Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

11 December 2015*

(EAFRD — Expenditure excluded from financing — Rural development — One-off financial correction — Eligibility of expenditure incurred for the purchase of second-hand machinery and equipment — Derogation for micro, small and medium-sized enterprises — Article 55(1) of Regulation (EC) No 1974/2006)

In Case T-124/14,

Republic of Finland, represented by J. Heliskoski and S. Hartikainen, acting as Agents,

applicant,

v

European Commission, represented by P. Aalto, J. Aquilina, P. Rossi and T. Sevón, acting as Agents,

defendant,

APPLICATION for annulment of Commission Implementing Decision 2013/763/EU of 12 December 2013 on 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 2013 L 338, p. 81), in so far as that decision excludes from EU financing under the EAFRD certain expenditure incurred by the Republic of Finland, in the amount of EUR 927 827,58, on grounds of non-compliance with Union rules,

THE GENERAL COURT (Fourth Chamber),

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

Registrar: C. Heeren, Administrator,

having regard to the written procedure and further to the hearing on 12 June 2015,

gives the following

* Language of the case: Finnish.

Judgment

Background to the dispute

1 From 23 to 27 May 2011, the European Commission carried out an on-the-spot control in Finland (Enquiry RD1/2011/805/FI) concerning Measure M312 'Creation and development of microenterprises'.

2 On 9 September 2011, the Commission sent the Finnish authorities a communication, as provided for in Article 11(1) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) 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), informing them of the results of the on-the-spot control. In that communication, the Commission set out the reasons why it considered that, in respect of the financing of rural development expenditure since the financial year 2007, the Finnish authorities had not complied with certain requirements of EU legislation, including those arising under Article 55(1) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15), as amended, and invited those authorities to explain the circumstances in which they regarded expenditure on the purchase of certain second-hand equipment as eligible. Furthermore, the Commission pointed out weaknesses in the verification of the reasonableness of the costs relating to the purchase of certain second-hand equipment, as referred to in Article 26(2)(d) of Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support (OJ 2006 L 368, p. 74).

3 By letter of 3 November 2011, the Republic of Finland replied to the Commission that it considered that it had acted in accordance with the EU rules and, in particular, with Article 55 of Regulation No 1974/2006, on the ground that that article permitted Member States to establish the conditions under which expenditure on the purchase of second-hand equipment may be considered eligible. In Finland, that opportunity was realised by Articles 23 and 35 of Decree No 632/2007, which at the same time lays down the conditions for the granting of the aid.

4 By letter of 16 January 2012, the Commission invited the Finnish authorities to a bilateral meeting in Brussels (Belgium), which was held on 2 February 2012. By letter of 29 February 2012, the Commission sent the Finnish authorities the minutes of that meeting, in accordance with Article 11(2) of Regulation No 885/2006, and a request for additional information. In Annexe 1 to that letter, the Commission set out the reasons why it considered that Decree No 632/2007 was not compatible with the requirements laid down in Article 55(1) of Regulation No 1974/2006, and also repeated its criticism of the weakness in the verification of the reasonableness of the costs relating to the purchase of certain second-hand equipment.

5 On 27 April 2012, the Finnish authorities submitted their observations on the minutes of the meeting of 2 February 2012 and their reply to the request for information.

6 On 13 May 2013, the Commission sent the Finnish authorities an official communication dated the preceding 6 May, in accordance with the third subparagraph of Article 11(2) and Article 16(1) of Regulation No 885/2006, announcing a financial correction of a total amount of EUR 927 827,58 for the period from 9 September 2009 to 15 October 2012. The Commission set out the reasons why it considered that the Finnish authorities, as regards aid for the purchase of second-hand equipment, had not complied with the requirements of Article 55(1) of Regulation No 1974/2006 and Article 26(2)(d) of Regulation No 1975/2006.

7 On 19 June 2013, the Republic of Finland, pursuant to Article 16 of Regulation No 885/2006, submitted a request for conciliation to the Conciliation body. By letter of 5 September 2013, that body informed them that it would not take a decision on that request because the amount of the financial correction was less than EUR 1 000 000.

