Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

4 September 2015*

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Single payment scheme — Key controls — Ancillary controls)

In Case T-503/12,

United Kingdom of Great Britain and Northern Ireland, represented initially by C. Murrell, and subsequently by E. Jenkinson and M. Holt, and finally by M. Holt, acting as Agents, and by D. Wyatt QC, and V. Wakefield, Barrister,

applicant,

v

European Commission, represented by N. Donnelly, P. Rossi and K. Skelly, acting as Agents,

defendant,

ACTION for annulment of Commission Implementing Decision 2012/500/EU of 6 September 2012 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 2012 L 244, p. 11), as regards four entries in the Annex to the decision relating to a 5% flat-rate correction applied to expenditure incurred in Northern Ireland (United Kingdom) in the financial years 2008, amounting to EUR 277 231.60 and EUR 13 671 588.90, and 2009, amounting to EUR 270 398.26 and EUR 15 844 193.29,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro (Rapporteur), President, S. Gervasoni and L. Madise, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written part of the procedure and further to the hearing on 2 December 2014,

gives the following

* Language of the case: English.

Judgment

Legal context

Regulation (EC) No 1290/2005

1 The basic rules relating to the financing of the common agricultural policy are constituted, in respect of expenditure incurred by the Member States from 16 October 2006 and in respect of expenditure incurred by the Commission of the European Communities from 1 January 2007, by Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

2 Pursuant to Article 3(1)(c) of Regulation No 1290/2005, the European Agricultural Guarantee Fund (EAGF) is to finance, in a context of shared management between the Member States and the European Union, direct payments to farmers under the common agricultural policy that are effected in accordance with EU law.

3 According to Article 4 of Regulation No 1290/2005, the European Agricultural Fund for Rural Development (EAFRD) is to finance, in a context of shared management between the Member States and the European Union, the European Union's financial contribution to rural development programmes implemented in accordance with the EU legislation on support for rural development by the EAFRD.

4 Article 31 of Regulation No 1290/2005, entitled 'Conformity clearance', states, in paragraphs 1 to 3:

'1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed [European Union] rules, it shall decide what amounts are to be excluded from [European Union] financing in accordance with the procedure referred to in Article 41(3).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature and gravity of the infringement and of the financial damage caused to the [European Union].

3. Before any decision to refuse financing is taken, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

If agreement is not reached, the Member State may request opening of a procedure aimed at reconciling each party's position within four months. A report of the outcome of the procedure shall be given to the Commission, which shall examine it before deciding on any refusal of financing.'

Regulation (EC) No 885/2006

5 Detailed rules on the conformity clearance procedure are set out in Article 11 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). Furthermore, Article 16 of that regulation lays down detailed rules on the conciliation procedure.

Regulation (EC) No 1782/2003

6 In the context of the reform of the common agricultural policy, the Council adopted Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1). That regulation set up, inter alia, an income support scheme for farmers, decoupled from production. This scheme, referred to in the second indent of Article 1 of the regulation as the 'single payment scheme', combines a number of direct payments made to farmers under various support schemes in existence until then.

7 The single payment scheme forms the subject-matter of Title III of Regulation No 1782/2003, which covers, in five chapters, Articles 33 to 71m.

8 Chapter 1 of Title III of Regulation No 1782/2003, concerning 'General provisions', includes, in particular, Article 36 entitled 'Payment'. Article 36(1) provides:

'Aid under the single payment scheme shall be paid in respect of payment entitlements as defined in Chapter 3, accompanied by an equal number of eligible hectares as defined in Article 44(2).'

9 Chapter 2 of Title III of Regulation No 1782/2003 lays down the rules on the establishment of the reference amount. In accordance with Article 37(1) of the regulation, that amount is calculated as follows:

'The reference amount shall be the three-year average of the total amounts of payments, which a farmer was granted under the support schemes referred to in Annex VI, calculated and adjusted according to Annex VII, in each calendar year of the reference period referred to in Article 38.'

10 The reference period is defined in Article 38 of Regulation No 1782/2003 as comprising the calendar years 2000, 2001 and 2002.

11 Chapter 3 of Title III of Regulation No 1782/2003 concerns payment entitlements. In this respect, Article 43 of the regulation, entitled 'Determination of the payment entitlements', provides, in particular:

'1. […A] farmer shall receive a payment entitlement per hectare which is calculated by dividing the reference amount by the three-year average number of all hectares which in the reference period gave right to direct payments listed in Annex VI.

The total number of payment entitlements shall be equal to the abovementioned average number of hectares.

…'

12 As regards the '[u]se of payment entitlements', Article 44(1) of Regulation No 1782/2003 states the following:

'Any payment entitlement accompanied by an eligible hectare shall give right to the payment of the amount fixed by the payment entitlement.'

13 Article 44(2) of Regulation No 1782/2003 defines 'eligible hectare', as it applied before 1 January 2009, as 'any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non agricultural activities'. As it applied after 1 January 2009, this term is defined as 'any agricultural area of the holding except areas under forests or used for non agricultural activities'.

14 Section 1 of Chapter 5 of Title III of Regulation No 1782/2003 allowed Member States, inter alia, to opt for the regional application of the single payment scheme. In this respect, Article 58 of the regulation provides:

'1. A Member State may decide, by 1 August 2004 at the latest, to apply the single payment scheme provided for in Chapters 1 to 4 at regional level under the conditions laid down in this Section.

2. Member States shall define the regions according to objective criteria.

Member States with less than three million eligible hectares may be considered as one single region.

3. The Member State shall subdivide the ceiling referred to in Article 41 between the regions according to objective criteria.'

15 Article 59 of Regulation No 1782/2003 lays down the rules on the regionalisation of the single payment scheme, as follows:

'1. In duly justified cases and according to objective criteria the Member State may divide the total amount of the regional ceiling established under Article 58 or part of it between all the farmers whose holdings are located in the region concerned, including those who do not meet the eligibility criterion referred to in Article 33.

