Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

12 May 2016*

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Cattle and sheep sectors — Flat-rate financial correction — One-off correction — Articles 48 and 69 of Regulation (EC) No 1782/2003 — Special entitlements — Obligation to state reasons)

In Case T-384/14,

Italian Republic, represented by G. Palmieri and B. Tidore, acting as Agents,

applicant,

v

European Commission, represented by P. Rossi and D. Bianchi, acting as Agents,

defendant,

ACTION for partial annulment of Commission Implementing Decision 2014/191/EU of 4 April 2014 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 2014 L 104, p. 43), in so far as it excludes certain expenditure incurred by the Italian Republic,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen, President, F. Dehousse and A.M. Collins (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 10 December 2015,

gives the following

* Language of the case: Italian.

Judgment [1] …

Procedure and forms of order sought

21 By application lodged at the Court Registry on 3 June 2014, the Italian Republic brought the present action.

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

23 The parties presented oral argument and replied to the Court's oral questions at the hearing on 10 December 2015.

24 The Italian Republic claims that the Court should:

— annul the contested decision in so far as it applies to it financial corrections of EUR 5026453.43 and EUR 1860259.60;

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the Italian Republic to pay the costs.

Law

26 The Italian Republic invokes against the contested decision pleas alleging, in essence, an infringement of the EU rules regarding the CAP, an infringement of essential procedural requirements on account of a failure to state reasons, and an infringement of several general principles of Union law, including the principles of proportionality, of legality and of legal certainty, in so far as the Commission applied financial corrections, first, in the context of the additional payments within the meaning of Article 69 of Regulation No 1782/2003 and, secondly, in the context of the determination of special entitlements within the meaning of Articles 47 and 48 of that regulation.

27 During the hearing, the Italian Republic declared that it was withdrawing the plea alleging an incorrect application of the flat-rate correction of EUR 3 477 225 in so far as it was based on a failure to comply with the criteria for accreditation as a paying agency. Therefore, the subject matter of the present proceedings is limited to the lawfulness of the Commission's application of Articles 47, 48 and 69 of Regulation No 1782/2003 to justify the financial corrections of EUR 1860259.60 and EUR 5026453.43 respectively.

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

Basic considerations

28 At the outset, it should be noted that the EAGGF and the Fund only finance expenditure incurred in accordance with EU law in the context of the common organisation of agricultural markets (judgments of 8 May 2003 in *Spain* v *Commission*, C-349/97, ECR, EU:C:2003:251, paragraph 45; 24 February 2005 in *Greece* v *Commission*, C-300/02, ECR, EU:C:2005:103, paragraph 32; and 12 September 2012 in *Greece* v *Commission*, T-356/08, EU:T:2012:418, paragraph 12).

29 In that regard, it is clear from the rules relating to the EAGGF and the Fund that the Member States are required to organise a series of administrative and on-the-spot checks to ensure that the substantive and formal conditions for granting aid are correctly observed. If no comprehensive system of checks exists or if the system introduced by a Member State is defective to the point of giving rise to doubts as to compliance with those conditions, the Commission is entitled to disallow certain expenditure incurred by the Member State in question (judgments of 12 June 1990 in *Germany* v *Commission*, C-8/88, ECR, EU:C:1990:241, paragraphs 20 and 21; 14 April 2005 in *Spain* v *Commission*, C-468/02, EU:C:2005:221, paragraph 36; and 30 September 2009 in *Portugal* v *Commission*, T-183/06, EU:T:2009:370, paragraph 31).

30 It is also apparent from the case-law that, even if the relevant rules on the granting of premiums do not expressly require Member States to introduce supervisory measures and inspection procedures, such as those mentioned by the Commission during the clearance of the accounts of the EAGGF and the Fund, nevertheless that obligation may follow, in some cases implicitly, from the fact that under the rules relating to the EAGGF and to the Fund, it is for the Member States to organise an effective system of inspection and supervision (judgments in *Spain* v *Commission*, cited in paragraph 29 above, EU:C:2005:221, paragraph 35; of 24 April 2008 in *Belgium* v *Commission*, C-418/06 P, ECR, EU:C:2008:247, paragraph 70; and of 4 September 2009 in *Austria* v *Commission*, T-368/05, EU:T:2009:305, paragraph 76).

