Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

16 February 2017 *

(EAGGF and EAFRD — Area-related measures — Expenditure excluded from financing — Flat-rate financial corrections — Article 52 of Regulation (EU) No 1306/2013 — Obligation to state reasons — Proportionality)

In Case T-145/15,

Romania, represented initially by R.-H Radu, V. Angelescu, R. Mangu, D. Bulancea, N. Horumbă, E. Mierlea and T. Crainic, and subsequently by R. Radu, V. Angelescu, R. Mangu, N. Horumbă, E. Mierlea and T. Crainic, acting as Agents,

applicant,

v

European Commission, represented by A. Biolan and G. von Rintelen, acting as Agents,

defendant,

ACTION on the basis of Article 263 TFEU seeking the annulment in part of Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 16, p. 33),

THE GENERAL COURT (Seventh Chamber),

composed of M. van der Woude (Rapporteur), President, M. Kancheva and I. Ulloa Rubio, Judges,

Registrar: I. Drăgan, Administrator,

having regard to the written part of the procedure and further to the hearing on 14 July 2016,

gives the following

* Language of the case: Romanian.

Judgment

Facts and background to the dispute

1 Article 14 of 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) requires Member States to set up and operate an integrated administration and control system ('the IACS'). The IACS is the principal administration and control tool for 'area' aid schemes. By virtue of Article 15 of Regulation No 73/2009, the IACS comprises, inter alia, a computerised database of farms and applications for aid and an identification system for agricultural parcels based on a computerised geographical information system ('the ISAP-GIS'), in accordance with Article 17 of that regulation.

2 In the context of shared management, the comprehensive system for the management and control of agricultural expenditure, provided for in EU legislation with a view to obtaining reasonable guarantees as to the effective management of the risk of error in the legality and regularity of aid, included, in essence, four levels:

— the first level comprises a compulsory administrative structure at the level of Member States, based on the establishment of accredited paying agencies and an authority responsible for their accreditation;

— the second level comprises detailed systems for controls and dissuasive sanctions to be implemented by the paying agencies;

— the third level comprises ex-post controls by independent audit bodies designated by the Member States, in accordance with Article 7 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) and Article 5 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), applicable rationae temporis at the time of the controls to be carried out by the Romanian conciliation body in respect of claim years 2009 and 2010;

— the fourth level comprises the clearance of accounts through the Commission, including both annual financial clearance and multi-annual conformity clearance.

3 By Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 16, p. 33; 'the contested decision'), the Commission excluded certain expenditure incurred by Romania, declared in respect of financial years 2009 and 2010, as expenditure excluded from EU financing.

4 By that decision, a total sum of EUR 128 368 775, made up of an amount of EUR 92 471 526 under budget heading 6701 and EUR 35 897 249 under budget heading 6711, was thus excluded from EU financing, by the application of flat-rate correction rates of 10% in respect of the expenditure in claim year 2009 and of 5% in respect of the expenditure in claim year 2010, because of 'weaknesses in the administrative cross-checks and the on-site inspections'.

5 The contested decision thus closes a conformity clearance procedure, on the basis of Article 52 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), applicable rationae temporis at the time of adoption of that decision on 16 January 2015.

6 In the context of the shared management of the European Agricultural Guarantee Fund (EAGF) and in the European Agricultural Fund for Rural Development (EAFRD), area aid, excluded from EU financing by the contested decision, had been paid to farmers by the Agenția de Plăți și Intervenție pentru Agricultură (Paying and Intervention Agency for Agriculture ('APIA'), Romania), namely the Romanian paying body responsible for the management and supervision of aid schemes. All the instances of deficent supervision relate to the determination of the admissible areas, with the exception of one instance, deficiency J (see paragraph 20 below) concerning advance payments and the calculation of penalties.

7 The contested decision is based on deficiencies in the supervision by the APIA of the conditions for admissibility of the aid, noted by the Commission in two inquiries into area aid carried out in Romania between 2 and 6 November 2009, as regards the 2009 claim year (inquiry AA/2009/20), and between 27 September and 1 October 2010, as regards the 2010 claim year (inquiry AA/2010/16), on the basis of Article 37 of Regulation No 1290/2005. The purpose of those inquiries was to determine whether the management and supervision of the area aid schemes complied with the EU legislation for that claim year, 'the more specific objective of the audit being to supervise the implementation of the corrective measures concerning the weaknesses of the IACS (in accordance with the action plan)'. According to the information provided by Romania and not disputed by the Commission, that three-year action plan, dealing mainly with the bringing up to date of the Romanian ISAP-GIS with orto-photo images from 2008, 2009 and 2010, was implemented, in agreement with the Commission, from June 2009 and was closed at the end of 2011.

8 By letters of 7 April 2010 and 18 March 2011, the Commission sent Romania its findings following the abovementioned inquiries and requests for additional information, in accordance with Article 11(1) of Regulation No 885/2006. The Romanian authorities replied by letters of 7 June 2010 and 19 May 2011.

9 The Commission convened a bilateral meeting, which was held on 1 June 2012. The minutes of that meeting were sent to the Romanian authorities by letter of 17 January 2013. In point 3 of those minutes, entitled 'Conclusion and financial impact', the Commission states that it 'maintains its position that the system implemented in Romania shows some major weaknesses, mainly as regards the ISAP-GIS and the carrying-out of on-site inspections and administrative inspections'. It specifies that, 'in accordance with document VI/5330/97 [entitled "Guidelines concerning the calculations of the financial consequences at the time of preparation of the clearance decision for the EAGGF-Guarantee accounts"], those weaknesses correspond to the weak points in the main inspections (namely the administrative cross-checks and the on-site inspections) and secondary inspections (namely the payments and calculation of the penalties) and created a risk of large-scale loss for the fund as regards the expenditure incurred under the first and second pillars [of the Common Agricultural Policy]'. It adds that, 'nonetheless, with regard to the financial impact of those findings, the Romanian authorities are reminded that they are entitled to provide clear evidence showing that the risk to the fund is lower than the flat-rate correction usually applied, in accordance with the abovementioned working document'.

10 The Romanian authorities replied by letter of 18 March 2013.

11 By letter of 21 August 2013, the Commission sent Romania, in accordance with the third paragraph of Article 11(2) of Regulation No 885/2006, its proposal to exclude the sums of EUR 90 174 906 in respect of the 2009 claim year and of EUR 50 362 738 in respect of the 2010 claim year from EU financing.

The reasons for that exclusion and the measures to which the Commission thus proposed to apply a correction of 10% in respect of the 2009 claim year and of 5% in respect of the 2010 claim year were set out in Annexes 1 and 2 to that letter.

12 By letter of 4 October 2013, Romania referred that proposal for financial corrections to the Conciliation Body, in accordance with Article 16 of Regulation No 885/2006. The report of the Conciliation Body, drawn up on 21 March 2014, was sent to the Romanian authorities on 26 March 2014.

13 In its report, the Conciliation Body concluded, on the basis of the following considerations, that it was possible to reach a partial agreement between the parties:

'6.1. The Body notes that the parties agree to revise the basis of the correction as regards the possible transfer of some sums from the 2009 financial year to the 2010 financial year and as regards the large recoveries, provided that this is supported by the evidence which the authorities will provide.