2. In this case of division of the total amount of the regional ceiling, farmers shall receive entitlements, whose unit value is calculated by dividing the regional ceiling established under Article 58 by the number of eligible hectares, within the meaning of Article 44(2), established at regional level.

3. In case of partial division of the total amount of the regional ceiling, farmers shall receive entitlements whose unit value is calculated by dividing the corresponding part of the regional ceiling established under Article 58 by the number of eligible hectares, within the meaning of Article 44(2), established at regional level.

In case the farmer is also entitled to receive entitlements calculated on the remaining part of the regional ceiling, the regional unit value of each of his entitlements, except for set-aside entitlements, shall be increased by an amount corresponding to the reference amount divided by the number [of] his entitlements established in accordance with paragraph 4.

Articles 48 and 49 shall apply mutatis mutandis.

4. The number of entitlements per farmer shall be equal to the number of hectares he declares in accordance with Article 44(2) [for] the first year of application of the single payment scheme, except in case of force majeure or exceptional circumstances within the meaning of Article 40(4).'

16 Regulation No 1782/2003 was repealed and replaced by 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 No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 (OJ 2009 L 30, p. 16), with effect from 1 January 2009.

Regulation (EC) No 796/2004

17 Article 50 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 Regulation No 1782/2003 (OJ 2004 L 141, p. 18), entitled 'Basis of calculation in respect of areas declared', lays down rules on the calculation of the aid.

18 Article 51 of Regulation No 796/2004 sets out the reductions and exclusions in cases of over-declaration of area by farmers.

19 Article 73 of Regulation No 796/2004 lays down rules on the recovery of undue payments.

20 Article 73a of Regulation No 796/2004 concerns the recovery of entitlements unduly allocated to farmers.

21 Regulation No 796/2004 was repealed and replaced by Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for in that regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65), with effect from 1 January 2010.

Document No VI/5330/97

22 The Commission's guidelines for the application of financial corrections were set out in Commission Document No VI/5330/97 of 23 December 1997, entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee' ('Document No VI/5330/97').

23 Annex 2 to Document No VI/5330/97, relating to the financial consequences within the framework of the clearance of the accounts of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) of deficiencies in controls carried out by the Member States, states, in the section entitled 'Introduction':

'When the Commission finds that a particular payment concerns a claim which fails to comply with Community rules, the financial consequences are clear: unless the irregular payment had already been detected by national control bodies and the appropriate remedial and recovery measures taken (see Annex 4), the Commission must refuse its financing by the Community budget. When consequences are drawn from the examination of expenditure comprising a large number of files, whenever possible, the refusal is calculated on the basis of an extrapolation of the results of an examination of a representative sample of files. The same extrapolation method should apply to all Member States, including confidence and materiality level, stratification of the population, sample size and evaluation of the errors within the sampling with regard to the total financial implications.

When a Member State fails to comply with the Community regulations concerning the verification of the eligibility of claims, then this very failure means that the payments infringe the Community rules applicable to the measure concerned, and the general requirement under Article 8 of Regulation [No] 729/70 requiring Member States to detect and prevent irregularities. It does not necessarily follow that all the claims paid were irregular, but it does mean that the risk of irregular payments being charged to the [EAGGF] is increased. Whilst in certain flagrant cases, the Commission might be entitled to refuse all the expenditure concerned if the controls required by a regulation are not effected, in a number of cases the amount refused would in all probability exceed the financial loss suffered by the Community. An assessment of the financial loss is therefore to be made when evaluating financial corrections.

…’

24 The section of Annex 2 to Document No VI/5330/97 entitled ‘Evaluation based on the risks of financial loss: flat-rate corrections’ states:

‘As the systems audit approach has become more widely applied, the Commission’s services have had recourse increasingly to an assessment of the risk which a system deficiency presents. When the actual level of irregular payments, and thus the amount of financial losses suffered by the Community cannot be determined, the Commission has applied, since the clearance of the 1990 financial year, flat-rate corrections of 2%, 5% or 10% of the expenditure declared, depending on the amplitude of the risk of loss. Higher rates of correction, up to 100%, may be decided in exceptional cases. The Commission’s prerogative to apply corrections of this nature has been confirmed by the Court of Justice when deciding on appeals against the annual clearance decisions (e.g. the judgment in Case C-50/94).

…’

25 The section of Annex 2 to Document No VI/5330/97 entitled ‘Guidelines for the application of flat-rate corrections’ states:

‘Flat-rate corrections may be envisaged when the information resulting from the enquiry does not permit the auditor to evaluate the loss by an extrapolation of determined losses, by statistical means, or by reference to other verifiable data, but does enable him to conclude that the Member State has failed to carry out adequate verification of the eligibility of claims paid.

… The probable loss to the Community funds must … be assessed by an evaluation of the risk to which they were exposed by the control deficiency, which may concern as much the nature, or quality, of the controls operated [as] the quantity of controls effected. The underlying principle, which has been made explicit by the new Article 5(2)(c) [of Regulation No 729/90], is that the rate of correction must be clearly related to the probable loss.

…

When controls are effected, but imperfectly, the seriousness of the deficiency must be evaluated. … The fact that the way in which a control procedure operates is perfectible is, however, not in itself sufficient grounds for a financial correction. There must be a serious deficiency in the compliance with explicit Community rules, and the deficiency must open the [EAGGF] to a real risk of loss or irregularity. A Member State’s failure to perfect controls becomes more serious if the Commission has already notified it of the improvements it considers essential to protect Community funds against fraud and irregularity.

When one or more key controls are not applied or applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity then a correction of 10% is justified as it can reasonably be concluded that there was a high risk of wide-spread loss to the [EAGGF].

When all key controls are applied, but not in the number, frequency or the depth required by the regulation, then a correction of 5% is justified, as it can be reasonably … concluded [that] they do not provide sufficient level of assurance of the regularity of claims, and that the risk to the [EAGGF] was significant.