31 As regards the rules on the burden of proof in the field of the clearance of accounts, in order to prove an infringement of the rules on the CAP, the Commission is not required to demonstrate exhaustively that the checks carried out by the national authorities are inadequate, or that the figures submitted by them are incorrect, but to adduce evidence of serious and reasonable doubt on its part regarding those checks or figures. The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of the accounts of the Fund (judgments of 11 January 2001 in *Greece* v *Commission*, C-247/98, ECR, EU:C:2001:4, paragraphs 7 to 9; of 1 July 2009 in *Spain* v *Commission*, T-259/05, EU:T:2009:232, paragraph 112, and *Greece* v *Commission*, cited in paragraph 28 above, EU:T:2012:418, paragraph 13).

32 The management of the financing of the Fund is principally in the hands of the national administrative authorities responsible for ensuring that the Union rules are strictly observed. That system, based on trust between national and Union authorities, does not involve any systematic supervision by the Commission, which, moreover, would in practice be quite unable to carry it out. Only the Member State is in a position to know and determine precisely the information necessary for drawing up the accounts of the Fund, since the Commission is not close enough to obtain the information it needs from the economic operators (judgments of 1 October 1998 in *Ireland* v *Commission*, C-238/96, ECR, EU:C:1998:451, paragraph 30; 7 July 2005 in *Greece* v *Commission*, C-5/03, ECR, EU:C:2005:426, paragraph 97; and 17 October 2012 in *Spain* v *Commission*, T-491/09, EU:T:2012:550, paragraph 25).

33 Consequently, it is for the Member State to adduce the most detailed and comprehensive evidence that its checks or data are accurate and, if appropriate, that the Commission's statements are incorrect (judgment in *Greece* v *Commission*, cited in paragraph 28 above, EU:T:2012:418, paragraph 13).

34 The Member State concerned, for its part, cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. If it is not able to show that the Commission's findings are inaccurate, the latter amount to evidence liable to give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures (judgments of 28 October 1999 in *Italy* v *Commission*, C-253/97, ECR, EU:C:1999:527, paragraph 7; *Spain* v *Commission*, cited in paragraph 28 above, EU:C:2003:251, paragraph 48; of 12 July 2011 in *Slovenia* v *Commission*, T-197/09, EU:T:2011:348, paragraph 40, and *Greece* v *Commission*, cited in paragraph 28 above, EU:T:2012:418, paragraph 35).

35 It is in the light of those considerations that it is necessary to examine the pleas put forward by the Italian Republic in support of the action in so far as it refers to the two categories of financial corrections applied in the contested decision.

…

The plea concerning the one-off correction relating to the determination and payment of special entitlements provided for in Articles 47 and 48 of Regulation No 1782/2003

80 The Italian Republic claims that it correctly applied Articles 43 and 48 of Regulation No 1782/2003 in all cases of transfer or succession of payment entitlements from one farmer to another, referred to in the contested decision. According to it, those rights to special payments were correctly calculated by keeping separate, on the one hand, the reference amount of livestock farming activities and, on the other hand, the entitlements to payments connected with hectarage. The system of redistribution of those entitlements is compatible with EU legislation since it complies with the requirement of traceability of payment entitlements.

81 The Commission contests the arguments of the Italian Republic.

82 First of all, it should be pointed out that, in paragraph 4.16 of the application, the Italian Republic states that the contested decision is unlawful 'as a result of an infringement of the general principles of proportionality, legality, legal certainty, legitimate expectations and the duty to state reasons'. It should be noted that, concerning the principles and duties allegedly infringed, the Italian Republic does not put forward any arguments, even in summary form. In particular, in so far as it invokes a failure to state full and adequate reasons for the contested decision without indicating which paragraphs were not properly reasoned and without specifying the elements of law and fact which would have required further explanation, the application does not comply with the requirements of Article 76(d) of the Rules of Procedure, such that those complaints must be declared inadmissible (see, to that effect, judgment of 15 October 2008 in *Mote* v *Parliament*, T-345/05, ECR, EU:T:2008:440, paragraphs 75 to 77).

83 It follows that, by the present complaint, the Italian Republic must be considered to be claiming essentially an infringement of Articles 47 and 48 of Regulation No 1782/2003.

84 It should also be noted that the assessment of the present complaint concerns only the validity of the interpretation of Article 48 of Regulation No 1782/2003 adopted by the Commission in the contested decision, read in conjunction with the evidence adduced during the administrative proceedings. As is apparent from the discussions during the hearing, the parties disagree on the manner in which that provision should be interpreted.