6.2. With regard to the level of the correction, the flat rate of 10% proposed in respect of 2009 is higher than that (of 7.4%) applied in respect of 2008 and that proposed in respect of 2010. The Body wonders whether the correction in respect of 2009 could not be set more exactly by an exercise such as that which was accepted in respect of 2008. However, that presupposes that the calculations cover all the weaknesses and that they take into account the risk to the fund. The Body is not in a position to judge whether that is possible.

6.3. The Body takes note of the high percentage of recoveries declared by the authorities [and their] request to submit to the services [of the Commission] exact details of the sums entered to the credit of the fund and evidence for the fact that the recoveries are due to the [deficiencies referred to by the Commission in the Romanian integrated administration and control system, in the administrative inspections and on-site inspections and in the calculation of the payments and penalties].

Logically, if the corrections calculated and proposed by the authorities are correct, the financial basis of the correction[s] must be reduced, if more than half of the aid not due has been repaid.'

14 In the light of that report, by letter of 11 April 2014, Romania sent additional information to the Commission.

15 By letter of 19 June 2014, the Commission sent Romania its final position.

16 By letter of 19 January 2015, the Commission served the contested decision on Romania, together with the summary reports. In the first place, in that report, the Commission reviews the various deficiencies found and dismisses the individual assessment by the Romanian authorities of the financial impact on the EU budget of each of the deficiencies which it had identified under capitals 'A', 'E', 'F', 'G' and 'I'. In the second place, the Commission concludes, in that report, firstly, that, in the absence of the provision of additional information by the Romanian authorities, it is not possible to calculate the risk of financial damage to the EU, which justifies the application of a flat rate. In that respect, the Commission takes as its basis the content of the reports of the Certification Body concerning claim years 2009 and 2010 respectively. It notes, in essence, that that body issue an unreserved opinion as regards the population covered by the IACS, but it nonetheless highlighted the possibility that there was a significant error in the statistics concerning that population, with an upper error limit of 2.7%, in respect of claim year 2009, and of 4.24%, in respect of claim year 2010. In addition, with regard to the latter year, the Commission refers to the lack of reliability of the error rate calculated by the Romanian Certification Body, based on the audit report of the European Court of Auditors on the validation by that certification body of the control statistics for the EAGGF expenditure covered by

the IACS (increased guarantee procedure) as regards the 2011 financial year, which corresponds to the 2010 claim year. Secondly, to determine the rate of the flat-rate correction applicable, the Commission considers that the weaknesses in the functioning of the ISAP-GIS and the administrative cross-checks justify the application of a correction rate of 10% for the 2009 claim year. With regard to the 2010 claim year, the Commission considers that those failures justify the application of a rate of 5%, having regard in particular to the updating of the images of the ISAP-GIS and the improvement in the administrative cross-checks.

17 More specifically, with regard, firstly, to the 2009 claim year, the Commission states, in the summary report, that three series of deficiencies carried a risk of financial damage. Those various deficiencies, found following audits (see paragraph 7 above), and referenced from A to J by the Commission, were thus split into three groups.

18 The first series of deficiencies includes the functional problems of the ISAP-GIS (deficiencies A and B, see paragraph 23 below) and failures in the administrative cross-checks (deficiencies C, D and E). The lacunae relating to those key checks justify the application of a financial correction rate of 10%, in accordance with the Commission guidelines for the application of financial corrections defined in the document entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee' ('Document VI/5330/97'), which provides for the application of such a rate in cases of the absence or inefficiency of one or more key checks.

19 The second series of deficiencies found relates to the on-site inspections and the site visits (deficiencies F and G) and to the on-site inspections after remote sensing inspections (deficiencies H and I). The combination of those failures in carrying out key checks justifies, in the view of the Commission, the application of a correction rate of 5%, in accordance with Document VI/5330/97, which provides for the application of that rate when all the key checks were carried out, but without compliance with the applicable legislation as regards the required number, frequency or stringency of such inspections.

20 The third series of deficiencies relates to the calculation of the payments and penalties (deficiency J). Those deficiencies, which relate to secondary inspections, thus justify, according to the Commission, the application of the correction rate of 2% provided for in Document VI/5330/97. While the first two series of deficiencies, referred to in paragraphs 18 and 19 above, concern both the EAGGF and the EAFRD, the third concerns only the EAFRD.

21 The correction rates of 5% and 2%, justified respectively, according to the Commission, by the second and third series of deficiencies (see paragraphs 19 and 20 above), are absorbed by the rate of 10% applied because of the first series of deficiencies (see paragraph 18 above), in accordance with Document VI/5330/97 which provides that, when a single system shows a number of deficiencies, the flat rates are not cumulative, the most serious deficiency being regarded as indicative of the risks of the system of inspections as a whole.

22 Next, with regard to the 2010 claim year, it is apparent from the summary report that the Commission took the view that two series of deficiencies carried a risk of financial damage to the funds.

23 The first series consists of functional problems of the ISAP-GIS already found under the 2009 claim year (see paragraph 18 above), namely:

— deficiency A, concerning imprecisions in the Romanian ISAP-GIS, some non-admissible areas not always having been excluded from the maximum admissible area of the reference parcels;

— deficiency B, concerning inaccuracies in the information sent by the Romanian authorities to the farmers, in 2009 and 2010, despite improvements, as part of Romania's obligation to provide standard forms. That deficiency led to a large number of farmers making over-declarations.

24 In the summary report, the Commission further notes that the deficiencies A and B, which concern the key checks, justify a financial correction of 5%, having regard to the improvements made in 2010 to the Romanian ISAP-GIS thanks to the updating of the orto-photographic images.

25 The second series of deficiencies referred to by the Commission in the summary report, in respect of the 2010 claim year, is identical to the third series alleged with regard to the 2009 claim year (see paragraph 20 above) and thus corresponds to deficiency J. According to the Commission, it justifies the application of a rate of 2%, absorbed by the rate of 5% applied because of the first series, in accordance with Document VI/5330/97 (see paragraphs 21 and 24 above).

Procedure and forms of order sought

26 By application lodged at the Registry of the General Court on 29 March 2015, the applicant brought the present proceedings. The written stage of the procedure was closed following the filing of the rejoinder on 16 October 2015.

27 By document lodged at the Registry of the General Court on 13 November 2015, Romania requested that a hearing be fixed, stating the reasons for its wish to be heard. Acting on a proposal from the Judge-Rapporteur, the General Court (Seventh Chamber) granted that request.

28 Since a Member of the Chamber was prevented from attending, the President of the Seventh Chamber designated, pursuant to Article 17(2) of the Rules of Procedure of the General Court, another Judge to complete the Chamber.

29 By way of measures of organisation of the procedure, the General Court sent a number of written questions to the parties, who replied within the period allowed.

30 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 14 July 2016.

31 Romania claims that the Court should:

— annul the contested decision in as far as it concerns Romania;

— order the Commission to pay the costs.

32 The Commission contends that the Court should:

— dismiss the application;

— order Romania to pay the costs.