8 In paragraph 17.1 of the Summary Report of 18 November 2013, the Commission stated that, with regard to eligibility of aid for the purchase of second-hand equipment, the practices of the Finnish authorities did not meet the conditions of Article 55(1) of Regulation No 1974/2006, since the Republic of Finland had not defined and duly substantiated specific cases in which second-hand equipment would exceptionally be eligible for EAFRD-financing. On the contrary, the provisions of Decree No 632/2007 provide a generic possibility of investing in second-hand equipment, the eligibility of which is assessed on a case-by-case basis according to the unclearly defined criterion of the 'economically most advantageous option from an overall economic point of view'. The Commission also found that the verification of reasonable costs relating to the financing of second-hand equipment was weak and did not meet the requirements of Article 26(2)(d) of Regulation No 1975/2006. It concluded that a financial correction of 100% should be applied as regards the aid for the purchase of second-hand equipment, corresponding to an amount of EUR 927 827,58. As regards the inadequate verification of reasonable costs relating to the financing of second-hand equipment, the Commission proposed a financial correction of 10%, corresponding to an amount of EUR 14 208,31, which would however be entirely consumed by the former financial correction.

9 On 12 December 2013 the Commission adopted Implementing Decision 2011/763/EU of 15 April 2001, on 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 2013 L 338, p. 81, 'the contested decision'). That decision was notified to the Republic of Finland on 13 December 2013, under reference C(2013) 8743.

10 In the contested decision, referring to the 'summary report [of 18 November 2013]' (recital 6 of the contested decision), the Commission excluded as ineligible, for the financial years from 2009 to 2012, expenditure declared by the Republic of Finland for the purchase of second-hand machinery and equipment in connection with the measure entitled 'Rural Development EAFRD Axis 1 + 3 — Investment orientated measures (2007-2013)'. The financial correction in the total amount of EUR 927 827,58 is described therein as 'one-off' since it is justified by 'non-compliance with Article 55 of Regulation No 1974/2006'. Since that financial correction is based on 'weaknesses in verifying reasonableness of costs', it is described as a 'flat rate' of 10%, corresponding to an amount of EUR 14 208,31, but with no 'financial impact' (see Article 1 read in conjunction with the Annex to the contested decision, pp. 98 and 99).

Procedure and forms of order sought by the parties

11 By application lodged at the Court Registry on 19 February 2014, the Republic of Finland brought the present action.

12 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

13 The parties presented their oral arguments and answered the oral questions asked by the Court at the hearing held on 12 June 2015.

14 The Republic of Finland submits that the Court should:

— annul the contested decision in so far as a financial correction of EUR 927 827,58 has been applied to the applicant;

— order the Commission to pay the costs.

15 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the Republic of Finland to pay the costs.

Law

Subject-matter of the proceedings

16 In support of its action, the Republic of Finland puts forward, in essence, a single plea in law, alleging infringement of Article 55(1) of Regulation No 1974/2006.

17 In that regard, it should be pointed out that, in the reply, the Republic of Finland confirmed that its action referred only to the one-off financial correction applied in the contested decision. That is corroborated by the plea for annulment raised in the application, which refers exclusively to Article 55(1) of Regulation No 1974/2006, and not to Article 26(2)(d) of Regulation No 1975/2006, on which the flat rate financial correction was based. Therefore, the subject-matter of these proceedings is limited to the legality of the application by the Commission of Article 55(1) of Regulation No 1974/2006 as a basis for the aforementioned one-off financial correction.