When a Member State has adequately performed the key controls, but completely failed to operate one or more of the ancillary controls, then a correction of 2% is justified in view of the lower risk of loss to the [EAGGF], and in view of the lesser seriousness of the infringement.

A correction of 2% is also justified when a Member State has failed to take measures to improve the application of ancillary controls, or measures which are derived from Community regulations, and the Commission has notified the Member State concerned, in particular under Article 8 of Regulation [No] 1663/95, that it is required to take them in order to attain the result sought by the regulations, or to attain a reasonable level of protection against fraud and irregularity or to ensure proper control over Community funds.

…

The rate of correction should be applied to that part of the expenditure placed at risk. When the deficiency results from a failure by the Member State to adopt an appropriate control system then the correction should be applied to the entire expenditure for which that control system was required. When there is reason to suppose that the deficiency is limited to that of a department or region's application of the control system adopted by the Member State, the correction should be limited to the expenditure controlled by that department or region. …

…

When several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole. …'

26 The Commission also states, in the section of Annex 2 to Document No VI/5330/97 entitled 'Further consideration of the real financial losses', that:

'The Member State always has the opportunity to demonstrate, through additional verifications or through additional information, that the deficiency was not as serious as it appeared, or that the real risk of loss was lower than the amount of the proposed correction. These arguments must be carefully considered and replied to before drawing financial conclusions on the rate of correction to be applied. If objective elements presented by the Member State demonstrate that the maximum likely loss is limited to a sum lower than the correction proposed, the lower sum should be retained.'

Background to the dispute

27 Between 30 June and 4 July 2008, the Commission's services conducted an enquiry in the United Kingdom concerning the correct application of the rules on financing expenditure incurred, within the context of the single payment scheme, in Northern Ireland (United Kingdom) in 2008 and 2009, relating to claim years 2007 and 2008 (enquiry AA/2008/18).

28 By letter of 12 August 2008 ('the first communication of 12 August 2008'), sent pursuant to Article 11(1) of Regulation No 885/2006, the Commission notified the United Kingdom of Great Britain and Northern Ireland authorities of the outcome of that enquiry. An annex entitled 'Observations and requests for information', which contained the enquiry's findings, was attached to that letter.

29 It is apparent from the first communication of 12 August 2008, inter alia, that the Commission took the view that the United Kingdom authorities had not fully complied with the requirements of EU legislation and that corrective measures were necessary to ensure future compliance with those requirements. The Commission asked to be informed of the corrective measures already taken and those envisaged, as well as the scheduled timetable for their implementation. The Commission also stated that it could exclude from European Union funding all or part of the expenditure financed by the EAGF and EAFRD (taken together, 'the Funds'), in accordance with Article 31 of Regulation

No 1290/2005. Furthermore, it pointed out that the shortcomings identified would form the basis for the calculation of the financial corrections in respect of expenditure incurred until suitable corrective measures were implemented.

30 In the observations and recommendations set out in the Annex to the first communication of 12 August 2008, the Commission, inter alia, pointed out, first, weaknesses in the Land Parcel Identification System (LPIS) and the Geographic Information System (GIS) (taken together, 'the LPIS-GIS'), in that the information contained therein was not sufficiently accurate to ensure that the administrative and on-the-spot checks to monitor the eligibility of the areas declared were conclusive; secondly, weaknesses in the on-the-spot checks; and lastly, weaknesses in the application of penalties, in the retroactive correction of ineligible applications, in the recovery of undue payments and in the application of reductions for intentional non-compliance. It is also apparent from that annex that those weaknesses had already been identified during a previous enquiry (enquiry AA/2006/07) and had resulted in financial corrections in accordance with Commission Decision 2010/399/EU of 15 July 2010 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF, under the EAGF and under the EAFRD (OJ 2010 L 184, p. 6).

31 By letter of 22 December 2008, the Commission invited the United Kingdom authorities to submit their observations on the matters in dispute for the purpose of a bilateral meeting to take place on 4 February 2009.

32 The bilateral meeting between the Commission's services and the United Kingdom authorities was held in Brussels (Belgium) on 4 February 2009. The minutes of that meeting were sent to the United Kingdom authorities on 23 February 2009.

33 The minutes of the bilateral meeting of 4 February 2009 show that, following that meeting, the Commission essentially maintained its conclusions as set out in the first communication of 12 August 2008. Thus, it confirmed its conclusions that there were weaknesses in relation to, among others, the information contained in the LPIS-GIS, the on-the-spot checks, the application of penalties, the retroactive correction of ineligible applications, the recovery of undue payments and the application of reductions for intentional non-compliance. The Commission also stated that those weaknesses affected key controls and ancillary controls as provided for in Document No VI/5330/97 and drew the United Kingdom authorities' attention to the fact that they had the opportunity to demonstrate that the financial risk was lower than the flat-rate corrections which could be applied under that document.

34 By letter of 30 April 2009 and by emails of 28 May and 20 November 2009, the United Kingdom authorities submitted their observations on the minutes and provided additional information to the Commission.

35 By letter of 4 January 2010, the Commission sent the United Kingdom authorities a formal communication under Article 11(2) of Regulation No 885/2006, in which it maintained its position as regards the abovementioned weaknesses affecting expenditure incurred in 2008 and 2009 relating to claim years 2007 and 2008. As regards the financial consequences, the Commission — after rejecting the calculation of the financial risk suggested by the United Kingdom authorities — proposed flat-rate corrections, pursuant to Document No VI/5330/97. In particular, it noted that, first, the weaknesses identified in relation to the LPIS-GIS affected the functioning of a key control as provided for in that document, justifying a flat-rate correction of 5% applied to expenditure incurred in 2008 and 2009; secondly, since the weaknesses in the on-the-spot checks also affected the functioning of a key control, a flat-rate correction of 5% was again justified; and third, since the weaknesses identified in relation to the application of penalties, the recovery of undue payments and intentional non-compliance amounted to a deficiency in an ancillary control, as provided for in Document No VI/5330/97, a flat-rate correction of 2% was justified, it being specified that the second and third corrections were deemed to be absorbed by the first correction.