Law

33 In support of its action, Romania puts forward three pleas in law. The first plea alleges infringement of Article 52 of Regulation No 1306/2013 and of Document VI/5330/97. The other two pleas allege infringement of the duty to state reasons and infringement of the principle of proportionality respectively.

34 As a preliminary point, it is appropriate to note that, apart from deficiency H, which concerns delays in the on-site visits (see paragraph 19 above), Romania does not dispute the failures in monitoring alleged against it.

35 However, Romania does dispute the financial consequences drawn in the contested decision of the deficiencies found. Without denying the existence of some deficiencies in the Romanian IACS, it refers in particular to the efforts which it has made with a view to improving the quality of the ISAP-GIS (see paragraphs 1 and 7 above). The updating of that system was carried out with orto-photographic images from 2008, 2009 and 2010 and was completed on 1 February 2010. The Commission did, furthermore, recognise those improvements.

36 In that regard, Romania recalls that 2007 was the first year in which the IACS was applied in that country. The APIA, responsible for implementing and managing the aid schemes to support agriculture (see paragraph 6 above), met with some difficulties in 2007 and 2008 because of the specific nature of farming structures in Romania, comprising millions of small family farms. Accordingly, the Commission, finding irregularities in the functioning of the ISAP-GIS and the carrying out of on-site inspections following the administrative cross-checks, applied a financial correction of 10% for the 2007 claim year and a correction of 7.4% for the 2008 claim year, calculated using the extrapolation method on the basis of the error rates resulting from the certified inspection statistics, which had been proposed by the Romanian authorities.

37 In the present case, Romania complains that, despite the improvements made (see paragraph 35 above), the Commission applied a flat-rate financial correction of 10% in respect of the 2009 claim year and of 5% in respect of the 2010 claim year instead of calculating the true risk to the EU of financial loss, as for the 2008 claim year (see paragraph 36 above). Under the method of calculation by extrapolation, the correction rate ought not to be higher than 5.5% for the 2009 claim year and 3.989% for the 2010 claim year.

38 In the context of the present dispute, it is appropriate to examine, first of all, the second plea in law, alleging infringement of the duty to state reasons.

39 Romania complains that the Commission has never set out its reasons for not accepting the arguments and evidence submitted to it by the Romanian authorities as regards the possibility of calculating the risk of financial damage to the EU funds. In that regard, Romania submitted, both in its written submissions and at the hearing, that it proposed two alternative methods of calculation during the administrative procedure. With regard to the first of those methods, based on an individual assessment of the financial consequences of each of the deficiencies found, the Commission did not set out the reasons for its rejection of the individual assessments made by the Romanian authorities, showing that the risk of losses caused by the majority of the deficiencies was reduced or non-existent. Nor did the Commission state reasons for its refusal, in this case, to apply the second method proposed, based on an extrapolation of the results of the inspection statistics.

40 Romania asserts, in the alternative, that, even if there was an adequate statement of reasons for the application of a flat rate and it was justified, in accordance with Article 52(2) of Regulation No 1306/2013, by the fact that it was impossible to determine the risk of financial damage more exactly without making a disproportionate effort, which Romania disputes, the contested decision also fails to satisfy the requirements of the duty to state reasons with regard to the choice of the rate of 10% for the 2009 claim year (see paragraph 18 above) and the rate of 5% for the 2010 claim year (see paragraphs 24 and 25 above).

41 Accordingly, it is appropriate to examine in turn the abovementioned complaints, alleging insufficient reasons, concerning, firstly, the Commission's refusal to carry out an individual assessment of the risk of loss to the EU funds by each of the deficiencies found; secondly, the Commission's refusal to apply the method of calculation by extrapolation in the present case; and thirdly, the application of a rate of 10% in respect of the first series of deficiencies in the 2009 claim year and a rate of 5% in respect of the first series of deficiencies in the 2010 claim year. As preliminary remarks, it is appropriate to make some observations relevant to the assessment of the three complaints.

Preliminary observations

42 In the first place, it must be borne in mind that the obligation to state reasons, provided for in Article 296 TFEU, is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. With that in mind, the statement of reasons must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraphs 146 and 147).

43 In particular, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, firstly, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable the latter to review the legality of that act (see judgment of 19 June 2014, *FLS Plast* v *Commission*, C-243/12 P, EU:C:2014:2006, paragraph 49). Thus, the duty to state reasons is not limited to respect of the rights of the defence, but contributes to the achievement of a more general objective, namely to ensure that the EU Courts are able to review the legality of the measure challenged before them (see, to that effect, Opinion of Advocate General Mengozzi in *Bensada Benallal*, C-161/15, EU:C:2016:3, paragraph 99).

44 However, the statement of reasons cannot be required to go into every relevant point of fact and law. Whether the statement of reasons meets the requirements referred to in paragraph 42 above must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 3 December 2015, *Poland* v *Commission*, T-367/13, not published, under appeal, EU:T:2015:933, paragraph 111 and the case-law cited).

45 In that regard, firstly, it must be borne in mind that Commission conformity clearance decisions are taken on the basis of a summary report and correspondence between the Commission and the Member State concerned. In the particular context of the preparation of decisions relating to the clearance of accounts, the statement of reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was closely involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the EAGGF (judgment of 3 December 2015, *Poland* v *Commission*, T-367/13, not published, under appeal, EU:T:2015:933, paragraph 112.

46 It follows therefrom that the Commission's obligation to state reasons for its rejection of the assessment of the financial impact of the deficiencies found proposed by the Member State concerned must be assessed in the light of the developments and evolution of the parties' arguments, in the context of the procedure in which both parties were heard which preceded the Commission's final decision and sought to reach an agreement, on the basis of the information provided by the Member State concerned, on the rate of the financial correction or, failing agreement, to reconcile the respective positions of those parties, in accordance with the provisions of Article 52(3) of Regulation No 1306/2013.

47 Moreover, the Commission is required to state reasons for its rejection of sufficiently precise details of the assessment put forward by the competent national authorities only during the administrative procedure. Although it is for the Commission to prove that the rules of the common organisation of the agricultural markets have been infringed, once it has established such an infringement it is for the Member State to demonstrate, if appropriate, that the Commission made an error as to the financial consequences to be attached to that infringement. The Member State must then adduce the most

detailed and comprehensive evidence possible that its figures are accurate and, if appropriate, that the Commission's calculations are incorrect (judgment of 7 October 2004, *Spain* v *Commission*, C-153/01, EU:C:2004:589, paragraph 67).

48 That division of the burden of proof as regards the financial consequences of the deficiencies found is explained by the fact that the management of the EAGGF and EAFRD financing rests mainly with the national administrations responsible for ensuring strict compliance with the EU rules and is based on trust between the national authorities and the EU authorities. Only the Member State is in a position to know and to determine precisely the information necessary for drawing up EAGGF and EAFRD accounts, since the Commission is not close enough to obtain the information it needs from the economic operators (see, to that effect, judgment of 4 September 2009, *Austria* v *Commission*, T-368/05, not published, EU:T:2009:305, paragraph 182 and the case-law cited).