18 The Republic of Finland considers that the Commission fails to have regard to the link between point (b) of the first subparagraph of Article 55(1) of Regulation No 1974/2006 ('the first subparagraph') and the second subparagraph of that same provision ('the second subparagraph'). That provision gives the Member State a broad degree of latitude to decide the eligibility of certain second-hand machinery and equipment, since the second subparagraph does not lay down criteria for determining whether aid for the purchase of second-hand machinery and equipment may be 'duly substantiated'. Nor does that regulation require the Member State to define specifically each particular case in which the purchase of second-hand machinery or equipment is eligible. Furthermore, the first subparagraph of Article 71(3) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) expressly provides that the rules on eligibility of expenditure shall be set at national level. It is therefore for the Member States to lay down more specific criteria for determining the cases in which there are strong reasons for supporting the purchase of second-hand equipment. According to the Republic of Finland, the concepts of 'duly substantiated cases' and 'conditions of eligibility' are closely linked, so that it is impossible to apply them separately from each other. It is therefore sufficient for the Member States to define the conditions of eligibility and that those conditions are met for the grant of aid for the purchase of second-hand machinery or equipment to be duly substantiated.

19 The Commission counters by saying that the first subparagraph states a general rule, according to which eligible expenditure for investments financed by the EAFRD are limited to the purchase or lease-purchase of new machinery and equipment. Under the second subparagraph, it is only by derogation from the first subparagraph and in 'duly substantiated cases' that the purchase of second-hand equipment may be regarded as eligible expenditure. For that reason, the Member State is

required to identify specifically, with the help of a prior definition, those rare 'duly substantiated cases' in which aid may be granted. Such an approach alone complies with the aim of Community farm investment aid, stated in recital 21 of Regulation No 1698/2005, which is to modernise agricultural holdings to improve their economic performance through better use of the production factors including the introduction of new technologies and innovation, and the purpose of the aid granted by the EARDF, as stated in recital 23 of the same regulation, which is to encourage improvements in the processing and marketing of primary agricultural and forestry products. The limit imposed on aid for second-hand equipment also accords with the objective stated in Article 4(1)(a) of Regulation No 1698/2005 of improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation (see also recital 46 of that regulation). Those objectives may generally be attained only by investing in new equipment.

20 The interpretation of Article 55(1) of Regulation No 1974/2006 proposed by the Republic of Finland is, the Commission submits, contrary both to its structure, which establishes a general rule and a derogation, and to the 'normative hierarchy' between that rule and that derogation. It is apparent from its wording that aid for the purchase of second-hand equipment derogates from the general rule relating to the purchase of new equipment, which, as such, does not require specific substantiation. It is precisely due to the derogating nature of that aid that the Member States may finance the purchase of second-hand equipment only in 'duly substantiated cases', that is to say, by making an extra effort of definition and reasoning. The interpretation proposed by the Republic of Finland extends the scope of application of the derogation to such a degree that it becomes a general rule. In that regard, the Republic of Finland cannot rely on a discretionary power, since the criterion of 'duly substantiated cases' must be interpreted uniformly in all the Member States and the Member States are required to keep within the limits clearly defined by Regulation No 1974/2006. The application of the derogation provided for in Article 55(1) of Regulation No 1974/2006 therefore presupposes that the Member States correctly defines beforehand the 'duly substantiated cases', namely a limited number of clearly identified cases. In that context, the Commission also contests the argument that the criteria of 'duly substantiated cases' and 'conditions under which the purchase of second-hand equipment may be regarded as eligible' are interconnected and should be applied together. The Commission concludes that the Finnish legislation fails to define, in accordance with Article 55(1) of Regulation No 1974/2006, the 'duly substantiated cases' in which aid may, by derogation, be granted for the purchase of second-hand equipment.

21 The Court considers it necessary to focus its assessment on the validity of the interpretation of Article 55(1) of Regulation No 1974/2006 accepted by the Commission in the contested decision, read in conjunction with the summary report. The parties disagree, primarily, with regard to the interpretation to be given to the first and second subparagraphs and to the connection between them. That article provides, in particular, as follows:

'1. In the case of investments, eligible expenditure shall be limited to:

…

(b) the purchase or lease-purchase of new machinery and equipment, including computer software up to the market value of the asset … ;

…

By way of derogation from point (b) of the first subparagraph, and only for micro, small and medium-sized enterprises …, Member States may, in duly substantiated cases, establish the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure.'

