

Finally, the contested decision violates Article 4(6) of Regulation (EC) No 1049/2001 for failure to provide partial access to the requested document.

(<sup>1</sup>) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

**Action brought on 24 September 2010 — Northern Ireland Department of Agriculture and Rural Development v Commission**

(Case T-453/10)

(2010/C 328/65)

*Language of the case: English*

**Parties**

*Applicants:* Northern Ireland Department of Agriculture and Rural Development (Belfast, United Kingdom), (represented by: K. Brown, Solicitor and D. Wyatt QC, Barrister)

*Defendant:* European Commission

**Form of order sought**

— Annul Commission Decision No 2010/399/EU (<sup>1</sup>) (notified under document C(2010) 4894) of 15 July 2010, to the extent of the entry relating to a 5 % flat-rate correction of expenditure amounting to 18 600 258,71 Euro incurred in Northern Ireland during the financial year 2007; and

— Award costs against the defendant.

**Pleas in law and main arguments**

By means of the present application, the applicant seeks, pursuant to Article 263 TFUE, the partial annulment of Commission Decision No 2010/399/EU (notified under document C(2010) 4894) of 15 July 2010, to the extent it excluded from European Union financing the entry relating to a 5 % flat-rate correction of expenditure amounting to 18 600 258,71 Euro incurred in Northern Ireland during the financial year 2007.

In support of his appeal, the applicant submits the following pleas in law:

Firstly, the Commission reached its decision as regards the contested entry on the basis errors of law and fact since the deficiencies in the key controls identified by it and the possible consequences on the declaration of eligible hectares during the 2006 claim year could not have posed a risk of 5 % to the entirety of relevant expenditures in Northern Ireland during that year. Such over-declarations could not have increased the reference amounts derived from payments to farmers during the years 2000-2002, and accordingly, could only have increased the number, and not the value, of the payments entitlements established in 2005. Approximately 78 % of the amount of the payment entitlements to be allocated and divided between eligible hectares declared by farmers in 2005 was determined by payments to the farmers concerned during the years 2000-2002 and would remain unaffected by errors in determining the number of eligible hectares in 2005 which were repeated in 2006. Furthermore, the provisions for reductions and exclusions, or penalties, apply subject to the principle of retrospective adjustment of payment entitlements, and subject to the principle that where a farmer makes an over-declaration of eligible hectares and payment entitlements, but the area of land determined to be eligible is sufficient to activate all the payment entitlements to which he is actually entitled, no penalty is payable. The Commission has misinterpreted the provisions which lay down these principles, and accordingly significantly over-estimated the amounts recoverable from farmers in Northern Ireland in respect of over-declaration during the claim year 2006.

In addition, the Commission infringed the principle of proportionality since it has assessed the probable loss as being 5 % of the entirety of the expenditure incurred, even though the underlying principle to be applied in cases where it is not possible to make a precise assessment of losses to the relevant European Union funding funds is that the rate of correction must be clearly related to the probable loss. That assessment made by the Commission has been based on two erroneous premises; the first erroneous premise is that it is irrelevant that errors in over-determination of eligible land in 2005 and 2006 could have had no adverse effect upon approximately 78 % of the total payment entitlements to be allocated to farmers, and accordingly could not to this extent have posed a risk to the funding. In addition, the second erroneous premise is that the Commission significantly over-estimated the amounts recoverable from farmers in Northern Ireland in the event of over-declarations in 2006. Finally, since the Commission's application of a 5 % flat-rate reduction is based on a significant over-estimate of the actual probable loss to the European Union funding funds, it follows that in the circumstances of the case a 5 % flat-rate reduction was excessive, and thus disproportionate.

(<sup>1</sup>) Commission Decision of 15 July 2010 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) (notified under document C(2010) 4894) (OJ 2010 L 184, p. 6).