36 The Commission therefore proposed excluding the following amounts from European Union financing: EUR 17 587 901.48 for expenditure incurred in 2008 and EUR 16 936 447.44 for expenditure incurred in 2009.

37 By letter of 18 February 2010, the United Kingdom authorities filed a request for conciliation with the Conciliation Body under Article 16 of Regulation No 885/2006 and challenged the flat-rate correction of 5% proposed by the Commission.

38 On 22 June 2010, the Conciliation Body delivered its final report. In that report, the Conciliation Body found that it had not been able to reconcile the respective views of the Commission and the United Kingdom authorities.

39 By letter of 27 October 2011, the Commission sent the United Kingdom authorities its final conclusions ('the final position'). It is apparent from that letter that the Commission essentially maintained its position — as summarised in paragraphs 35 and 36 above — as regards the weaknesses identified and the financial corrections envisaged.

40 On 1 June 2012, the Commission sent the United Kingdom a summary report on the results of enquiry AA/2008/18.

41 Those are the circumstances in which, on 6 September 2012, the Commission adopted Implementing Decision 2012/500/EU on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF, under the EAGF and under the EAFRD (OJ 2012 L 244, p. 11, 'the contested decision'), including the expenditure incurred by the United Kingdom in Northern Ireland in 2008 and 2009 which is at issue in this case.

Procedure and forms of order sought by the parties

42 By application lodged at the Court Registry on 16 November 2012, the United Kingdom brought the present action.

43 By letter lodged at the Court Registry on 19 July 2013, the United Kingdom applied for the joinder of this case with Case T-245/13 *United Kingdom* v *Commission*, for the purposes of the oral part of the procedure and the judgment. The Commission submitted observations on that application by letter lodged with the Court Registry on 29 July 2013.

44 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Second Chamber, to which the present case was accordingly allocated.

45 On a proposal from the Judge-Rapporteur, the General Court (Second Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure of 2 May 1991, requested the Commission to lodge a document and put to it a question in writing. The Commission complied with those requests within the prescribed period.

46 At the hearing on 2 December 2014, the parties presented oral argument and answered the questions put to them by the Court.

47 The United Kingdom claims that the Court should:

— annul the contested decision, as regards four entries in the Annex thereto, relating to a 5% flat-rate correction in expenditure incurred in Northern Ireland in the financial years 2008 (amounting to EUR 277 231.60 and EUR 13 671 588.90) and 2009 (amounting to EUR 270 398.26 and EUR 15 844 193.29);

— order the Commission to pay the costs.

48 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the United Kingdom to pay the costs.

Law

49 In support of its action for annulment, the United Kingdom relies on two pleas in law by which it essentially alleges, first, errors of law and fact regarding the determination of the scale of the actual loss to the Funds and, secondly, errors of law and fact affecting the Commission's finding regarding weaknesses in the ancillary controls.

First plea in law, alleging errors of law and fact regarding the determination of the scale of the actual loss to the Funds

50 In its first plea for annulment, the United Kingdom claims that, by applying a 5% flat-rate correction in respect of weaknesses in key controls to all expenditure incurred in 2008 and 2009 in Northern Ireland, the Commission committed errors of law and fact as regards the scale of the risk of loss to the Funds. In essence, the United Kingdom submits that, by applying that flat-rate correction only to the part of the expenditure that was at risk, the financial correction could not have exceeded 1.88%.

51 The Commission disputes the merits of the arguments put forward by the United Kingdom.

52 As a preliminary point, in the first place, it must be observed that only intervention undertaken in accordance with the EU rules in the framework of the common organisation of the agricultural markets is to be financed by the Funds (see, to that effect, judgments of 9 January 2003 in *Greece* v *Commission*, C-157/00, ECR, EU:C:2003:5, paragraph 15 and the case-law cited; 24 February 2005 in *Greece* v *Commission*, C-300/02, ECR, EU:C:2005:103, paragraph 32 and the case-law cited; and 4 September 2009 in *Austria* v *Commission*, T-368/05, EU:T:2009:305, paragraph 70).

53 In that regard, according to the case-law, although it is for the Commission to prove that EU rules have been infringed, once it has established such an infringement it is for the Member State to demonstrate, if that be the case, that the Commission made an error as to the financial consequences to be attached to that infringement (see, to that effect, judgments of 24 April 2008 in *Belgium* v *Commission*, C-418/06 P, ECR, EU:C:2008:247, paragraph 135, and in *Austria* v *Commission*, cited in paragraph 52 above, EU:T:2009:305, paragraph 181).

54 The management of the financing of the Funds is principally in the hands of the national administrative authorities responsible for ensuring that the EU rules are strictly observed and is based on trust between national and European Union authorities. Only the Member State is in a position to know and determine precisely the information necessary for drawing up the accounts of the Funds, since the Commission is not close enough to obtain the information it needs from the economic

operators (see, to that effect, judgments of 7 October 2004 in *Spain* v *Commission*, C-153/01, ECR, EU:C:2004:589, paragraph 133 and the case-law cited, and in *Austria* v *Commission*, cited in paragraph 52 above, EU:T:2009:305, paragraph 182 and the case-law cited).

55 As regards the type of correction applied, it should be noted that, in the light of Document No VI/5330/97, a flat-rate correction may be considered by the Commission where it is not possible to determine precisely the losses suffered by the European Union (judgments of 18 September 2003 in *United Kingdom* v *Commission*, C-346/00, ECR, EU:C:2003:474, paragraph 53; in *Belgium* v *Commission*, cited in paragraph 53 above, EU:C:2008:247, paragraph 136; and in *Austria* v *Commission*, cited in paragraph 52 above, EU:T:2009:305, paragraph 183). In this respect, it is important to point out, and the United Kingdom does not dispute, that, whilst Document No VI/5330/97 was issued by the Commission in the context of the EAGGF and, as its title indicates, contains guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of the EAGGF Guarantee Section, there is nothing to prevent the Commission from applying that document also when exercising the powers which Article 31(1) of Regulation No 1290/2005 confers on it for the purpose of the clearance of the accounts of the Funds (see, to that effect, judgment of 17 May 2013 in *Bulgaria* v *Commission*, T-335/11, EU:T:2013:262, paragraph 86).