22 According to the Commission, the first subparagraph states the general rule that 'eligible expenditure' for investments financed by the EARDF 'shall be limited … to the purchase or lease-purchase of new machinery and equipment'. Under the second subparagraph, it is only 'by way of derogation from [point (b) of] the first subparagraph', that is to say the aforementioned general rule, 'and only for micro, small and medium-sized enterprises' that 'Member States may, in duly substantiated cases, establish the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure'. For the purposes of the application of that derogation, the Member State concerned is therefore required to identify specifically, with the help of a prior definition, in its national legislation, the 'duly substantiated cases' in which aid may exceptionally be granted for investing in second-hand equipment.

23 On the other hand, although the Republic of Finland does not dispute the derogating nature as such of the second subparagraph in relation to the first, it maintains, in essence, that that derogation is not to be construed as an exception of strict interpretation, but as a specific scheme for micro, small- and medium-sized enterprises. Member States are free, in the exercise of their discretionary power, to create such a scheme and are authorised to define its content by laying down 'conditions' of eligibility of expenditure for the purposes of purchasing second-hand equipment. Those conditions are 'closely linked' to the 'duly substantiated cases' which the Member States, may, if there is no definition in EU law, specify in the exercise of their discretionary power. It is sufficient for the national legislation to establish those 'conditions' of eligibility and that these are met, for the expenditure incurred for the purchase of second-hand equipment to constitute 'duly substantiated cases'.

24 In order to reply to the questions of interpretation thus raised and to determine the exact scope of the provisions of Article 55(1) of Regulation No 1974/2006 and the relationship between them, it is necessary, in accordance with settled case law, to carry out a literal, teleological, contextual and historical interpretation (see to that effect, the judgments of 20 November 2002 in *Lagardère and Canal+* v *Commission*, T-251/00, ECR, EU:T:2002:278, paragraphs 72 to 83, and 6 October 2005 in *Sumitomo Chemical and Sumika Fine Chemicals* v *Commission*, T-22/02 and T-23/02, ECR, EU:T:2005:349, paragraphs 41 to 60).

The literal interpretation of Article 55(1) of Regulation No 1974/2006

The derogating nature of the second subparagraph

25 In a literal interpretation, it is necessary to examine the legal nature of the first and second subparagraphs and the nature of the relationship between them. In so doing it must be borne in mind that Community legislation is drafted in various languages and that the different language versions are all equally authentic; an interpretation of a provision of EU law thus involves a comparison of the different language versions (see, to that effect, the judgments of 6 October 1982 in *Cilfit and Others*, 283/81, ECR, EU:C:1982:335, paragraph 18, and 7 November 2007 in *Germany* v *Commission*, T-374/04, ECR, EU:T:2007:332, paragraph 95).

26 As the parties have acknowledged, inter alia, at the hearing, a comparison of the different language versions does not provide further clarification of the scope of Article 55(1) of Regulation No 1974/2006 and, in particular, the significance of the specific link between the first and second subparagraphs.

27 As regards the words 'by derogation' in the second subparagraph, these may either signify the limitation of the scope of the general rule by providing a different rule for one or more abstractly determined situations, formalised in the adages *specialia generalibus derogant* and *legi speciali per generalem non derogatur*, and, therefore, an exception in the strict sense, or refer to the decision of the author of the legislation at issue not to apply the general rule to certain situations or certain addressees and to submit them to a different and specific scheme beyond its scope.

28 It is not disputed between the parties that the first subparagraph constitutes the principal or general rule, and that the second subparagraph provides for a different solution for micro, small- and medium-sized enterprises, which makes it possible to classify it, in any event, as a derogating rule. However, as has been stated in paragraph 27 above, that classification is not necessarily equivalent to an exception in the strict sense, but may indicate the existence of a specific, different scheme as opposed to the scheme laid down by the principal or general rule. Thus, the English, Italian and Portuguese words 'derogation', 'deroga' and 'derrogação' are not, in every case, synonyms of 'exception', 'eccezione' and 'exceção'. Similarly, the German and Dutch terms 'abweichend' and '[i]n afwijking' mean 'different' or 'divergent' without necessarily indicating an exception. Finally, the Spanish expression 'no obstante' means 'nevertheless', which may, but does not necessarily have to, refer to an exception in the strict sense.