49 Secondly, it is apparent from case-law that a decision of the Commission which fits into a well-established line of decisions may be reasoned in a summary manner, for example by a reference to those decisions. However, the EU authority must give an explicit account of its reasoning if the decision goes appreciably further than the previous decisions (see judgment of 14 January 2016, *France* v *Commission*, T-549/13, EU:T:2016:6, paragraphs 24 and 25 and the case-law cited).

50 It is also necessary to note that the EU authority, here the Commission, must give express responses to precise and detailed information put forward by a Member State which, during the administrative procedure, seeks to discharge its burden of proof to show the financial consequences of the deficiencies found, by entering into a dialogue with the Commission in order to find the solution which best meets the requirements of the applicable legislation.

51 In the second place, it must be noted that, at the end of a conformity clearance procedure on the basis of Article 52 of Regulation No 1306/2013, the conformity decision, excluding some expenditure from EU financing, determines the rates of financial correction on the basis of a set of exact and express rules which follow from the applicable legislation and the guidelines laid down by the Commission with a view to the implementation of that legislation. Such guidelines concern only the provision by the Member States of necessary information, in particular for the purpose of determining what amounts must be excluded, but also for the assessment of the reliability of that information and the criteria for, if appropriate, setting a flat-rate correction rate where the Commission believes that the information supplied is not sufficiently reliable to enable more precise determination of the amounts to be excluded.

52 Since in principle the national authorities are fully aware of all the rules and criteria which flow from the relevant legislation and the guidelines laid down by the Commission in accordance with that legislation, the reasoning of the decision imposing a financial correction on a Member State may, as a general rule, merely refer to the usual practice and state the facts on which the Commission bases that decision, in accordance with the case-law cited in paragraph 49 above. However, that is not the case where the Commission departs from its usual practice and adopts new guidelines, particularly as regards the requirements relating to the certification of the information provided by the Member States, with a view to showing the reliability of such information.

53 In the present case, the guidance note on which the Commission stated, in the contested decision, that the decision was based, is a guidance note of 19 January 2010 concerning the strengthening of the guarantees, by the certification bodies, of the lawfulness and regularity of the operations at the level of the final beneficiaries ('the note of 19 January 2010'). That note (point 2) actually introduces measures to strengthen the certification system for inspection statistics, on which the method for calculating by extrapolation the amount of the financial correction is based, application of which method was rejected by the Commission in the contested decision, in order to 'provide a more solid basis on which to determine the reliability of [those] statistics'. The Member States which decided to apply that strengthened guarantees system require the certification bodies to carry out a new, full inspection, for

each of the expenditure populations, of a representative sample of the transactions which were subject to an on-site inspection by the paying body. That sample includes between 110 and 180 transactions per population. The validation inspection does not merely verify the on-site inspections, but covers the entire handling of the file, from receipt of the application for aid to the calculation and execution of the final payment, including the application of any penalties.

54 In that context, on the one hand, it must be noted that, at the time of the first applications, in each Member State, of that strengthened guarantees system, making validation by the certification body of the error rates of the inspection statistics subject to considerable new requirements, the Commission must set out clearly and expressly the precise reasons for any rejection of a calculation of the risk of loss proposed by the national authorities, on the ground that that calculation is based on inspection statistics which had not been certified in accordance with the new guidelines.

55 On the other hand, the guidelines defined in the note of 19 January 2010 cannot deprive the Member States of the possibility of proposing an individual assessment of the financial impact of each of the deficiencies found (see paragraph 61 below). The choice of the method of calculation by extrapolation, on the basis of data subject to strengthened guarantees in accordance with the guidelines set out in the note of 19 January 2010, is optional for the Member States, as, furthermore, is clear from that note.

56 Accordingly, if it does not require disproportionate efforts, in principle the Commission must examine, in accordance with Article 52 of Regulation No 1306/2013, the individual assessment of the financial impact of the various deficiencies found, proposed, if necessary, by a Member State and to state sufficient reasons for any rejection by it of that method of calculating the amount of the financial correction. Even a summary statement of reasons for such a rejection satisfies, in principle, the obligation to state reasons, in accordance with the case-law cited in paragraphs 42 to 45 and 47 to 49 above.

57 In the third place, and whatever the calculation method thus proposed, the need for adequately clear reasoning is particularly great as regards the Member States, which must act in concert with the Commission to ensure, firstly, that the expenditure incurred in the context of support schemes for farmers complies with the EU rules and, secondly, that, in the event of irregularities, the size of the risk run by the EU funds may be determined as precisely as possible. Such an obligation to state reasons satisfies, in addition, the guidelines defined in Document VI/5330/97, stating in essence that the Commission is to take account of improvements made by the Member States in their inspection system and pointing out in that regard that ‘clearance should aim to be preventive and corrective rather than being seen as a means of imposing penalties, and should be accompanied by appropriate procedural guarantees when corrections prove unavoidable’.

58 In the light of those principles, it is appropriate to assess Romania’s three complaints referred to in paragraph 41 above, alleging a failure to state reasons as regards, firstly, the Commission’s rejection of the individual assessment by the national authorities of the financial impact of each of the deficiencies; next, its refusal to apply the method of calculation by extrapolation and, finally, its choice to apply a flat-rate correction of 10% for the 2009 claim year and a rate of 5% for the 2010 claim year.

The reasons for the refusal to carry out an individual assessment of the financial impact of the various deficiencies

59 In its written submissions, Romania has claimed a lack of reasoning for the Commission’s rejection of the individual assessment of the various deficiencies which it had carried out. In reply to a question from the Court, Romania confirmed, at the hearing, that it had first proposed, during the administrative procedure, to carry out an individual assessment of the risks of loss to the EU budget caused by each of the various deficiencies found. It is solely because of the Commission’s failure to take into consideration the calculations provided by the Romanian authorities for the purposes of

assessing the financial impact of most of the deficiencies that those authorities proposed, at the conciliation stage, to apply the method of calculation by extrapolation on the basis of the inspection statistics. Contrary to the Commission's allegations made at the hearing, the lack of response from the Romanian authorities to the request for additional information on specific points, with regard, in particular, to deficiency G, concerning the treatment of the differences in area below or equal to 3% (see paragraph 19 above), which was made by the Commission in its letter of 17 January 2013 containing the conclusions of the bilateral meeting of 1 June 2012, does not mean that Romania had abandoned the individual assessment proposed.

60 At the hearing, the Commission accepted that it was possible, in theory, to have recourse to an individual assessment of the financial impact of the various deficiencies found, while stating, without being contradicted on that point by Romania, that it had, during the bilateral meeting, rejected the individual assessment of the financial impact of each of the deficiencies proposed by the Romanian authorities. Since those authorities did not respond to some of its questions and did not pursue, in particular at the conciliation stage, their argument concerning the method of calculation based on an individual assessment, the Commission took the view that they had abandoned the application of that method. Accordingly, the arguments concerning such an individual assessment, raised by Romania before the Court, are irrelevant.