56 In that regard, it should also be noted, in the light of Document No VI/5330/97, that, when all key controls are applied, but not, inter alia, in the depth required by the regulation, a flat-rate correction of 5% is justified (judgment of 24 February 2005 in *Netherlands* v *Commission*, C-318/02, EU:C:2005:104, paragraph 38), as it can be reasonably concluded that they do not provide the appropriate level of regularity of claims, and that the risk of loss to the Funds is significant (judgment of 12 July 2011 in *Slovenia* v *Commission*, T-197/09, EU:T:2011:348, paragraph 81).

57 It is also apparent from Document No VI/5330/97 that the rate of correction should be applied to the part of the expenditure which constituted a risk. When the deficiency results from a failure by the Member State to adopt an appropriate control system, then the correction should, by very reason of its flat-rate nature, be applied to the entire expenditure under the measure concerned (see, to that effect, judgments of 28 March 2007 in *Spain* v *Commission*, T-220/04, EU:T:2007:97, paragraph 106, and in *Slovenia* v *Commission*, cited in paragraph 56 above, EU:T:2011:348, paragraph 82). According to that document, when there is reason to suppose that the deficiency is limited to that of a department's or region's application of the control system adopted by the Member State, the correction should be limited to the expenditure under that department or region.

58 In the second place, it is important, having regard to the arguments raised by the United Kingdom, to clarify the method of allocation of payment entitlements applied, in 2005, by the United Kingdom for the purpose of the application of the single payment scheme established by Regulation No 1782/2003.

59 In that regard, it is apparent from the documents before the Court that the United Kingdom opted for a regional application of the single payment scheme, in accordance with the provisions of Chapter 5 of Title III of Regulation No 1782/2003.

60 The payment entitlements were established, in Northern Ireland, on the basis of the 'static hybrid' model. In that model, each payment entitlement comprises an 'historic' element ('the historic element') and an area-related 'flat-rate' element ('the flat-rate element'), with the sum of the value of those elements corresponding to the unit value of the payment entitlement. In order to establish the value of the historic element, a reference amount, established on the basis of the payments made to farmers during the reference period (2000 to 2002), is divided by the number of eligible hectares declared by the farmers, that number thereby constituting the number of payment entitlements allocated. It follows that, whereas the sum of the historic elements constitutes a fixed amount established on the basis of the payments made during the reference period, the unit value of each

historic element of those payment entitlements is dependent on the number of entitlements allocated in 2005 and, thus, on the number of eligible hectares declared in that year. Moreover, the flat-rate element is of a fixed value, in this case EUR 78.33.

61 The merits of the present plea should be examined, primarily, in the light of those considerations and clarifications.

62 In the present case, it is apparent in particular from the letter of 4 January 2010, the final position and the summary report that the Commission applied a 5% flat-rate correction to all expenditure incurred in respect of claim years 2007 and 2008 in Northern Ireland. It justified the application of that correction by weaknesses in a key control, namely the weaknesses identified in respect of the LPIS-GIS. Having rejected the calculation of the financial risk submitted by the United Kingdom, the Commission — taking the view that a flat-rate correction enabled a better assessment of that risk — adopted, pursuant to Document No VI/5330/97, a rate of correction of 5%. It applied that rate to all expenditure incurred in Northern Ireland.

63 In that regard, first, it should be observed that it is common ground that the United Kingdom does not dispute the existence of the weaknesses in the LPIS-GIS, identified by the Commission and which affected the checks of the eligibility of the areas declared in Northern Ireland, or the classification of the LPIS-GIS as a key control for the purpose of the definition contained in Document No VI/5330/97.

64 It should be recalled that, as is apparent from Document No VI/5330/97, as referred to in paragraph 56 above, when it is unable to determine the actual level of irregular payments, the Commission may, in the presence of a weakness in a key control, apply a flat-rate correction of 5%.

65 In addition, as is apparent from the United Kingdom's written pleadings and as the United Kingdom stated at the hearing in reply to a question put by the Court, that Member State in no way disputes, in the context of the present plea, the appropriateness of a flat-rate correction of 5% to the weaknesses in the LPIS-GIS. The present plea seeks to contest only the application of that flat-rate correction of 5% to all expenditure incurred in Northern Ireland in respect of the period at issue; a formal note of this was entered in the minutes of the hearing.

66 Secondly, it should be observed that, where, as is the case here (a point not challenged by the United Kingdom), the weaknesses in a key control affect the check of the area eligible for financial support, the Commission is justified in applying the flat-rate correction to all payments made and potentially affected by the weakness in that key control.

67 As the Commission rightly stated, it is apparent from Article 36(1) of Regulation No 1782/2003 that aid under the single payment scheme is to be paid in respect of payment entitlements accompanied by an equal number of eligible hectares. Likewise, in accordance with Article 44(1) of that regulation, any payment entitlement accompanied by an eligible hectare is to give a right to the payment of the amount fixed by the payment entitlement. Therefore, the amount of aid granted under the single payment scheme corresponds to the sum of the unit values of 'activated' payment entitlements, that is to say, payment entitlements accompanied by eligible hectares. It follows that an error regarding the determination of the eligible areas in any event affects the amount of aid. Consequently, an irregularity in the LPIS-GIS affecting the checks of the eligibility of the areas declared is capable of affecting, potentially, any payment made.

68 It follows that, in the present case, it is all of the payments made in 2008 and 2009 in Northern Ireland under the single payment scheme which constituted a risk to the Funds.

69 As was stated in paragraph 57 above, according to Document No VI/5330/97, the rate of correction must be applied to the part of the expenditure which constituted a risk, and that part corresponds in the present case, as is apparent from paragraph 68 above, to all expenditure incurred in 2008 and 2009 in Northern Ireland.

