

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.

The applicant also submits that the acceptance of land for payment was in accordance with the conditions relating to the eligibility of land, regard being had to the fact that, in accordance with the Act of Accession, a condition for the eligibility of land is that it was being maintained in good agricultural condition (GAC) on 30 June 2003, whereas maintenance of the land in good agricultural and environmental condition (GAEC) on the day of monitoring was not a condition governing eligibility of the land but rather a condition, failure to comply with which would lead to a reduction in the rate of payment.

In addition, the applicant contends that the number of on-the-spot checks in 2005 in the Opolski Province was effected on a basis which was in compliance with the requirements of Article 26 of Regulation No 796/2004.

Second, the applicant argues that there has been a breach of the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(2) of Regulation (EC) No 1290/2005, a breach of Guidelines No VI/5330/97 and infringement of the principle of proportionality by reason of the application of a correction in an amount which was flagrantly excessive in relation to the risk of potential financial loss to the budget of the European Union.

In the view of the applicant, even if it were to be established that there were certain breaches in the control and penalty system established by the Polish authorities — which is denied — such breaches would be so insignificant that the risk of possible losses for the Union budget would be many times lower than the level of the correction applied by the Commission in the contested decision. This in particular relates to the level of the correction applied by the Commission by reason of the non-completion of the vectorisation system for identification of land parcels and by reason of the allegedly inadequate number of on-the-spot checks in Opole Province in 2005.

(¹) OJ 2010 L 63, p. 7.

(²) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

(³) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

(⁴) Council 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) No 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).

(⁵) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 28 May 2010 — medi v OHIM — Deutsche Medi Präventions (deutschemedi.de)

(Case T-247/10)

(2010/C 209/72)

Language in which the application was lodged: German

Parties

Applicant: medi GmbH & Co KG (Bayreuth, Germany) (represented by: D. Terheggen, H. Lindner and T. Kiputh, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: Deutsche Medi Präventions GmbH (Düsseldorf, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 March 2010 in Case R 1366/2008-4;

— reject the application for Community trade mark EM 5 089 099 in its entirety;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Deutsche Medi Präventions GmbH.

Community trade mark concerned: word mark 'deutschemedi.de' for services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: the applicant.