85 The one-off correction of EUR 1860259.60 applied by the Commission in the contested decision, as a result of the undue determination and allocation of entitlements to special payments, was not subject to prior conciliation and, therefore, no explanation is presented with respect to it in the summary report. The Italian Republic's alleged deficiency is explained in the Commission's letters of

22 December 2010 and 13 December 2012 (see paragraphs 12 and 14 above). It concerns, first, the allocation of special entitlements where there are entitlements deriving from sheep and cattle and from hectarage and, secondly, the distribution of special entitlements resulting from the olive oil sector, for the claim years 2006 to 2009. In those letters, the Commission alleges that the Italian authorities mismanaged these situations of overlapping entitlements to aid. The situations covered by the present complaint are described in those letters as follows:

— where a farmer with special entitlements allocated on the basis of the reference period received from another farmer (by transfer or by succession) hectares and the corresponding amounts before the first year of the implementation of the single payment scheme, the value of his special entitlements was not distributed by the Italian authorities between the normal entitlements (up to EUR 5 000);

— where a farmer with normal entitlements allocated on the basis of the reference period received amounts resulting from the cattle premium without corresponding hectares from another farmer (by transfer or by succession) before the first year of the implementation of the single payment scheme, the value of special entitlements received was not allocated by the Italian authorities to his normal entitlements (up to EUR 5 000).

86 According to the Commission, the correct application of Article 48 of Regulation No 1782/2003 required the special entitlements to be allocated to normal entitlements up to a ceiling of EUR 5 000 per hectare and, next, the balance to be allocated to special entitlements. It contended, throughout the administrative proceedings, that the entitlements to additional (special) payments amounting to less than EUR 5 000 could not be used independently of the single payment, but should be allocated to the normal entitlements in order to determine the entitlement to payment per hectare, that calculation being carried out by dividing the payments received during the reference period by the hectares which contributed to generating them as if those hectares had also contributed to generating the additional payments (up to the ceiling of EUR 5 000). By contrast, by maintaining the normal and special entitlements (without any redistribution) separate, the Italian authorities created more special entitlements and, as a result, underestimated the value of the normal reference entitlements.

87 In its pleadings, the Italian Republic acknowledges that it departed, in its practice, from the application of the provisions at issue, as declared by the Commission. It claims that ‘Articles 43 and 48 were applied to the fraction of the reference amounts of each transferor farmer and to the transferee farmer for the fraction of the amounts resulting from the latter’s farming activity, by considering that everyone had the right to direct payments during the reference period’ and that ‘the Italian authorities decided not to carry out [a redistribution of entitlements to special payments] only in cases where the sum of all the reference amounts … resulted in a unit amount per hectare higher than EUR 5 000’. According to it, that application is also compatible with Article 48 of Regulation No 1782/2003.

88 It should be noted that Article 48 of Regulation No 1782/2003, which establishes the modalities for applying the derogation provided for by Article 47 to the general rule set out in Article 43 of that regulation, must necessarily be interpreted strictly (see, by analogy, judgment of 13 December 2001 in *Heininger*, C-481/99, ECR, EU:C:2001:684, paragraph 31 and the case-law cited).

89 First of all, the general objective pursued by Regulation No 1782/2003 should be borne in mind, namely the implementation of the single payment scheme. In the light of a literal interpretation of Article 48 of Regulation No 1782/2003, in view of the adjacent provisions, that provision applies to farmers who benefit from ‘payments giving right to payment entitlements subject to special conditions’ referred to in Article 47 of that regulation and who, during the reference period, ‘had no hectares as referred to in Article 43 [of that regulation]’ for the purposes of determining single payment entitlements or the entitlement per hectare is higher than EUR 5 000. Such farmers, who either have no hectares or possess hectares with respect to which the entitlement per hectare is higher than EUR 5 000, are entitled (a) to a payment equal to the (basic) ‘reference amount’ corresponding to

direct payments which they enjoyed over an average period of three years and (b) to payments 'for each EUR 5 000 or fraction of the reference amount' (that is to say, special payments) which they enjoyed over an average period of three years.