29 The question of the classification of the second subparagraph as an exception in the strict sense or as a derogating rule providing for the possibility of establishing a different and specific scheme for micro, small- and medium-sized enterprises also cannot be resolved owing to the fact that, in most of the language versions, the words equivalent to the words 'by way of derogation' are separated, by means of the conjunction 'and', from the second part of the sentence, which refers, by using the adverb 'only' ('uniquement'; 'exclusivamente'; 'unicamente'; 'alleen'), to micro, small- and medium-sized enterprises. Indeed it is not clear whether the legislature's intention was either to lay down such an exception in the strict sense, or only to authorise the Member State to create a derogating and specific scheme for micro, small- and medium-sized enterprises, since the terms 'by way of derogation' and 'and only', read as a whole, may be interpreted both ways. Therefore, the coexistence of the two aforementioned limiting elements in the same sentence does not provide a sufficiently clear and precise indication as to whether the second subparagraph constitutes an exception in the strict sense or merely a derogating rule providing for the possibility of establishing a different and specific scheme for micro, small- and medium-sized enterprises.

30 It is apparent that, in the present case, the case law, based on the principle of Roman law *singularia non sunt extendenda*, according to which EU rules providing for exceptions must be interpreted strictly in order to preserve the effectiveness of the general rule from which they are derogating (see, to that effect, the judgments of 13 December 2001 in *Heininger*, C-481/99, Rec, EU:C:2001:684, paragraph 31 and the case law cited, and 13 December 2012 in *BLV Wohn- und Gewerbebau*, C-395/11, Rec, EU:C:2012:799, paragraphs 40 and 41 and the case law cited), does not necessarily apply since such a strict interpretation is not required if the second subparagraph is to be classified as a derogating rule providing for the possibility of establishing a different and specific scheme for micro, small- and medium-sized enterprises.

31 Therefore, a literal interpretation does not make it possible to establish whether the second subparagraph constitutes an exception of strict interpretation within the meaning of the case law referred to in paragraph 30 above, as asserted, in essence, by the Commission, but only to find that it provides a specific rule for micro, small- and medium-sized enterprises.

The link between the criteria 'duly substantiated cases' and 'conditions' of eligibility

32 As regards the exact scope of the second subparagraph, it should be pointed out that the parties disagree as to whether the second subparagraph applies only to exceptional situations which, furthermore, must be specifically defined beforehand by the Member State in its national legislation, or whether it has a broader scope covering, in principle, all situations which, in the assessment of the competent national authorities, satisfy the 'conditions' for eligibility laid down in the national legislation, since those conditions therefore represent in themselves 'duly substantiated cases', where those authorities decide to apply them and give reasons for applying them in accordance with the objectives pursued by the rules at issue.

33 In that regard, it must be stated first of all that, according to the unequivocal wording of the second subparagraph whatever the language version, the Member States have a discretion in the introduction and implementation of a different and specific scheme for micro, small- and medium-sized enterprises, in that, to that end, they 'may … establish the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure'. Similarly, the parties agree that the criterion of 'duly substantiated cases' is not defined in EU law and that, therefore, the Member States also have a discretion — as well as for establishing 'conditions' of eligibility — for specifying those cases.

34 Also, it is indeed true that the EU legislature intended to give a particular and different meaning to the criteria of 'duly substantiated cases', on the one hand, and 'conditions' of eligibility, on the other. However, that finding on its own does not justify the Commission's interpretation of the criterion of 'duly substantiated cases', namely the alleged need for the Member State to adopt legislation of general scope defining, beforehand, the specific cases in which the purchase of machinery or second-hand equipment may be regarded as eligible expenditure. On the contrary, having regard to the structure of the second subparagraph the criterion of 'duly substantiated cases' is immediately linked to the authorisation and discretionary power of the Member State ('may, in duly substantiated cases, establish') to introduce and implement a different and specific scheme for micro, small- and medium-sized enterprises. In that regard, it is, furthermore, irrelevant that, in particular, the versions in Danish ('I behørigt begrundede tilfælde') and Portuguese ('Em casos devidamente fundamentados') mention the criterion of 'duly substantiated cases' right at the beginning of the second subparagraph.