61 In that regard, in the first place, it must be borne in mind that, in accordance with Article 52(2) of Regulation No 1306/2013, the Commission is to base the exclusion from EU financing on the identification of amounts unduly spent and, where these cannot be identified with proportionate effort, may apply extrapolated or flat-rate corrections. It follows therefrom that the calculation of the correction based on an individual assessment of the financial impact of the various deficiencies, on the basis of information provided by the Member State concerned, is, in principle, admissible where such an individual assessment does not require disproportionate efforts.

62 In the second place, it is appropriate to examine whether the Romanian authorities abandoned individual assessments, as the Commission alleges.

63 In that regard, it must be noted, firstly, that the fact alone that the Romanian authorities did not reply to some of the Commission's requests for additional information cannot be interpreted as meaning that those authorities abandoned their proposal to calculate the correction rate on the basis of an individual assessment of the financial impact of the various deficiencies.

64 Secondly, examination of the documents in the file does not show any express statement from Romania that it was abandoning the application of a method of calculation for each individual shortcoming.

65 Thirdly, with regard to whether the Romanian authorities impliedly abandoned an individual assessment of the financial consequences of the various deficiencies, on the one hand, it must be noted that, after the Commission's rejection, at the bilateral meeting, of the individual assessment made by the Romanian authorities of the financial impact of the various deficiencies, those authorities did not submit a more detailed individual assessment of the financial impact of those deficiencies in their reply of 18 March 2013 to the conclusions of the bilateral meeting, in reply to the Commission's requests for additional information of 17 January 2013 or later during the procedure.

66 In addition, in their letter requesting conciliation of 4 October 2013 (see paragraph 12 above), the Romanian authorities did not mention, under the heading 'Financial consequences', a method of calculation relating to each individual shortcoming. The method for calculating the risk of loss to the funds, which is proposed in that part of the letter of 4 October 2013, concerns a calculation for all the deficiencies and is based on a method of extrapolation of the error rates resulting from the inspection statistics. The Romanian authorities have pointed out that the risks from certain deficiencies were below the materiality threshold and set out the recoveries made. On the basis of

those factors, the Romanian authorities expressly proposed, in conclusion, the application of the method of calculation by extrapolation, which had already been applied as regards the 2008 claim year and led to a correction rate not exceeding 5.5% in respect of claim year 2009 and 3.99% in respect of claim year 2010.

67 In those circumstances, the conciliation procedure concentrated on the method of calculation by extrapolation. Thus, it is apparent from the report of the conciliation body, drawn up on 21 March 2014 (see paragraphs 12 and 13 above), that the recommendations issued by that body were intended solely to seek to reconcile the divergent positions of the parties when they were heard as regards the possibility of applying the abovementioned method of calculation by extrapolation in respect of the 2009 and 2010 claim years.

68 It is, however, appropriate to note that, in the first part of their request for conciliation of 4 October 2013 (see paragraph 12 above), dealing with the individual examination of the various deficiencies found, the Romanian authorities reiterated their conclusions concerning, in essence, the limited nature of the financial consequences of each of the deficiencies. With regard in particular to the calculation of the financial effect of shortcoming A, concerning the failures of the ISAP-GIS (see paragraphs 18 and 23 above), those authorities raised a new method of calculation by comparison with the ISAP-GIS data of the following year, by reference to the factors advanced in their reply of 18 May 2012 to the invitation to the bilateral meeting and in their reply of 18 March 2013 to the conclusions of that meeting.

69 Fourthly, in the summary report, the Commission referred, in respect of each of the deficiencies A, E, F, G and I, to the individual assessment of the risk of loss to the funds made by the Romanian authorities (see paragraphs 17 to 19 above), which shows that the Commission itself did not believe, at the time of adoption of the contested decision, that the authorities had abandoned the application of such a method of calculation.

70 Having regard to those factors, the view cannot be taken that Romania abandoned a method of individual calculation of the risks incurred by the funds, shortcoming by shortcoming.

71 In those circumstances, it was for the Commission to take a position in the contested decision or in the summary report which accompanied it on all the points relating to individual assessment raised by the Romanian authorities during the administrative procedure and to state reasons for rejecting them.

72 It sufficed for that purpose that the Commission gave a summary of the main reasons for its refusal to use the method of individual assessment of the risks of loss caused by the various deficiencies, proposed by the Romanian authorities as an alternative method of assessment to the method of calculation by extrapolation, before those authorities concentrated their arguments on the latter method, at the conciliation meeting.

73 In the present case, it must be noted that, for both the 2009 and the 2010 claim years examined, the summary report does not contain such reasoning, even in summary. In respect of several deficiencies, the Commission merely stated the calculations made by the Romanian authorities without giving reasons for rejecting them.

74 First of all, with regard to shortcoming A, concerning a key check, the Commission did not state reasons for rejecting the method of comparing the data from year N with those from years N + 1 (see paragraph 68 above). According to the Romanian authorities, the comparison of the ISAP-GIS data from the 2009 claim year with those from 2010 would show that the reductions in agricultural surfaces following the updating of the ISAP-GIS were by only 2.3%. As regards the comparison of the data of the 2010 claim year with those of 2011, it shows that the reduction of surfaces following the updating of the ISAP-GIS was 1.88%, which is below the materiality threshold of 2%.

75 Indeed, it is apparent from the table concerning the improvements in the orto-photographic images of the ISAP-GIS in the summary report that, as regards the data from the 2010 claim year, with which the Romanian authorities had compared the data from the 2009 claim year, a large part of those images remained deficient, the improvements affecting only around 33% of them. However, the Commission did not make it clear, in the summary report or in its exchanges with the Romanian authorities during the administrative procedure, the reasons for its view, despite the slight improvements in the ISAP-GIS and the administrative cross-checks, that it was not possible to make individual assessments of the financial impact of shortcoming A in respect of the 2009 claim year using the proposed comparison method. Furthermore, with regard to the 2010 claim year, the Commission did not make any comment concerning the quality of the orto-photographic images of the ISAP-GIS corresponding to the 2011 claim year, which the Romanian authorities had compared the data from 2010.

76 In addition, with regard to the 2009 claim year, the contested decision is not adequately reasoned, in particular in so far as it refuses to take into consideration, for the purposes of calculating the amounts to be excluded from EU financing, the individual assessment of deficiencies E, F and G, noted solely with regard to that claim year, proposed by the Romanian authorities (see paragraphs 18, 19 and 69 above).

77 With regard to shortcoming E, concerning the incorrect treatment of remote sensing results, and shortcoming G, concerning the treatment of differences in surface areas of or below 3%, the Commission merely states, in the summary report, the results of the calculations by the Romanian authorities of their respective financial impact, without giving clear reasons for its calling into question the reliability of those calculations. The Romanian authorities had calculated the financial impact of shortcoming E at EUR 856159.59 and that of shortcoming G at EUR 5478.03.

78 With regard to shortcoming F, concerning the inclusion of ineligible land, the Commission expressly accepts that that shortcoming has only a limited financial impact, as is apparent from the assessment made by the Romanian authorities. Those authorities had considered that that impact was not significant, since the total surface accepted with the inclusion of the ineligible land was 646.41 hectares. The Commission does not, however, draw any conclusion as regards the calculation of the amount of the financial correction, merely stating, in essence, that it maintained its position concerning the existence of shortcoming F, which in 2009 led to an irregular acceptance of over-declarations.