70 Moreover and in any event, Document No VI/5330/97 also stipulates that, when the deficiency results from a failure by the Member State to adopt an appropriate control system, the correction should be applied to the entire expenditure for which that control system was required (see paragraph 57 above), namely, in the present case, all expenditure incurred in 2008 and 2009 in Northern Ireland.

71 Therefore, the Court finds that the Commission was entitled to apply, in the contested decision, a flat-rate correction of 5% to all expenditure incurred in 2008 and 2009 in Northern Ireland.

72 In addition, the appropriateness, in the present case, of a flat-rate correction of 5% applied to all expenditure incurred in 2008 and 2009 in Northern Ireland is all the more evident in the light of the importance of the regular upkeep of the LPIS-GIS. The identification of agricultural parcels and the check of the eligibility of areas is a key element in the correct application of a system linked to land area. Weaknesses in the LPIS-GIS, such as, in the present case, the lack of precision of the information contained therein affecting the carrying out of administrative and on-the-spot checks to monitor the eligibility of the areas declared, of themselves entail a substantial risk of damage to the European Union budget (see, to that effect and by analogy, judgment in *Greece* v *Commission*, cited in paragraph 52 above, EU:C:2005:103, paragraph 97).

73 The conclusion drawn in paragraph 71 above is not called in question by the arguments of the United Kingdom. Those arguments can be grouped into three sets.

74 First, the United Kingdom asserts, in essence, that the flat-rate correction of 5% must be applied only to the proportion of expenditure incurred in the period concerned in Northern Ireland which is, according to that Member State, affected by irregularities, so that the maximum actual financial risk is 1.88%. In that regard, the United Kingdom maintains that 80% of the errors committed in respect of claim years 2007 and 2008 were the result of errors committed during the initial allocation and calculation of payment entitlements as regards eligible areas. The United Kingdom submits that, therefore, in essence, as regards 80% of the expenditure incurred in Northern Ireland in the period concerned, it is appropriate, because of the method for calculating those payment entitlements comprising an historic element and a flat-rate element, to take account of the fact that only the latter element and not the payment in its entirety is affected by the risk to the Funds. According to the United Kingdom, the flat-rate element represents only approximately 22% of all payments made in Northern Ireland.

75 Those arguments of the United Kingdom consist, in essence, in extrapolating, at the level of the payments made during the period concerned in Northern Ireland, considerations relating to the composition of the unit value of payment entitlements.

76 However, even if it were to be considered that only one of the two components — namely the flat-rate element — of the payment entitlement as established in the context of the static hybrid model is, as the United Kingdom maintains, affected by the errors regarding the determination of the eligible areas where those errors date from 2005, that consideration would not be such as to invalidate the finding made in paragraphs 67 and 68 above that each payment made is potentially affected by the weaknesses in the LPIS-GIS identified by the Commission.

77 As is apparent from paragraph 67 above, since the amount of aid comprises the sum of the unit values of activated payment entitlements, that is to say payment entitlements accompanied by eligible hectares, an error regarding the eligible area in any event affects the amount of aid.

78 In addition, as is apparent from paragraphs 56, 57 and 66 to 70 above, in the event of a failure affecting a key control, the Commission is authorised to apply a flat-rate correction of 5% to all expenditure subject to the control measure, and does not have to make, for the purpose of the application of such a flat-rate correction, a distinction on the basis of considerations relating to the composition of the unit value of payment entitlements.

79 Secondly, the United Kingdom observes, both in its written pleadings and at the hearing in reply to a question put by the Court, that the claim in the present plea, namely that the maximum actual risk is 1.88% of all relevant expenditure, is dependent on the application of the provisions of Articles 51, 73 and 73a of Regulation No 796/2004, as interpreted by it within the context of the second plea. The United Kingdom considers that, since the two pleas raised in support of the present action are closely linked, account should be taken, at the stage of the present plea, of the arguments submitted in respect of those provisions within the context of the second plea. According to that Member State, the actual risk is understood to comprise the sum of the undue payments and the applicable penalties in cases of over-declaration.

80 Without needing to examine, at this stage, the provisions of Articles 51, 73 and 73a of Regulation No 796/2004, the Court points out that the United Kingdom's arguments made, in the context of the second plea, in respect of those provisions relate to the method for calculating undue payments and the penalties for over-declaration applicable in the case of discovery of an error regarding the eligible area dating from the year 2005 and which was repeated thereafter. In essence, the United Kingdom seeks to establish that the calculation method recommended in that regard by the Commission is incorrect.

81 In the first place, in so far as, in the context of the arguments summarised in paragraph 79 above, the United Kingdom argues that the calculation method recommended by the Commission had a very significant effect on the probable maximum level of financial losses to the Funds, so that the Commission seriously over-estimated the level of losses, it should be observed that those arguments concern the ancillary controls which the Commission held to be insufficient during the administrative procedure. It follows that, as the Commission observed at the hearing, the weaknesses in the LPIS-GIS — a key control which gave rise to the 5% financial correction — are separate from those identified in respect of the ancillary controls and which are at issue in the second plea.

82 Moreover, it is common ground that, in respect of the weaknesses in the LPIS-GIS, the Commission did not in any way base the flat-rate correction of 5%, which stems directly from the guidelines set out in Document No VI/5330/97, on any assessment of the total amount of the undue payments and the applicable penalties in cases of over-declaration. In other words, the determination by the Commission of the flat-rate correction of 5% is unconnected with the dispute between the parties within the context of the second plea regarding the method for calculating undue payments and the penalties.

83 Therefore, even if the method for calculating undue payments and the penalties, as recommended by the Commission, were — as the United Kingdom argues within the context of the second plea — vitiated by errors, such errors would in any event have no effect on the flat-rate correction of 5% applied by the Commission by virtue of the weaknesses in the LPIS-GIS.