35 In the light of the foregoing, the criterion of 'duly substantiated cases' is limited to describing the way in which the Member State is deemed to exercise its discretionary power under the second subparagraph and, above all, to give reasons for exercising it. In other words, each time that the Member State considers it appropriate to use its authorisation and that discretionary power, it is required either, in a possible decision to adopt rules of general scope, or in a possible decision relating to an individual case of purchase of second-hand equipment, to state the relevant reasons in support of its decision in order to satisfy that criterion, and to enable the Commission to carry out a control in that regard. It must be stated that that understanding is the same in the light of all the language versions of the second subparagraph and that it is enough to ensure that the Commission is able to carry out an adequate control a posteriori of the exercise by the Member State of its discretionary power under the second subparagraph, in accordance with the objectives of the relevant EU rules (see also paragraphs 40 and 41 below).

36 Finally, if the EU legislature had intended to introduce a rule corresponding to the interpretation proposed by the Commission, it should have clearly indicated that the Member State was required to lay down rules of general scope specifying, beforehand, all the situations in which financing of the purchase of second-hand machinery or equipment could be regarded as eligible, which is not, however, the case of the second subparagraph. According to the principle of legal certainty, litigants, including the Member States, cannot suffer as a result of difficulties of interpretation owing to imprecise legislation which provides for financial consequences which are unfavourable to them. (see to that effect and by analogy, the judgments of 29 April 2004 in *Sudholz*, C-17/01, ECR, EU:C:2004:242, paragraph 34 and the case law cited; 7 June 2005 in *VEMW and Others*, C-17/03, ECR, EU:C:2005:362, paragraph 80; and 11 June 2015 in *Berlington Hungary and Others*, C-98/14, ECR, EU:C:2015:386, paragraph 77 and the case law cited).

37 In those circumstances, in a literal interpretation, it is necessary to reject the Commission's argument that, in essence, on the one hand, the second subparagraph constitutes an exception of strict interpretation in relation to the general or principal rule laid down in the first subparagraph and, on the other hand, the Member State is deemed, under the criterion of 'duly substantiated cases', to provide, at the outset, in legislation of general scope, specific reasons defining those cases and justifying the application of the different 'conditions' of eligibility established therein in order to avoid the scope of the alleged exceptions depriving the general rule of its content and compromising its effectiveness.

The teleological interpretation of Article 55(1) of Regulation No 1974/2006

38 In a teleological interpretation, it is necessary to take into account the general objective pursued by Regulations Nos 1698/2005 and 1974/2006, namely 'support for rural development'.

39 Recitals 21 and 23 of Regulation No 1698/2005 state that purpose, inter alia, in the following way:

> '(21) The purpose of Community farm investment aid is to modernise agricultural holdings to improve their economic performance through better use of the production factors including the introduction of new technologies and innovation, targeting quality, organic products and on/off-farm diversification, including non-food sectors and energy crops …
>
> (23) Improvements in the processing and marketing of primary agricultural and forestry products should be encouraged by means of support for investments aimed at improving efficiency in the processing and marketing sector, promoting the processing of agricultural and forestry production for renewable energy, introducing new technologies and innovation, opening new market opportunities for agricultural and forestry products, putting emphasis on quality, improving environmental protection, occupational safety, hygiene and animal welfare, as appropriate, by targeting, as a general rule, micro, small and medium-sized enterprises and other enterprises under a certain size, which are better placed to add value to local products, while simplifying the conditions for investment aid as compared with those laid down in Regulation (EC) No 1257/1999.'