79 However, sufficient reasons are stated for the rejection of the assessment of the financial risk caused by shortcoming I, concerning the acceptance of ineligible land. In the summary report, the Commission states that the Romanian authorities submitted a calculation of the financial risk flowing from that shortcoming which amounted to EUR 88465.14. The Commission notes, however, in that regard, that the financial risk resulting from the sample inspected by its inspectors in the audit could not be directly extrapolated to the whole population, as the Romanian authorities had done.

80 On all those grounds, it must be held that, in the circumstances of the present case, the complaint alleging insufficient reasons for the rejection of the method of individual assessment of the various deficiencies is well founded as regards, firstly, shortcoming A for the 2009 and 2010 claim years and, secondly, deficiencies E, F and G for the 2009 claim year.

The reasoning for the refusal to apply the method of calculation by extrapolation on the basis of the error rate of the inspection statistics

81 Romania recalls that, when it proposed, in the conciliation procedure, the application of the method of calculation by extrapolation, which it had already used in respect of the 2008 claim year, the Commission stated, as confirmed by the report of the conciliation body (points 4 and 5 of the report), that that method was, in principle, acceptable, but that it could not be used for the 2009 and 2010 claim years.

82 Accordingly, Romania complains that the Commission did not state reasons, whether during the administrative procedure or in the contested decision, for its refusal to apply, in accordance with earlier practice, the abovementioned method of calculation for both the 2009 and the 2010 claim years.

The 2009 claim year

83 As regards the 2009 claim year, it is apparent from the report of the conciliation body that the Commission rejected the calculation of the risk of losses to the funds on the basis of the extrapolation method, proposed by the Romanian authorities, stating, inter alia, that that calculation did not cover all the deficiencies and did not taken into consideration the penalties not applied. In addition, the Commission took as its basis the fact that the certification body had highlighted an upper error limit of 2.7% for 2009.

84 In the official communication of 21 August 2013, which immediately preceded the request for conciliation (see paragraph 11 above), the Commission had already stated that the certification body 'had expressed, in its report, an unqualified opinion concerning the EAGF population covered by the IACS', but that, 'however, [it had] highlighted the possible existence of a material error in the statistics concerning the EAGF population covered by the IACS, having regard to the divergences found, [namely] of a very probable error rate of 0.9% (under the materiality threshold of 2%), with an upper error limit of 2.7%'. In the summary report (point 12.12.2), the Commission repeated the essential parts of that argument in the same terms as those appearing in the abovementioned passage of the communication of 21 August 2013.

85 Before the Court, Romania claimed, in the application, that it was for the Commission, by virtue of its obligation to state reasons, firstly, to specify which deficiencies were not covered by the proposed calculation by extrapolation. Secondly, the Commission was required to explain why it had not done an alternative calculation on the basis of that method of calculation by extrapolation which it accepted, taking into account of the deficiencies which allegedly were not covered by the calculation done by the Romanian authorities. Furthermore, at the hearing, Romania argued that the requirement for certification referred to by the Commission applied only from the 2010 claim year.

86 The Commission thus breached its obligation to state reasons by refraining from justifying the failure to take into consideration the arguments put forward by the Romanian authorities concerning the calculation by extrapolation of the amount of the financial correction. Moreover, that lack of reasoning, both during the administrative procedure and in the contested decision, deprived the Romanian State of the guarantees provided to the Member States which are necessary for them to present their point of view (judgment of 7 June 2013, *Portugal* v *Commission*, T-2/11, EU:T:2013:307, paragraph 54).

87 It is not in dispute between the parties that, in respect of the 2008 claim year, the Commission had accepted the application of the method of calculation by extrapolation, also proposed by Romania in respect of the 2009 and 2010 claim years, under consideration in the present case.

88 However, the parties' positions diverge as regards whether, in the present case, the Commission has changed its requirements, in comparison with the 2008 claim year, in particular as regards the 2009 claim year, concerning the certification system for information provided by the national authorities. Neither the contested decision nor the written submissions of the parties or the documents which they have adduced contain the least indication allowing it to be understood what, according to the Commission, the certification system applicable to the 2009 claim year was and, in particular, whether that system was identical to that implemented in respect of the 2008 claim year.

89 In its written submissions, the Commission merely asserted, without explanation, that, in respect of the 2009 claim year, 'the error rate was not certified by the certification body'. It is only in its written, then oral answers to the questions posed by the Court that the Commission alleged that the increased guarantee procedure had applied since the 2008 claim year.

90 In its written replies to the Court's questions and at the hearing, the Commission stated that the certification system provided for in the note of 19 January 2010 had not been changed between the 2008 and 2010 claim years. It confirmed that, in respect of the 2008 claim year, 'the error rate [had] been certified in accordance with its instructions'. In that regard, the Commission explained that the conciliation had been requested by the Romanian authorities only in 2010 and that the risk to the EU budget had been calculated in the context of that conciliation procedure. Romania was thus aware of the content of the note of 19 January 2010, which had already been examined with the Member States in 2009, and was therefore able to apply the increased guarantee system with effect from the 2008 claim year.

91 In those circumstances, with regard to the 2009 claim year, the Commission was of the opinion that the increased guarantee procedure, provided for in the note of 19 January 2010, could be applied to ensure the reliability of the inspection statistics for the purpose of calculating by extrapolation the financial correction, as in respect of the 2008 claim year. The Commission added that the figures for the 2009 claim year had not been available until 15 July 2010, in accordance with Article 76(1) of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and No 73/2009 and of cross-compliance provided for by Council Regulation (EC) No 479/2008 (OJ 2004 L 141, p. 18). The Commission deduced therefrom that the increased guarantee system could apply to the figures relating to the 2009 claim year.

92 Furthermore, the Commission recalled that the increased guarantee system was optional (see paragraphs 53 and 60 above). However, the Commission stated that it was of the view that, if a Member State did not opt to apply that system, it could not rely on the inspection statistics drawn up by the paying body, on which the method of calculation by extrapolation was based.

93 At the hearing, Romania, in turn, disputed that the increased guarantee system, provided for in the note of 19 January 2010, had been applied as regards the 2008 claim year. It insisted that it had not opted to apply that system for either the 2008 or the 2009 claim year.

94 Furthermore, Romania stated that, in the absence of clear and foreseeable rules, the mere fact that the note of 19 January 2010 had been discussed between the Member States and the Commission in 2009 and that the inspection statistics relating to the 2009 claim year, drawn up by the APIA, were not available until 15 July 2010 did not mean that the increased guarantee system was already applicable in 2010 to the certification of those inspection statistics.

95 Contrary to the Commission's assertions at the hearing, it must be noted that the summary report on the financial corrections in respect of the 2008 claim year, produced by that institution as an annex to its written replies to the Court's questions, does not contain any indication as to the type of certification which had been implemented in Romania and accepted by the Commission as regards

that claim year. In that report (point 12.4.5), unlike the summary reports for the 2009 and 2010 claim years (see paragraph 84 above and paragraph 107 below), the Commission makes no mention of what the maximum error rate was of the inspection statistics highlighted by the certification body. It notes only that that body, to which Romania appealed after the conciliation to have it verify the reliability of the inspection statistics in order to show that the risk of loss to the funds was lower than the correction of 10% proposed by the Commission, had confirmed that 'the various error rates resulting from those inspection statistics, as regards various area-related aid schemes, were not significantly incorrect'. It is possible to deduce therefrom only that the difference between the error rate established by the paying body and that established by the certification body did not exceed the margin of tolerance accepted by the Commission.

