

Appeal brought on 27 November 2018 by the Czech Republic against the judgment of the General Court (Fifth Chamber) delivered on 13 September 2018 in Case T-627/16, Czech Republic v Commission

(Case C-742/18 P)

(2019/C 44/22)

Language of the case: Czech

Parties

Appellant: Czech Republic (represented by: M. Smolek, O. Serdula, J. Vláčil, J. Pavliš, agents)

Other parties to the proceedings: European Commission, Kingdom of Sweden

Re:

Appeal in cassation against the judgment of the General Court of the European Union dated 13 September 2018 in Case T-627/16, *Czech Republic v Commission*, by which the General Court dismissed in part the Czech Republic's application for the annulment of Commission Implementing Decision (EU) 2016/1059 ⁽¹⁾ of 20 June 2016 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) (notified under document C(2016) 3753), so far as concerns the part excluding expenditure by the Czech Republic.

Form of order sought

The appellant claims that the Court should:

- set aside point 2 of the operative part of the General Court's judgment in Case T-627/16 and the corresponding part of the judgment;
- annul Commission Decision (EU) 2016/1059 in so far as it excludes expenditure amounting to EUR 462 517,83 in connection with the single area payment;
- annul Commission Decision (EU) 2016/1059 in so far as it excludes expenditure amounting to EUR 636 516,20 in connection with investments in the wine sector; and
- order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant relies on four grounds in support of its appeal in cassation.

The first ground of appeal alleges infringement of Article 52(1) of Regulation No 1306/2013 ⁽²⁾ in conjunction with Articles 26 and 31 of Regulation No 1122/2009. ⁽³⁾ The appellant claims that the General Court erred in law when it concluded that on-the-spot checks in the form of remote sensing and classical on-the-spot checks must have the same or a comparable error rate. Such a requirement is not apparent from any provision of EU law or from the nature of the inspection methods concerned. On the contrary, the method of selecting samples for inspection differs so much in respect of both methods, for reasons particular to those methods, that conclusions as to their effectiveness cannot be rendered conditional on the same or a comparable error rate.

The second ground of appeal alleges infringement of Article 52(1) of Regulation No 1306/2013 in conjunction with Article 33 of Regulation No 1122/2009. The appellant claims that the General Court erred in law when it concluded that if over-declaration at the rate of 3 % of the area determined has been identified, the sample inspected must in all circumstances be increased until no over-declaration is identified, even in the situation where the national authorities may be certain, on the basis of the specific circumstances of the case in question, that, in the other parcels of the farmer concerned, no further errors may be expected in the declaration of the agricultural area.

The third ground of appeal is based on infringement of Article 52(1) of Regulation No 1306/2013 in conjunction with Article 112 of Regulation No 1605/2002,⁽⁴⁾ or as the case may be Article 130 of Regulation No 966/2012.⁽⁵⁾ The Tribunal grossly distorted the substance of the dispute between the Czech Republic and the Commission, and erred in law when it concluded that the correction imposed was exclusively connected with the retroactive financing of the investments made prior to the implementation of the national programme of support. In connection with the investigation concerned the Commission took issue with any retroactive financing of investments in the wine sector. The Tribunal therefore erred when it failed to address in any way the Czech Republic's arguments that the retroactive financing of investments made after the approval of the national programme of support was in accordance with EU law.

The fourth ground of appeal is based on infringement of Article 52(1) of Regulation No 1306/2013 in conjunction with Article 19 and Article 77 of Regulation No 555/2008⁽⁶⁾ and Article 27 of Regulation No 1975/2006,⁽⁷⁾ or as the case may be Article 25 of Regulation No 65/2011.⁽⁸⁾ The applicant claims that the General Court erred in law when it concluded that at the material time 100 % of the investments made in the wine sector should have been subject to on-the-spot checks, despite the fact that Article 77(5) of Regulation No 555/2008, through the express reference to Article 27 of Regulation No 1975/2006, allowed checks to be carried out on a sample only of the investments made.

⁽¹⁾ OJ 2016 L 173, p. 59.

⁽²⁾ 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.

⁽³⁾ Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for 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.

⁽⁴⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L 248, p. 1.

⁽⁵⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ 2012 L 298, p. 1.

⁽⁶⁾ Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector, OJ 2008 L 170, p. 1.

⁽⁷⁾ Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures, OJ 2006 L 368, p. 74.

⁽⁸⁾ Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures, OJ 2011 L 25, p. 8.