of the requirements of SMR8 under the framework of cross-compliance. As regards the claims for 2008, the Commission identified deficiencies regarding the effective control of SMR2 and SMR4, deficiencies regarding the effective control of GAEC4, GAEC16 and GAEC18, failure to adequately control and impose penalties in respect of the requirements of a number of SMR under the framework of cross-compliance and the adoption of a lenient approach for infringements of SMR7 and SMR8. It also stated that the 5% sanction for negligent non-compliance was not possible for SMR4 and identified a failure to carry out a systematic follow-up for all cases of minor non-compliance. In that letter, the Commission proposed a 5% correction for 2008 and, for 2009 and 2010, a 2% correction on the ground that the Scottish authorities had taken a number of measures to correct some of the weaknesses identified.

27 By letter dated 14 May 2013, the United Kingdom's coordinating body requested that the matter be referred to the conciliation body. The questions referred to the conciliation body concerned, on the one hand, the financial correction for non-implementation of the whole of the cross-compliance controls in the context of SMR4 and, on the other hand, the interpretation of SMR8. Conciliation took place on 18 July 2013 but was unsuccessful.

28 By letter of 8 November 2013, the Commission wrote to the United Kingdom to confirm its position as set out in its letter of 27 March 2013.

29 On 4 April 2014, by Implementing Decision 2014/191/EU excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 104, p. 43) ('the contested decision'), of which the United Kingdom was given notification on 7 April 2014, the Commission, in accordance with the proposal set out in its letter of 27 March 2013, excluded from EU financing certain expenditure incurred in Scotland during the financial periods 2008, 2009 and 2010, in the sum of EUR 5606459.48, because of its non-compliance with EU rules (Article 1) and imposed a flat-rate correction of 5% for 2008 and 2% for 2009 and 2010.

Procedure and forms of order sought by the parties

30 By application lodged at the Registry of the General Court on 16 June 2014, the United Kingdom brought the present action.

31 The United Kingdom claims that the Court should:

— annul nine entries from the Annex to the contested decision;

— order the Commission to pay the costs.

32 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the United Kingdom to pay the costs.

33 By document lodged at the Court Registry on 2 April 2015, the Kingdom of the Netherlands applied for leave to intervene in support of the form of order sought by the United Kingdom.

34 On 7 July 2015, by decision of the President of the Fourth Chamber of the General Court, the Kingdom of the Netherlands was granted leave to intervene in the proceedings in support of the form of order sought by the United Kingdom, in accordance with Article 116(6) of the Rules of Procedure of the General Court of 2 May 1991.

35 On 30 September 2015, by way of measures of organisation of procedure provided for in Article 89(3) of its Rules of Procedure, the Court put a series of written questions to the parties to be answered at the hearing and ordered the Commission to produce document VI/5330/97 of 23 December 1997 entitled 'Orientations concernant le calcul des conséquences financières lors de la préparation de la décision d'apurement des comptes du FEOGA Garantie' (Guidelines for the calculation of financial consequences when preparing decisions on the clearance of the EAGGF, Guarantee Section, accounts).

36 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 11 November 2015.

Law

37 In support of its application, the United Kingdom relies, in essence, on a single plea in law, alleging breach of the principles of legal certainty, non-discrimination and equal treatment as a result of the Commission's illegal interpretation of SMR8.

38 The United Kingdom claims, inter alia, that the Commission's interpretation of SMR8, according to which that SMR is covered by sub-paragraphs (c) and (d) of Article 3(1) of Regulation No 21/2004 and, therefore, the requirements laid down by those provisions, in particular the requirement to keep a central register or a computer database and to keep movement documents for ovine and caprine animals, is illegal.

39 Specifically, first, since SMR8 refers expressly only to Articles 3, 4 and 5 of Regulation No 21/2004, such an interpretation would, in the United Kingdom's view, misconstrue the legislator's intention of excluding Articles 6 to 8 — which lay down the detailed material rules concerning sub-paragraphs (c)

and (d) of Article 3(1) of Regulation No 21/2004 — from the scope of SMR8 and would give only the requirements set out in Articles 3(1)(a) and (b) and in Articles 4 and 5 of the regulation the status of cross-compliance obligations.

40 Second, according to the United Kingdom, the reference to Articles 4 and 5 in SMR 8 would make no sense if the legislator had intended to include in that SMR all the elements of Article 3(1) of Regulation No 21/2004. A reference to Article 3 alone would have been sufficient.

41 In actual fact, the United Kingdom maintains, Article 3 of Regulation No 21/2004 is not a sufficiently detailed provision and the only substantive rules capable of imposing binding obligations on farmers are those contained in Articles 4 et seq. of that regulation.

