

**Action brought on 27 May 2010 — Republic of Hungary v
European Commission**

(Case T-240/10)

(2010/C 209/70)

Language of the case: Hungarian

Parties

Applicant(s): Republic of Hungary (represented by: M. Fehér, K. Szijjártó, Agents)

Defendant(s): European Commission

Form of order sought

- Annulment of Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch.
- Annulment of Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council.
- In the alternative, if the claim for annulment of Decision 2010/136/EU is dismissed, annulment of Article 2(b) and (c) thereof.
- An order that the Commission pay the costs.

Pleas in law and main arguments

The applicant takes issue with Commission Decisions 2010/135/EU ⁽¹⁾ and 2010/136/EU ⁽²⁾ of 2 March 2010.

In the grounds for its application the applicant alleges, as its first plea in law, that the Commission made a manifest error of assessment and infringed the precautionary principle in authorising the placing on the market of the genetically modified potato known as 'Amflora' ('GM potato') despite the fact that,

when the risks were assessed, well-founded objections were raised to the effect that the authorisation — having regard to the objectives of guaranteeing a high level of protection of health and the environment — could cause damage to the health of humans and animals and to the environment. In the view of the applicant, the marketing authorisation is based on a risk assessment which is unsubstantiated or deficient in many respects, which has implications for the legality of the Commission Decisions.

As regards the risks to health caused by the GM potato at issue, the applicant alleges that the antibiotic-resistance marker gene present in the GM potato and the transfer of that gene from GM crops to bacteria entail a risk to human and animal health and the environment which is unacceptable, especially having regard to the obligation to ensure a high level of protection for health and the environment, and that there is, at the least, significant scientific uncertainty regarding the risks, which the Commission has not adequately allayed. The applicant concludes that the marketing authorisation infringes the precautionary principle and breaches Article 4(2) of Directive 2001/18/EC, ⁽³⁾ which gives that principle concrete legal expression. Moreover, the scientific opinion issued by the European Food Safety Authority (EFSA) which served as a basis for the Commission Decisions also contradicts the views held in this matter by the World Health Organisation, the World Organisation for Animal Health and the European Medicines Agency.

In the view of the applicant, the assessment of the risk to the environment posed by the GM potato is deficient and inadequate having regard to:

- The lack of any open-air trials relating to all the biogeographical regions of the European Union;
- The lack of any assessment of impact, or of cumulative long term impact, on untargeted organisms, or of impact on the dynamic of species populations and genetic diversity;
- The inadequacy of the assessment of possible impact on animal health and possible consequences for the food chain.

As its second plea in law the applicant alleges that the Commission breached Regulation No 1829/2003/EC. ⁽⁴⁾ In that regard, the applicant argues that Article 2(b) and (c) of Decision 2010/136/EU, which authorises the adventitious or technically unavoidable presence, in food or crops, of genetically modified organisms in a proportion no higher

than 0,9 %, is contrary to law, given that, as far as authorisation is concerned, Regulation No 1829/2003/EC does not envisage any safety margin or allow the Commission to apply any safety margin in the event of the adventitious or technically unavoidable presence of genetically modified organisms.

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- (¹) Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (notified under document C(2010) 1193) (OJ 2010 L 53, p. 11).
- (²) Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2010) 1196) (OJ 2010 L 53, p. 15).
- (³) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).
- (⁴) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

Action brought on 24 May 2010 — Poland v Commission

(Case T-241/10)

(2010/C 209/71)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, Agent)

Defendant: European Commission

Form of order sought

— declare invalid Commission Decision 2010/152/EU of 11 March 2010 (notified under document C(2010) 1317) 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), (¹) in so far as it excludes from Community financing the amounts of

PLN 279 794 442,15 and EUR 25 583 996,81 in expenditure incurred by the payment agency accredited by the Republic of Poland;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The contested decision provides for a financial correction resulting from alleged failings in the system for the identification and monitoring of agricultural land parcels in 2005 and 2006 relating to: non-completion of land parcel system vectorisation; acceptance of ineligible land for payments; excessively low number of on-the-spot checks in regions with high error rates (Województwo Opolskie (Opole Province)); and erroneous application of provisions of intentional non-compliance.

The applicant questions the existence of all of the failings alleged and raises the following heads of complaint against the contested decision.

First, the applicant alleges that there has been a breach of the first subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 (²) and of Article 31(1) of Regulation (EC) No 1290/2005, (³) as well as a breach of Guidelines No VI/5330/97, by reason of the application of a financial correction based on a misconstruction of the facts and a misinterpretation of the law, despite the fact that the expenditure was effected by the Polish authorities in accordance with European Union rules.

In the applicant's view, none of the alleged failings underlying the financial correction effected actually occurred, while the expenditure excluded from financing by the European Union on the basis of the contested decision was effected in accordance with European Union rules.

The applicant contends that the system for identifying agricultural parcels which was applied in Poland in 2005 and 2006 complied in full with the requirements laid down in Article 20 of Council Regulation (EC) No 1782/2003 (⁴) and in Article 6 of Commission Regulation (EC) No 796/2004, (⁵) significantly exceeding those requirements in several respects and guaranteeing a rigorous protection of the financial interests of the European Union.

It further argues that the national procedures applied in 2005 and 2006 made it possible to establish, in an effective and objective manner, whether there had been intentional or unintentional action on the part of an applicant in the event of a declaration of areas of land for payment, providing, in cases of doubt, for judicial resolution and respecting the principle of the presumption of innocence.