84 In the second place, if, by the arguments summarised in paragraph 79 above, the United Kingdom seeks to assert that the Commission ought to have carried out an assessment of the actual risk rather than applying a flat-rate correction on the ground that the actual risk to the Funds could be established at a rate not exceeding 1.88%, or the United Kingdom seeks to submit to the Court an assessment of the actual risk, the Court observes, without needing to rule on the question whether and in what circumstances a Member State may validly submit such a risk assessment at the judicial stage of the proceedings in order to contest the application and extent of a flat-rate correction, that those arguments cannot succeed.

85 In that regard, first, it is important to note that, during the administrative procedure, the Commission had no reliable analysis of the actual financial risk incurred by the Funds because of the weaknesses identified in Northern Ireland in respect of claim years 2007 and 2008, so that — as the Commission stated in its written pleadings — it was unable to assess the risk actually incurred by the Funds.

86 First of all, it is apparent from the documents before the Court and, in particular, from the formal communication that the Commission rejected a financial risk analysis submitted by the United Kingdom during the administrative procedure on the ground that that analysis was marred by weaknesses; the United Kingdom does not in any way dispute this.

87 Then, in the present procedure, the United Kingdom has not put forward any reliable financial risk analysis submitted during the administrative procedure.

88 Lastly, in so far as the United Kingdom makes reference to the report on the assessment of risk to the single payment scheme in Northern Ireland in respect of claim year 2009, which it submitted to the Commission and which the Commission accepted in the course of the administrative procedure which led to the adoption of Commission Implementing Decision 2013/123/EU of 26 February 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF, under the EAGF and under the EAFRD (OJ 2013 L 67, p. 20), it should be noted that the risk assessment contained in that report is based on a sample of applications submitted in respect of claim year 2009. It follows that, even if that report were to contain a definition of financial risk which the Commission would have accepted, that definition and the assessment of financial risk would be relevant only for claim year 2009. However, the assessment of financial risk in respect of the year 2009 cannot be considered to constitute an assessment of the financial risk incurred by the Funds in respect of claim years 2007 and 2008.

89 Secondly, it should be noted that, even when read together, the arguments raised by the United Kingdom in support of the first and second pleas are not such as to establish that the maximum actual risk incurred by the Funds could not exceed a rate of 1.88%.

90 That rate is established by the United Kingdom, in the context of the present plea, by applying the flat-rate correction adopted by the Commission to the part of the expenditure which the United Kingdom considers to be at risk. In other words, that rate of alleged maximum actual risk is founded on a flat rate applied to a basis of calculation that has been reduced on the basis of arguments which have already been rejected. However, being based on a flat rate, such a calculation cannot establish the actual risk.

91 Moreover, the United Kingdom claims that that rate of 1.88%, as calculated on the basis of a flat-rate correction in the context of the first plea, is dependent on the application, in line with its interpretation as put forward in the second plea, of the provisions of Articles 51, 73 and 73a of Regulation No 796/2004. However, the United Kingdom has in no way established that the rate of 1.88% in fact corresponded to the losses actually suffered by the Funds owing to the weaknesses identified by the Commission or even that the rate of 5% applied by the Commission in fact over-estimated the actual risk. Even if the United Kingdom may, at the judicial stage of the proceedings, submit an assessment of the actual risk, it must be held that that Member State has not provided any numerical analysis enabling the Court to verify that, pursuant to the method for calculating overpayments and the applicable penalties in cases of over-declaration recommended by the United Kingdom, the financial risk — defined by the United Kingdom as the sum of the undue payments and the applicable penalties — could not exceed a maximum rate of 1.88% of all the expenditure in question or would be lower than the rate of 5% adopted by the Commission.

92 Therefore, it must be held that, even if the United Kingdom's arguments relating to the provisions of Articles 51, 73 and 73a of Regulation No 796/2004 were well founded, those arguments are not such as to demonstrate, as required by the case-law cited in paragraph 53 above, that the Commission made an error as to the financial consequences to be attached to weaknesses in the LPIS-GIS.

93 It also follows that, even if the United Kingdom were justified in claiming that, in 80% of cases, only the flat-rate element of each payment entitlement was capable of creating a risk of loss to the Funds and that its method for calculating overpayments and the applicable penalties in cases of over-declaration is correct, the actual level of irregular expenditure could nevertheless not be determined with sufficient precision, so that the Commission was entitled to impose a flat-rate correction of 5% on all expenditure incurred and subject to the deficient control measure, in accordance with Document No VI/5330/97 (see, to that effect and by analogy, judgment of 25 July 2006 in *Belgium* v *Commission*, T-221/04, EU:T:2006:223, paragraphs 91 and 92).

94 Thirdly, the United Kingdom observed at the hearing that, in the present case, the Commission could have applied a flat-rate correction of 2%, given that the financial risk was lower.

95 In that regard, first, it should be recalled that it follows from Article 44(1)(c) in conjunction with Article 48(2) of the Rules of Procedure of 2 May 1991 that the original application must state the subject-matter of the proceedings and contain a summary of the pleas in law relied on, and that new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. However, a plea which may be regarded as amplifying a plea put forward previously, whether directly or by implication, in the originating application and which is closely connected therewith, must be declared admissible (order of 13 November 2001 in *Dürbeck* v *Commission*, C-430/00 P, ECR, EU:C:2001:607, paragraph 17, and judgment of 11 July 2013 in *Ziegler* v *Commission*, C-439/11 P, ECR, EU:C:2013:513, paragraph 46). The same applies to a submission made in support of a plea in law (judgments of 21 March 2002 in *Joynson* v *Commission*, T-231/99, ECR, EU:T:2002:84, paragraph 156, and 12 December 2012 in *Novácke chemické závody* v *Commission*, T-352/09, ECR, EU:T:2012:673, paragraph 168; see also, to that effect, order of 24 September 2009 in *Alcon* v *OHIM*, C-481/08 P, EU:C:2009:579, paragraph 17).