42 Third, according to the United Kingdom, the exclusion of Articles 6 to 8 of Regulation No 21/2004 stems from a teleological interpretation of that regulation. Indeed, it submits that while it is true that all its provisions are binding as far as cross-compliance is concerned, failure to fulfil certain obligations does not necessarily lead to financial consequences. The requirements, prescribed in Article 4 of the regulation, relating to the identification of animals, and, in Article 5 of that regulation, concerning the keeping of a register of animals, constitute the basic building blocks of the system, which also enable compliance with the other obligations. Furthermore, Articles 6 to 8 are not directed directly at farmers but at the national authorities.

43 Fourth, the United Kingdom argues that the exclusion of SMR8 from Articles 6 to 8 of Regulation No 21/2004 is justified in the light of the principle of legal certainty. Indeed, that SMR, which has various interpretations and which is liable to lead to negative financial consequences for farmers, should be interpreted in a way favourable to them.

44 Fifth, the United Kingdom contends that the principles of non-discrimination and equal treatment require that a farmer who has not complied with one of the articles of Regulation No 21/2004 not appearing in the list in SMR8 should not be treated in the same way as a farmer who has not complied with one of the articles included in that list.

45 As a preliminary point, the Commission claims that the United Kingdom's action lacks any foundation in law as the entries in the Annex to the contested decision concern six shortcomings or deficiencies that were apparent in the United Kingdom's cross-compliance system for 2008 and three weaknesses for 2009 and 2010. Moreover, throughout the procedure the Commission proceeded on the basis that every deficiency identified would be sufficient in itself to justify the financial correction imposed. Lastly, the United Kingdom has challenged neither the deficiencies which are different from those relating to SMR8, nor the principle that any one of these deficiencies taken on its own would justify the rate of correction imposed during the administrative procedure.

46 As to the substance, the Commission points out, first, that Article 3 of Regulation No 21/2004 is of general application as regards the identification and registration system for ovine and caprine animals, that it includes all the elements covered in sub-paragraphs (a) to (d) and is included as an SMR in its entirety. The Commission adds that Article 3 is binding in its entirety. Next, the purpose of the regulation is to establish such a system, as confirmed by recital 20. Finally, the provisions of the regulation must be interpreted in a systematic and teleological manner.

47 Second, the Commission acknowledges that Articles 6 to 8 of Regulation No 21/2004 are not specifically identified as SMRs and are therefore not 'directly applicable' or 'strictly enforceable' in the context of cross-compliance, with the consequence that farmers' non-compliance with the detailed rules therein cannot give rise to penalties. Nevertheless, the Commission considers that penalties may be imposed for the complete lack of movement of documents or of contributions to a central computer-based register, as required by Article 3(1)(c) and (d) of the regulation. Articles 6 to 8 of

Regulation No 21/2004 are also relevant for interpreting the requirements stemming from Article 3 of the regulation and for determining whether a farmer has fulfilled his obligation to have an identification and registration system.

48 Third, according to the Commission, the express inclusion of Articles 4 and 5 of Regulation No 21/2004 in SMR8 serves a different purpose from that of Article 3 of that regulation, namely to guarantee uniformity in the specific fields of registration and identification of animals, which are essential, basic elements of the registration and identification system. Accordingly, the breach of a mere detail set out in those provisions leaves a farmer open to penalties.

49 By contrast, as regards the obligation to keep movement documents or to contribute to a central database, the Commission states that the means by which the farmer complies with these obligations are not strictly subject to the provisions of Articles 6 to 8 of Regulation No 21/2004, although an inspector should take them into account in the course of an inspection.

50 Fourth, the Commission submits that its interpretation of the relevant provisions is not at odds with the principle of legal certainty. All the provisions of Regulation No 21/2004 are in fact binding.

51 In its reply, the United Kingdom disputes the claim that its application lacks any substance in law and contends that the Commission's decision on SMR8, regardless of the impact of the financial correction, has legal consequences and may therefore form the subject-matter of an application.

52 The United Kingdom contests in particular the Commission's argument that every deficiency identified justifies in itself the correction rate applied. Indeed, the Commission applied a correction rate of 5% for 2008 on the basis of six deficiencies, and a rate of 2% for 2009 and 2010 on the basis of three deficiencies which persisted during those years. Therefore, although the calculation method is not cumulative, the various deficiencies must have an impact on the final rate applied.

53 In addition, the United Kingdom maintains that the fact that it did not challenge during the conciliation procedure the other deficiencies identified or the Commission's claim that every one of those deficiencies was sufficient in itself to justify the proposed correction does not render the challenge raised in the present application inadmissible.