96 Moreover, the Commission's line of argument, at the hearing, that it was expressly clear from the note of 19 January 2010 (see paragraph 53 above) that the increased guarantee system for which it provides has been applied since the 2008 claim year cannot be accepted. In that note, the Commission recalls first that, since the 2008 financial year, corresponding to the 2007 claim year, the certification bodies were required to verify and validate the inspection statistics for the EAGF expenditure covered by the IACS and the EAFRD expenditure, in order to provide the Commission with a guarantee regarding the reliability of those statistics. That implies in practice that the certification bodies take into consideration, in the results of the inspections communicated to the Commission, the detailed information held by the paying bodies and that they issue an opinion as to the quality of the field audits while carrying out afresh at least 10 of those inspections for each category of expenditure. Next, the Commission points out, in the same note, that, in order to respond to the criticisms of the Court of Auditors as regards the insufficiency of the inspections which the certification bodies were required to carry out, that note makes a proposal for the strengthening of the certification system.

97 Accordingly, in the light of the lack of precision in the summary report in relation to the 2008 claim year (see paragraph 95 above), it is impossible for the Court to verify whether Romania opted for the increased guarantee system in respect of that claim year.

98 With regard to the 2009 claim year, at issue in the present case, it must be noted that the summary report relating to both the 2009 and 2010 claim years refers to the provision of an increased guarantee by the Romanian authorities only in respect of the 2010 claim year and not in respect of the 2009 claim year. Accordingly it is appropriate to record that, independent of whether the guidelines defined in the note of 19 January 2010 were already applicable, Romania had not, in any event, opted for the increased guarantee system, provided for in that note, in respect of the 2009 claim year.

99 In that context, with regard to the 2009 claim year, the mere mention by the Commission, during the administrative procedure and in the summary report (see paragraph 84 above), of a very probable error rate of 0.9% (under the materiality threshold of 2%), with an upper error limit of 2.7%, does not make it possible, in the context of the ongoing change to its practice made by the guidelines defined in the note of 19 January 2010 (see paragraph 53 above), to determine the requirements as regards certification or any guidelines specifying those requirements, on which the Commission relied in the contested decision to call into question the reliability of the data provided by the Romanian authorities. What is more, the effect of the maximum error rate of 2.7% on the reliability of the inspection statistics is not clear from the contested decision, since the certification body had, moreover, issued in its report an 'unqualified opinion as regards the EAGF population covered by the GIS' and had considered that the 'most probable' error rate was 0.9%.

100 In its report, the conciliation body had already expressed incomprehension as to why the level of the correction for the 2009 claim year could not be more precisely determined by applying a calculation method similar to that accepted by the Commission in respect of the 2008 claim year (see paragraph 13 above).

101 It is therefore clear that the reasoning of the contested decision in no way makes it possible to understand which certification system, according to the Commission, was to be imposed by the Member States concerned on the certification bodies, in respect of the 2009 claim year, in order for them to accept that the error rates of the inspection statistics drawn up by their paying bodies were sufficiently reliable and able to form the basis of the calculation of the financial corrections.

102 It is appropriate to add that the criteria applied by the Commission in certification system matters, to ensure the reliability of the inspection statistics in respect of the 2009 claim year, appear all the more incomprehensible since the new certification system, provided for in the note of 19 January 2010, entailed, as the Commission itself points out in that note, a significant extension to the role and tasks of the certification bodies. Having regard to the extent of the adjustments necessitated by the implementation of that new system, a clear and express explanation of the Commission's refusal to apply the method of calculation by extrapolation proposed by the Romanian authorities, in respect of the 2009 claim year, was all the more essential (see paragraph 48 above).

103 In those circumstances, the reasoning of the contested decision, as follows from the summary report and the exchanges between the Commission and the Romanian authorities during the administrative procedure, evidenced by the documents in the file, makes it impossible to understand whether, as from the 2009 claim year, the Commission increased its requirements for certification in comparison with its earlier practice and, in particular, whether it departed from the practice followed in respect of the 2008 claim year.

104 Accordingly, such reasoning does not enable Romania to know what justified the Commission's refusal to apply the method of calculation by extrapolation proposed and to assess whether that refusal is potentially vitiated by a defect enabling its lawfulness to be disputed before the EU Courts, nor does it enable the Court to exercise its powers of review, in accordance with the case-law cited in paragraphs 42 and 43 above.

105 It follows therefore that the complaint alleging a failure to state reasons must be upheld, inasmuch as the Commission rejected, in the contested decision, the application of the method of calculation by extrapolation proposed in respect of the 2009 claim year.

The 2010 claim year

106 With regard to the 2010 claim year, the official communication of 21 August 2013 and the summary report expressly state that the Commission took as its basis the increased guarantee system. Those documents show that the Romanian authorities submitted the increased guarantee provided by the certification body.

107 In those circumstances, it must be found that the Commission stated adequate reasons for its refusal to apply the system of calculation by extrapolation proposed by the Romanian authorities, by putting forward the following two reasons in the summary report. Firstly, the Commission noted that the certification body had highlighted the probable existence of an error rate of 1.9975% but with an upper error limit of 4.24%. Secondly, it put forward the fact that, in its audit report on the validation by the Romanian certification body of the inspection statistics for the EAGF expenditure covered by the GIS (increased guarantee procedure) as regards the 2011 financial year, corresponding to the 2010 claim year, the Court of Auditors had concluded that the inspection carried out by that body was not reliable, on the ground that it did not comply with the Commission guidelines and that it had failed to detect some irregularities.

108 Accordingly, the complaint alleging insufficient reasoning for the contested decision, in so far as it rejects the application of the method of calculation by extrapolation for the 2010 claim year must be rejected.

The reasoning of the imposition of a flat rate of 10% in respect of the 2009 claim year and a flat rate of 5% in respect of the 2010 claim year

109 It is appropriate to examine, independently of the merits of applying a flat-rate correction itself for both claim years under consideration, whether sufficient reasons are given for the choice of a flat rate of 10% in respect of the 2009 claim year and a flat rate of 5% in respect of the 2010 claim year.

The reasoning of the choice of a flat rate of 10% in respect of the 2009 claim year

110 Firstly, the grounds for the choice of a flat-rate correction of 10% for the 2009 claim year are not clear from the summary report, which merely states, in essence, that, because of weaknesses in the functioning of the ISAP-GIS and the administrative cross-checks, which constitute a failure to perform a key check and show the inefficiency of the inspection system, carrying with them a risk of greater loss to the funds, the imposition of a rate of 10% is justified as regards the EAGF and the EAFRD.