96 In the present case, the complaint raised for the first time at the hearing and alleging that the Commission could have applied a flat-rate correction of 2% cannot be linked to the arguments raised by the United Kingdom in its written pleadings. In the present plea, the United Kingdom starts, in its written pleadings and as it acknowledged at the hearing, from the premiss that a flat-rate correction of 5% is, in principle, appropriate in the event of a failure affecting a key control, provided however, according to that Member State, that that rate is applied to the part of the expenditure which caused a risk to the Funds (see paragraph 65 above). However, the complaint alleging that the Commission could have applied a flat-rate correction of 2% has the incidental effect of calling that premiss into question, so that that complaint cannot be regarded as amplifying the first plea raised by the United Kingdom.

97 Moreover, it must be observed that the United Kingdom has not submitted any new matter of law or of fact that justifies the belated submission of that complaint.

98 Consequently, the complaint alleging that the Commission could have applied a flat-rate correction of 2% for the weaknesses in the key controls must be dismissed as inadmissible.

99 Secondly and in any event, that complaint is also unfounded. In this respect, it is sufficient to recall that, in the light of Document No VI/5330/97, a flat-rate correction of 2% is justified when a Member State has adequately performed the key controls, but completely failed to operate one or more of the ancillary controls, in view of the lower risk of loss to the Funds and the lesser seriousness of the infringement (judgment in *Belgium* v *Commission*, cited in paragraph 93 above, EU:T:2006:223,

paragraph 82). Moreover, it is apparent from Document No VI/5330/97 that, in the presence of a weakness in a key control, the Commission may apply a flat-rate correction of 5% (see paragraphs 56 and 64 above), as it rightly did in the present case.

100 In the light of the foregoing, the first plea must be rejected.

Second plea in law, alleging errors of law and fact regarding weaknesses in the ancillary controls

101 By the second plea for annulment, alleging errors of law and fact as to the finding of weaknesses in the ancillary controls, the United Kingdom challenges the flat-rate correction of 2%. This plea is split into five complaints covering, first, the retrospective re-evaluation of the value of the payment entitlements; second, the taking into account of differences in areas affecting 'animal' premiums when recalculating the payment entitlements; third, the recovery of undue payments; fourth, reductions and exclusions in the event of over-declarations of areas; and fifth, intentional over-declarations.

102 As its principal argument, the Commission contends that this plea is ineffective and argues, in the alternative, that it is in any event unfounded.

103 At the outset, it is necessary to examine the effectiveness of the second plea.

104 It must be noted in this regard that it is apparent from Annex 2 to Document No VI/5330/97 that, when several deficiencies are found in the same system, the flat rates of correction are not cumulated, the most serious deficiency being taken as an indication of the risks presented by the control system as a whole (judgments of 15 December 2011 in *Luxembourg* v *Commission*, T-232/08, EU:T:2011:751, paragraph 72, and 16 September 2013 in *Poland* v *Commission*, T-486/09, EU:T:2013:465, paragraph 147).

105 In the present case, it is common ground that the Commission identified weaknesses in (i) the LPIS-GIS, (ii) the on-the-spot checks and (iii) the application of the rules on penalties, the recovery of undue payments and intentional non-compliance. The Commission stated that the first two weaknesses, in relation to key controls, called for financial corrections of 5%, whereas the last weakness, concerning ancillary controls, justified only a financial correction of 2%. However, pursuant to the rule that the flat rates of correction are not cumulated, the Commission applied a financial correction of 5% by virtue of the weaknesses in the LPIS-GIS, stating that the other weaknesses identified were covered by that correction.

106 It follows that, in the contested decision, the Commission did not specifically apply a financial correction by virtue of the weaknesses in relation to the application of penalties, the recovery of undue payments and intentional non-compliance.

107 Since, as is apparent from the analysis of the first plea, the United Kingdom has failed to establish that the application of a financial correction of 5% by virtue of the weaknesses in the LPIS-GIS was vitiated by errors, the second plea must be dismissed as ineffective (see, to that effect, judgments of 27 October 2005 in *Greece* v *Commission*, C-175/03, EU:C:2005:643, paragraph 65; in *Luxembourg* v *Commission*, cited in paragraph 104 above, EU:T:2011:751, paragraphs 75 and 76; and in *Poland* v *Commission*, cited in paragraph 104 above, EU:T:2013:465, paragraphs 146 and 157).

108 That conclusion is not called into question by the United Kingdom's arguments alleging that, in essence, the present plea seeks to contest not the flat-rate correction of 2% but the flat-rate correction of 5%, applied by virtue of the weaknesses in relation to the LPIS-GIS. According to that Member State, the correctness of the claim made in the first plea, namely that the maximum actual risk

incurred by the Funds is 1.88%, 'depends upon the application of the provisions on retrospective recalculation of payment entitlements, recovery of overpayments, and penalties', at issue in the first, third and fourth complaints raised in support of the present plea.

109 In that regard, not only does the United Kingdom, in its written pleadings, direct the present plea sometimes against the financial correction of 5% applied by the Commission and sometimes against the financial correction of 2%, which the Commission considered to be encompassed by the former, so that the subject-matter of the present plea is not completely unambiguous, but it is sufficient to note that it has already been observed in paragraphs 81 to 83 above that the flat-rate correction of 5% was adopted by the Commission for reasons unconnected with the method for calculating overpayments and the applicable penalties in cases of over-declaration, where appropriate after retrospective re-evaluation of the payment entitlements. It follows that the arguments concerning the latter method are ineffective for the purpose of contesting the flat-rate correction of 5%.

110 In any event, it is apparent from paragraphs 85 to 93 above that, even on the assumption that they are well founded, those arguments are not such as to establish that the maximum level of actual losses suffered by the Funds cannot exceed 1.88% of the expenditure incurred in 2008 and in 2009 under the single payment scheme in Northern Ireland.

111 It follows that the second plea must be rejected.

112 In the light of all the foregoing considerations, the action must be dismissed in its entirety.

Costs

113 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. Since the United Kingdom has been unsuccessful, it must be ordered to pay the costs, in accordance with form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the action;

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

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 4 September 2015.

[Signatures]