54 Furthermore, according to the United Kingdom, since the conciliation body suggested a 2% correction for 2009 and 2010 on the basis of other mitigating circumstances, it would be permissible for the Commission to make a correction also for 2008, taking into account the actual financial damage suffered by the European Union, in accordance with Article 31(2) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

55 In any event, the United Kingdom states that the Commission's decision regarding SMR8 has legal effects and can therefore form the subject-matter of this application. In particular, the Member State is not only affected by a financial correction but it is also under an obligation to take remedial action to comply with EU rules (Article 11(3) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Regulation No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90)). In the absence of compliance, the Member State's failure to fulfil its obligations would be more serious and greater corrections may be applicable pursuant to the Commission's communication on repeated deficiencies AGRI/61495/2002.

56 In the rejoinder, the Commission asserts that the contested decision is a decision adopted in the context of the procedure for clearance of accounts in accordance with Article 31 of Regulation No 1290/2005, resulting in purely financial effects, whereas the enforcement of EU rules is the aim of infringement proceedings under Article 258 TFEU.

57 With regard to the question of the interpretation of the eighth entry concerning SMR8, the United Kingdom claims, in essence, that that entry should be interpreted as excluding the cross-compliance requirements laid down in Articles 6 to 8 of Regulation No 21/2004, as those provisions are not expressly referred to in that entry.

58 In reply, the Commission states, in essence, that, as regards Regulation No 21/2004, Article 3 is one of the provisions to which SMR8 refers. That article lists the four different cross-compliance requirements which remain mandatory and applicable, even though Articles 6 to 8 of that regulation, which specify the requirements set out in Article 3(c) and (d), are no longer so.

59 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives of the rules of which it is part (see judgment of 7 June 2005 in *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited).

60 In addition, since the textual and historical interpretations of a regulation, in particular of one of its provisions, do not permit its precise scope to be assessed, the legislation in question must be interpreted by reference to both its purpose and general structure (see, to that effect, judgments of 31 March 1998 in *France and Others* v *Commission*, C-68/94 and C-30/95, EU:C:1998:148, paragraph 168, and 25 March 1999 in *Gencor* v *Commission*, T-102/96, EU:T:1999:65, paragraph 148).

61 Regulation No 73/2009, which repealed Regulation No 1782/2003 with effect from 1 January 2009 (Article 146(1) and Article 149 of Regulation No 73/2009), is applicable to the facts of the case for 2009 and 2010, while Regulation No 1782/2003 is applicable in so far as concerns 2008.

62 Article 4 of Regulation No 73/2009, which is for all essential purposes the same as Article 3(1) of Regulation No 1782/2003, provided that farmers receiving direct payments were required to respect the SMR set out in Annex II. That annex refers to various requirements relating to the environment, public, animal and plant health, identification and registration and animal welfare.

63 Among those requirements, SRM8 in Annex II to Regulation No 73/2009, which is for all essential purposes the same as SMR8 bis in Annex III to Regulation No 1782/2003, referred to Articles 3, 4 and 5 of Regulation No 21/2004 for the identification and registration of animals.

64 Whereas Article 3 of Regulation No 21/2004 sets out four elements comprising the system for the identification and registration of animals, only Articles 4 and 5, which specify and provide details of the first two elements (set out in Article 3(a) and (b)), are referred to in SMR8.

65 In the first place, with regard to the interpretation of Articles 3 to 8 of Regulation No 21/2004, it is apparent from the overall structure of those provisions that Article 3 was not intended to be independent in scope, as it merely lists the elements which are then repeated and explained in greater detail in Articles 4 to 8, which define the content of those elements.

66 In the second place, with regard to the meaning to be attributed to the reference in SMR8 to Articles 3 to 5 of Regulation No 21/2004, only the elements mentioned in Articles 4 and 5 and referred to in Article 3(a) and (b) of that regulation are to be regarded as having the status of cross-compliance requirements.

67 Moreover, that that is a logical interpretation of SRM8 is confirmed by the difference in nature between, on the one hand, the elements set out in Article 3(a) and (b) of Regulation No 21/2004 and repeated in Articles 4 and 5 of that regulation and, on the other, the elements mentioned in Article 3(c) and (d) of Regulation No 21/2004 and repeated in Article 6 to 8 of the regulation. Indeed, unlike the elements in Articles 4 and 5 of Regulation No 21/2004, the elements set out in Articles 6

to 8 of the regulation concern obligations that are essentially incumbent on the Member States alone, which may explain the legislature's intention not to make compliance with those obligations a condition for payment to farmers.