111 In that regard, it must be borne in mind that Document VI/5330/97 provides for the application of a rate of 10% in particular where one or several key checks are carried out so badly or so infrequently that they are ineffective in determining the eligibility of an application for aid. However, that document provides for the application of a rate of only 5% where all the key checks are carried out, but without compliance as to the number, frequency or strictness required under the legislation.

112 Neither in the summary report nor in its correspondence with the Romanian authorities has the Commission set out the reasons for its view that the functional problems of the ISAP-GIS (deficiencies A and B) and the failures in the administrative cross-checks (deficiencies C, D and E) may be associated with the inefficiency of one or several key checks. A detailed statement of reasons was all the more necessary since, following the inception of the Romanian ISAP-GIS after the accession of Romania, the implementation of an action plan was ongoing (see paragraph 7 above).

113 Secondly, the Commission's argument concerning the grounds for the application of a rate of 10% is incoherent. In the defence, the Commission submits that each of the deficiencies labelled A to E is capable alone of justifying such a rate, since the question is one of a failure to carry out a key check.

114 Nonetheless, in the rejoinder, the Commission explains the application of the rate of 10% by the 'aggregation of the functional problems of the ISAP-GIS and the failures in the administrative cross-checks', that is to say by the aggregation of deficiencies A to E. While highlighting the importance of the ISAP-GIS, the Commission states, in effect, that the functional problems of the ISAP-GIS are not the only factor which led to the application of a rate of 10%. It recalls in that regard that, in accordance with the case-law, 'the identification of agricultural parcels is a key factor in the correct application of a system linked to surface area', that 'the lack of a reliable agricultural parcel identification system in itself implies a greater risk of loss for the EU budget' and that 'the failure to complete the ISAP-GIS alone thus justifies the application of a flat-rate correction of 5%' (judgment of 16 June 2015, *Portugal* v *Commission*, T-3/11, not published, EU:T:2015:388, paragraph 43). The Commission thus specifies that shortcoming A cannot alone justify the application of a flat rate of 10%. The Commission thus took as its basis, to impose a rate of 10%, the combination of deficiencies A to E, which imply an inefficiency of the inspection system justifying the imposition of such a rate, in accordance with Document VI/5330/97 (see paragraph 111 above).

115 That explanation, provided in the rejoinder and confirmed by the Commission at the hearing in reply to a question from the Court, is not clear from the summary report and is in contradiction with the line of argument advanced by the Commission in the defence (see paragraph 113 above).

116 For all those reasons, it must be found that insufficient reasons are stated in the contested decision, in so far as it defines a correction rate of 10% for the 2009 claim year.

The reasoning of the choice of a flat rate of 5% for the 2010 claim year

117 In the summary report, the Commission explains the application of the flat rate of 5% for the 2010 claim year by 'the weaknesses in the functioning of the ISAP-GIS and the administrative cross-checks, which constitute a failure to carry out a key check and show the inefficiency of the inspection system, carrying a greater risk of loss to the funds'. The Commission states that, 'having regard to the improvements made by the Romanian authorities in 2010, [relating] in particular [to] the updating of the images and the improvement in the administrative cross-checks (new software to avoid double or incorrect payments), a correction of 5% is justified'.

118 However, in the examination of the various deficiencies found, the summary report mentions, in respect of the 2010 claim year, only deficiencies A and B, concerning weaknesses in the ISAP-GIS and not deficiencies C, D and E, concerning the administrative cross-checks. The same is true of the defence.

119 At the hearing, the Commission stated, in answer to a question from the Court, that, to impose the rate of 5%, it took as its basis deficiencies A and B, arising from the lack of precision of the ISAP-GIS and the inaccuracy of the information provided to farmers. However, it added that shortcoming A alone justified the application of a rate of 5%.

120 The incoherence of the summary report, which, although it refers solely to the weaknesses in the ISAP-GIS (deficiencies A and B) with regard to the deficiencies found in respect of the 2010 claim year (see paragraph 118 above), also raises the failures in the administrative cross-checks (deficiencies C, D and E) to justify application of the rate of 5% (see paragraph 117 above), could not fail to give rise to serious doubts as to whether the choice of that rate was based on the aggregation of the abovementioned two types of deficiencies or whether it was based solely on the weaknesses in the ISAP-GIS.

121 Furthermore, having regard to its lack of precision and its ambiguity, the summary report makes it impossible to understand that, according to the Commission, shortcoming A, concerning the lack of precision of the ISAP-GIS, sufficed alone to justify the choice of the rate of 5%, as that institution explained at the hearing (see paragraph 119 above).

122 Accordingly, it must be found that the contested decision is vitiated by a failure to state reasons, in so far as it defines a rate of correction of 5% in respect of the 2010 claim year.

Conclusion regarding the examination of the second plea in law

123 It follows from all the foregoing considerations that the second plea in law is well founded, in respect of the 2009 and 2010 claim years, as regards the rejection, in the contested decision, of the individual assessment, proposed by the Romanian authorities, of the financial impact of the deficiencies (see paragraph 80 above).

124 In any event, that plea is also well founded, in respect of the entire 2009 claim year, as regards the Commission's refusal to apply the method of calculation by extrapolation (see paragraph 105 above).

125 Similarly, the second plea in law must be upheld as regards the choice of a flat rate of 10% in respect of the 2009 claim year (see paragraph 116 above) and a rate of 5% in respect of the 2010 claim year (see paragraph 122 above).

126 In consequence, with regard to the 2009 claim year, the contested decision must be annulled in its entirety, in so far as it concerns Romania, because of a failure to state adequate reasons, without it being necessary to examine the first and third pleas in law in connection with that claim year.

127 As regards the 2010 claim year, the contested decision must also be annulled because of a failure to state adequate reasons, in so far as it imposes a flat-rate correction without having provided adequate reasoning for the rejection of the method of calculation based on an individual assessment of the deficiencies found, proposed by the Romanian authorities (see paragraph 123 above).

128 In effect, it follows from Article 52(2) of Regulation No 1306/2013, which, in essence, confirms the guidelines defined in Document VI/5330/97, that the Commission is entitled to apply flat-rate corrections only 'where, due to the nature of the case or because the Member State has not provided the Commission with the necessary information, it is not possible with proportionate effort to identify more precisely the financial damage caused to the Union'.

129 Accordingly, in the present case, since it remains open to Romania to propose an individual assessment of the financial impact of the deficiencies found, the Commission was not entitled to apply a flat-rate correction without having properly stated reasons for and justified the rejection of the assessment proposed, where that does not entail disproportionate efforts, which the Commission does not allege (see paragraphs 55 and 56 above).

130 It follows that, in so far as it concerns Romania, the contested decision must be annulled in its entirety because of a failure to state adequate reasons in so far as it applies flat-rate corrections in respect of the 2009 and 2010 claim years, without it being necessary to examine the other pleas in law.

Costs

131 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.

132 Since the Commission has been unsuccessful in all of its pleas in law and Romania has applied for costs, the Commission must be ordered to pay all the costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Annuls Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it concerns Romania;**

2. **Orders the European Commission to bear its own costs and to pay the costs incurred by Romania.**

Van der Woude Kancheva Ulloa Rubio

Delivered in open court in Luxembourg on 16 February 2017.

[Signatures]

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