40 Therefore, the main objective of Regulation No 1698/2005 is to enable the modernisation and improvement of the economic performance of undertakings, in particular small- and medium-sized enterprises (SMEs), in the farming sector, inter alia, by promoting the adoption of new technologies and innovation. However, that aim does not necessarily require, exclusively, investment in new or innovative machinery or equipment in so far as concerns SMEs. Admittedly, financing such an investment is likely to promote the modernisation and competitiveness of SMEs, which is also linked to the objective of contributing to the improvement of quality of life and work in the rural environment, to the promotion of diversification of economic activities and to environmental protection by means of innovative technologies. The fact remains that, in the case of SMEs, which constitute the majority of operators active in that sector, targeted in recital 23 in fine of Regulation No 1698/2005, and whose financial means are usually less than those of large enterprises, investment in new equipment is not always likely to contribute to the attainment of those objectives. Accordingly, it may be that the purchase of second-hand machinery of a high technical level, but at a reduced price, even of a better technical level than that of certain new equipment, also satisfies the needs of those undertakings and contributes even more to their technological and economic development for the purposes of the planned modernisation of the farm sector.

41 From that point of view, the authorisation of the Member States to provide and implement a different and specific scheme for micro, small- and medium-sized enterprises in respect of the purchase of second-hand machinery is in full accord with the objectives of Regulations Nos 1698/2005 and 1974/2006 and does not therefore require, contrary to what is claimed by the Commission, a restrictive interpretation of the rules of that scheme in the light of those objectives. The fact remains that the criterion of 'duly substantiated cases' in the second subparagraph must be interpreted in accordance with those objectives in order to prevent the Member State using its discretionary power under the second subparagraph according to considerations unrelated to those objectives and to enable the Commission to carry out an effective control in that regard.

42 Consequently, the teleological interpretation cannot call into question the result of the literal analysis of the second subparagraph.

The contextual interpretation of Article 55(1) of Regulation No 1974/2006

43 It should be pointed out that a contextual interpretation outside the legislative framework laid down in Article 55(1) of Regulation No 1974/2006 can neither invalidate nor validate the result of the literal analysis of the second subparagraph.

44 In that regard, it is apparent from the first subparagraph of Article 71(3) of Regulation No 1698/2005 that the Member States are competent to establish 'the rules on eligibility of expenditure' within the framework of support for rural development by the EAFRD. Although that article may indicate that the Member States must, in principle, adopt, for that purpose, rules of general scope, it still cannot be inferred that those States have an unlimited discretionary power in establishing those rules, or that the rules must have a certain content. Above all, it is for the Member States to comply with the conditions and limits laid down by the EU rules which are specifically applicable in that context, and even constitute the specific legal basis of the legislative activity at issue. Such is the case of the second subparagraph of Article 55(1) of Regulation No 1974/2006, which constitutes the *lex specialis* in relation to the first subparagraph of Article 71(3) of Regulation No 1698/2005, but nevertheless leaves significant discretionary power to the Member States (see paragraph 33 above). Similarly, although Article 5(7) of that regulation, according to which 'the Member States shall ensure that the operations financed by the EAFRD are in conformity with the [FEU] Treaty', read in conjunction with Article 310(5) TFEU, requires the national authorities to cooperate in good faith with the Commission, in compliance with the principle of sound financial management, in order to implement the EU budget, those general obligations cannot provide useful information for the purposes of the contested interpretation of Article 55(1) of Regulation No 1974/2006.

45 Therefore, it is not possible to infer from those general rules and principles a more specific interpretation of the second subparagraph, in particular of the criteria of 'duly substantiated cases' and 'conditions' of eligibility and of their link within the framework of Article 55(1) of Regulation No 1974/2006, which goes beyond the results of the literal and teleological interpretations covered in paragraphs 25 to 42 above.

46 Therefore, those provisions provide no additional clarification for understanding those criteria.

Interpretation of Article 55(1) of Regulation No 1974/2006 in the light of earlier and subsequent provisions

47 When interpreting Article 55(1) of Regulation No 1974/2006 in the light of earlier provisions, it is necessary to refer to the relevant rules applicable before the entry into force of Regulations Nos 1698/2005 and 1974/2006.