68 That conclusion is also valid with regard to Article 6 of Regulation No 21/2004, in that that provision imposes an obligation on the competent authority of each Member State to draw up a model for a movement document which must accompany an animal each time it is moved within national territory between different holdings and which, according to Article 6(4) of the regulation, is optional in any Member State where a centralised computer database is operational. Member States are also required to communicate to each other and to the Commission the model of that document. According to Article 6(3) of that regulation, the keeper of the animal at the holding of destination is simply required to keep the movement document for a certain period, to be determined by the competent authority.

69 The same applies as regards Article 7 of Regulation No 21/2004, as it requires Member States to set up and keep a central register of all the holdings in their territory, and Article 8, which requires Member States to set up a computer database, to which a keeper of animals must, pursuant to Article 8(2), submit information on the animals present on his holding and their movements within specified periods.

70 In the light of the foregoing, it must be concluded that, while the United Kingdom is bound by Regulation No 21/2004 in its entirety, including Articles 5 to 8 thereof, compliance with those articles cannot be regarded as a condition for payments being made to farmers, notwithstanding the reference made by SMR8 to Article 3 of that regulation.

71 It follows that the Commission erred in law by taking the view that the question whether payments to Scottish farmers complied with EU rules had to be determined by reference to SMR8, in so far as the Commission demanded that all the elements set out in Article 3 of Regulation No 21/2004 be complied with, in particular the elements described in detail in Articles 6 to 8 of the regulation.

72 However, it is clear that, in the circumstances of the present case, that error cannot lead to the annulment of the contested decision.

73 It is settled case-law that, even if one of the grounds on which a contested act is based is vitiated by error, that defect cannot in any event justify the annulment of that act if the other grounds of the contested decision are sufficient to establish that the decision is well founded (see, to that effect, judgment of 12 December 2006 in *SELEX Sistemi Integrati* v *Commission*, T-155/04, EU:T:2006:387, paragraph 47).

74 It should be noted that the Commission was entitled to apply a 5% financial correction coefficient in respect of each of the deficiencies identified in the United Kingdom's control system, by applying the method set out in Document VI/5330/97, the lawfulness of which has not been contested by the United Kingdom.

75 It is apparent from the second paragraph of Annex 2 to Document VI/5330/97 that financial corrections are calculated having regard, inter alia, to the extent of the non-compliance established and, in so doing, the Commission takes account of the nature and seriousness of the infringement and the financial damage suffered by the European Union. That document provides, inter alia, a method of evaluation of the financial correction on the basis of the risks of financial loss, which seeks to identify systemic irregularities and may result in flat-rate corrections of 2%, 5%, 10% or 25% of the expenditure declared, depending on the amplitude of the risk of loss for the European Union resulting from deficiencies in the control systems (Annex 2 to Document VI/5330/97, eighth paragraph).

76 As regards the choice between the flat rates applicable, as set out in the first indent of Section 3.1 of Document AGRI-2005-64043, adopted on 9 June 2006 and entitled 'Commission Communication on how the Commission intends in the context of the EAGGF-Guarantee clearance procedure to handle shortcomings in the context of cross-compliance control systems implemented by Member States' ('Communication AGRI-2005-64043'), the lawfulness of which is not contested by the United Kingdom, Document VI/5330/97 states that where key controls are carried out, but not in the frequency, number or depth required by the regulations, a correction of 5% is to be applied as it may reasonably be concluded both that they do not provide the expected degree of assurance that claims are regular and that the risk of loss to the EAGGF is significant (Annex 2 to Document VI/5330/97, eighteenth paragraph).

77 Moreover, it is apparent from the twenty-fifth paragraph of Annex 2 to Document VI/5330/97 that, where several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole.

78 In the present case, the Commission applied 5% flat-rate corrections for 2008 on the basis of various deficiencies identified in the United Kingdom's cross-compliance system, as summarised in paragraph 26 above and set out in the Annex to the contested decision. For claim years 2009 and 2010, the Commission reduced that correction rate to reflect mitigating circumstances taken into account, in particular the measures adopted by the United Kingdom to remedy the deficiencies established. Each of the nine contested entries in the Annex to the contested decision relates to a number of deficiencies, not simply to SMR8. With regard to the United Kingdom and the 'cross-compliance' measure, those entries are worded as follows and are to be read in conjunction with the Annex to the letter of 27 March 2013:

Financial year	Reason	Type	%	Currency	Amount	Deductions	Financial Impact
2009	Lenient sanctioning system for SMR 7 and 8, no follow-up of minor non-compliance, ineffective control of GAEC, claim year 2008	Flat rate	5	EUR	– 2 949 043.26	– 59 941.88	– 2 889 101.38
2010	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2010	Flat rate	2	EUR	– 1 175 238.88	– 24 310.41	– 1 150 928.47
2010	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2009	Flat rate	2	EUR	1 901.10	0.00	1 901.10