90 It follows that special payments are allocated at the reference amount per hectare up to EUR 5 000 and, above that threshold, constitute an additional (special) payment entitlement. In that regard, Article 47(1) of Regulation No 1782/2003 provides that the amounts it lists must 'be included in' the reference amount under the conditions provided for in Article 48 of that regulation. It also follows from Article 47(2) of Regulation No 1782/2003 that, starting from 2007, and by way of derogation from Articles 33, 43 and 44 of that regulation, the amounts resulting from the dairy premium and additional payments (provided for in Articles 95 and 96 of Regulation No 1782/2003) are to be 'included in' the single payment scheme under the conditions provided for in Articles 48 to 50. Therefore, the relevant legislation establishes the principle of combination of payments under different headings in a single payment.

91 The Italian Republic is therefore wrong to claim that under Article 48 of Regulation No 1782/2003 there is an obligation to maintain separate all the payments derived from different entitlements. Moreover, the reference to Article 49 of that regulation, as made in the application, is also not capable of supporting the view put forward by the Italian Republic. That provision, entitled 'Conditions' and concerning entitlements to special payments, provides for a derogation from Articles 36(1) and 44(1) of that regulation in so far as a farmer who has such payment entitlements for which he did not have hectares in the reference period is authorised by the Member State to derogate from the obligation to provide a number of eligible hectares equivalent to the number of entitlements. That derogation is subject to the condition that the farmer maintain at least 50% of the agricultural activity exercised in the reference period expressed in livestock units. It should be noted that that provision does not provide for any alternative method for determining entitlements to special payments, or for any obligation to maintain separate the payments derived from different entitlements. Article 49(3) of Regulation No 1782/2003 states that '[t]he payment entitlements determined according to Article 48 shall not be modified'.

92 It is also necessary to reject the argument, in paragraph 32 of theReply, that the amounts referred to in the first indent to Article 48 of Regulation No 1782/2003 are 'added' to the reference amount. A comparison of the different language versions of Article 47(1) of that regulation, in particular the Italian, French and German versions, confirm the meaning of the words 'included in' ('sono inclusi', 'intégrés au', 'in die Berechnung des Referenzbetrags aufgenommen'). In any event, the Italian Republic withdrew that argument during the hearing.

93 The claim that, first, the method to determine entitlements used by the Italian authorities did not lead to differences in the overall value of entitlements to payment allocated to the farmers concerned and that, secondly, concerning the special entitlements, the obligation to maintain livestock units was retained in accordance with Article 49 of Regulation No 1782/2003, cannot be accepted. Since that regulation provided for a specific method for the calculation of entitlements to payment for those purposes and in order to ensure the lawfulness of entitlements allocated in all the Member States, the Italian Republic was obliged to apply it. It follows from the above analysis that Article 48 of Regulation No 1782/2003 is obligatory and leaves the Member States no margin of discretion. Consequently, the Italian Republic cannot claim that its alternative method is equally effective, appropriate for preventing fraud, or even, more favourable to farmers (see, to that effect, judgments in *Spain* v *Commission*, cited in paragraph 44 above, EU:C:2002:192, paragraph 87 and the case-law cited, and of 28 March 2007 in *Spain* v *Commission*, T-220/04, EU:T:2007:97, paragraph 89 and the case-law cited).

94 The same applies with respect to the argument that the actions of the Italian authorities did not create any risks for the Fund. It must be noted that the Italian Republic has failed to produce evidence calling into question the calculation, made by the Commission services, of the exact amounts exposing the Fund to a risk. It is apparent, first, from the minutes of the bilateral meeting of 8 February 2011 and,

secondly, from the letter of 13 December 2012, that the Italian authorities, on the basis of a methodology approved by the Commission, 'provided the calculation showing the real risk to the Fund created by the wrongful application of Articles 43 and 48 of Regulation No 1782/2003, which amounts to EUR 1813699.96 for 4 years'.

95 As regards the argument that the Commission failed to indicate the concrete effects of the incorrect application of Articles 43 and 48 of Regulation No 1782/2003 by the Italian authorities, it must also be rejected. In line with the findings set out in paragraph 31 above, it is for the Commission to present evidence of serious doubt and not to show that the risks materialised.

96 In the light of the above considerations, and in particular those set out in paragraphs 89 and 90 above, it must be held that the interpretation of Article 48 of Regulation No 1782/2003 proposed by the Italian Republic is incompatible both with its wording and its structure. In so far as all of its arguments have been rejected, it is necessary to reject as unfounded the present plea raised by the Italian Republic concerning the one-off correction relating to the determination and payment of special entitlements.

97 Therefore, the action must be dismissed in its entirety.

…

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders the Italian Republic to pay the costs.

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 12 May 2016.

[Signatures]