48 In that regard the following measures were in force: Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80) and Commission Regulations (EC) Nos 445/2002 and 817/2004 of 26 February 2002 and 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 (OJ 2002 L 74, p. 1 and OJ 2004 L 153, p. 30). Unlike Article 55(1) of Regulation No 1974/2006, point (b) of the first subparagraph of Article 22, of Regulation No 445/2002 did not contain explicit rules relating to the purchase of second-hand equipment or to SMEs, but referred only to eligible expenditure concerning 'new machinery and equipment, including computer software'. The same was true of Article 27 of Regulation No 817/2004.

49 On the other hand, the eligibility of expenditure relating to the purchase of second-hand machinery was provided for in the area of the Structural Funds, namely in Rule No 4 of Commission Regulation (EC) 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). That also applies to Rule No 4 of 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).

50 It is apparent that, before the entry into force of Regulations Nos 1698/2005 and 1974/2006, the eligibility of the costs of second-hand equipment was indeed the subject of the legislation relating to the Structural Funds, but was excluded from the scope of Regulation No 1257/1999.

51 Moreover, it should be pointed out that Regulations Nos 1698/2005 and 1974/2006 were replaced by Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation No 1698/2005 (OJ 2013 L 347, p. 487), and by Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ 2013 L 227, p. 1). On the basis of the authorisation provided for in Article 45(6) of Regulation No 1305/2013, the Commission enacted Article 13(b) of Delegated Regulation No 807/2014 under which 'Member States shall set out in their rural development programmes the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure'. Contrary to the second subparagraph of Article 55(1) of Regulation 1974/2006, those new rules, therefore, do not provide either a specific scheme for SMEs or the criterion of 'duly substantiated cases'. Furthermore, as regards the conditions of eligibility of the purchase of second-hand equipment, they expressly require the Member States to adopt rules of general scope within the framework of 'their rural development programmes'.

52 In the light of all the foregoing considerations, it must be found that it is impossible to draw, either from the history of the legislation at issue or from the subsequent legislation, any conclusion as to the exact scope of Article 55(1) of Regulation No 1974/2006.

53 Finally, the different rules relating to the Structural Funds are also not such as to affect that assessment, since Article 39 of Regulation No 445/2002 states that Article 22 of that regulation constitutes a special rule as opposed to the more general rules contained in Regulation No 1685/2000, so the Republic of Finland is not, in any event, justified in relying on the latter rules.

Conclusion concerning the interpretation of the second subparagraph of Article 55(1) of Regulation No 1974/ 2006

54 In the light of all the foregoing considerations, and in particular of the literal analysis set out in paragraphs 25 to 37 above, it must be concluded that Article 55(1) of Regulation 1974/2006 is to be interpreted as meaning that the second subparagraph authorises Member States, by conferring on them a discretionary power for the purpose, to introduce and implement a specific derogating scheme for micro, small- and medium-sized enterprises by specifying the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure, without it being necessary for the Member State to define, precisely and beforehand, in legislation of general scope, the cases in which the investment corresponds to a 'duly substantiated case'. The fact remains that that criterion requires the Member State, in the exercise of its discretionary power, either in a decision to lay down rules of general scope or in a decision relating to an individual case, to provide the reasons which show that that decision has been taken in accordance with the criteria and objectives of the relevant national legislation and of EU legislation.

55 Consequently, the contested decision is marred by an error of law in that it is the product of an incorrect interpretation of Article 55(1) of Regulation No 1974/2006 and, therefore, should be annulled in its entirety without the need to consider whether the Commission's assessment of the compliance of the Finnish legislation with that article is also marred by an error. In that regard, it is sufficient to state that the Commission only objects to the excessively broad scope of the conditions of eligibility of the purchase of second-hand machinery or equipment and also the lack of a specific and prior definition, in Decree No 632/2007, of the 'duly substantiated cases'; this is the consequence of its misinterpretation of Article 55(1) of that regulation.

Costs

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

57 Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Republic of Finland.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls Commission Implementing Decision 2013/763/EU of 12 December 2013 on 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), in so far as that decision excludes from EU financing under the EAGGF certain expenditure incurred by the Republic of Finland, in the amount of EUR 927 827,58, on grounds of non-compliance with Union rules;**

2. **Orders the European Commission to pay the costs.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 11 December 2015.

[Signatures]

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