2010	Lenient sanctioning system for SMR 7 and 8, no follow-up of minor non-compliance, ineffective control of GAEC, claim year 2008	Flat rate	5	EUR	– 4 961.22	– 34.71	– 4 926.51
2011	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2010	Flat rate	2	EUR	795.26	0.00	795.26
2011	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2009	Flat rate	2	EUR	– 58.63	0.00	– 58.63
2011	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2009	Flat rate	2	EUR	– 879.96	0.00	– 879.96
2011	Ineffective control of GAEC and SMR 2, 4 and 8, claim year 2010	Flat rate	2	EUR	– 1 164 633.01	– 388.79	– 1 164 244.22
2011	Lenient sanctioning system for SMR 7 and 8, no follow-up of minor non-compliance, ineffective control of GAEC, claim year 2008	Flat rate	5	EUR	– 440.27	0.00	– 440.27

79 Having regard to the calculation of the correction, in the letter of 27 March 2013, the Commission stated that, in line with Communication AGRI-2005-64043, the failure to carry out any or any adequate verifications in the context of cross-compliance and the incorrect application or

non-application of the penalties provided for in the regulations, with the result that they cease to have a deterrent effect, are regarded as deficiencies in the key controls. Such deficiencies or shortcomings were detected. In that letter, those deficiencies were set out as follows:

'Year 2008

— deficiencies regarding the effective control of SMR2 and SMR4;

— deficiencies regarding the effective control of GAE4, GAEC16 and GAEC18;

— not all SMR requirements were adequately controlled and sanctioned under the framework of cross-compliance:

— the 5% sanction rate for negligent non-compliance was not possible for SMR4;

— lenient approach for infringements of SMR7 and SMR8;

— systematic follow-up not performed for all cases of minor non-compliance.

Years 2009 and 2010

— deficiencies regarding the effective control of SMR2 and SMR4;

— deficiencies regarding the effective control of GAEC4, GAEC16 and GAEC18;

— not all requirements of SMR No 8 were controlled and sanctioned under the framework of cross-compliance.'

80 In the same letter, the Commission stated that, on the basis of those deficiencies or shortcomings and bearing in mind Communication AGRI-2005-64043, a 5% correction was proposed for 2008 and that 'each weakness could, in isolation, be sufficient to lead to the proposed correction'.

81 The United Kingdom did not challenge the position thus adopted by the Commission before the conciliation body.

82 That position was confirmed by the conclusions of the conciliation body annexed to the letter of 8 November 2013 in the following terms:

'according to the services, each weakness raised in the conciliation letter but not in the conciliation request could in isolation be sufficient to lead to the proposed correction ...'

83 Similarly, the United Kingdom does not dispute that, in the present action, it has contested only the Commission's assessment of SMR8, which is, for each of the entries in the Annex to the contested decision, merely one of the justifications put forward by the Commission for the correction rate applied.

84 Moreover, during the administrative procedure, the United Kingdom was placed in a position in which it was able to understand that the deficiencies identified related to key controls and gave rise to the risk of significant loss to EU funds and that each of the deficiencies could therefore warrant a flat-rate correction of 5%, in accordance with the method set out in Document VI/5330/97.

85 While, in the present action, the United Kingdom appears to dispute that the correction rate applied may be justified by other deficiencies than those which, it claims, are not genuine, it is clear that the only argument which it puts forward is based on acknowledgment of the fact that different rates were applied for different years. Essentially, the recognition of that fact is indicative of the effect that each deficiency may have on the correction rate established.

86 That argument cannot, however, succeed. Indeed, in the letter of 27 March 2013, the Commission had already explained that, for 2009 and 2010, as the Scottish authorities had taken remedial action in 2009 to correct certain deficiencies identified, there was less risk for EU funds and, as a result, the correction rate applied was 2%. The Commission therefore applied a reduced correction rate in recognition of mitigating circumstances.

87 In view of all the foregoing, the present action must be rejected as unfounded.

Costs

88 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings.

89 Since the United Kingdom has been unsuccessful and the Commission has applied for costs, the United Kingdom must be ordered to pay the costs.

90 Under Article 138(1) of the Rules of Procedure, the Member States and the institutions which have intervened in the case must bear their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs and to pay the costs incurred by the European Commission;**

3. **Orders the Kingdom of the Netherlands to bear its own costs.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 28 September 2016.

[Signatures]