

5. The fifth plea concerns the infringement by the contested acts of the principle of proportionality and the principle of equity in respect of assessment of the extent of the disciplinary penalties imposed on the applicant.

<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.

<sup>(2)</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

**Action brought on 29 July 2013 — Kėdainių rajono Okainių ŽŪB and Others v Council and Commission**

**(Case T-386/13)**

(2013/C 313/52)

*Language of the case: Lithuanian*

**Parties**

*Applicants:* Kėdainių rajono Okainių ŽŪB (District of Kėdainiai, Lithuania) and 134 others (represented by: I. Vėgėlė, lawyer)

*Defendants:* European Commission, Council of the European Union

**Form of order sought**

- declare the applicants' action admissible;
- pursuant to Article 263 TFEU, annul Commission Implementing Decision C(2012) 4391 final of 2 July 2012 authorising the making of complementary national direct payments in Lithuania for 2012 (notified under document number K(2012) 4391);
- in Article 132 of Regulation No 73/2009, an article governing complementary national direct payments and direct payments, declare inapplicable, pursuant to Article 277 TFEU, the final subparagraph of paragraph 2 which provides that '[t]he total direct support which a farmer may be granted in the new Member States after accession under the relevant direct payment, including all complementary national direct payments, shall not exceed the level of direct support a farmer would be entitled to receive under the corresponding direct payment then applicable to the Member States in the Member States other than the new Member States, taking into account, from 2012, the application of Article 7 in conjunction with Article 10';
- in Article 10 of Regulation No 73/2009, an article laying down special rules for modulation in the new Member States, declare inapplicable, pursuant to Article 277 TFEU, the provision in paragraph 1 '... taking into account any reductions applied under Article 7(1)';

— order the defendants to pay all the costs incurred by the applicants, regarding which evidence will be submitted to the Court.

**Pleas in law and main arguments**

In support of the action, the applicants rely on five pleas in law.

1. Lack of reasoning for, and of foundation of, Commission Implementing Decision C(2012) 4391 final

Commission Implementing Decision C(2012) 4391 final of 2 July 2012 lacks reasoning and foundation because there are no data confirming that in 2012 the level of direct payments in the new and old Member States of the European Union is uniform (equalised).

2. Level of direct payments in the Republic of Lithuania not corresponding to the level agreed in the Act of Accession and to the level of direct payments of the old Member States

The Republic of Lithuania's actual level of direct payments does not correspond to the level agreed in the Act of Accession of 23 September 2003. In breach of the Act of Accession, Regulation No 583/2004 of 22 March 2004 adopted amendments to Regulation No 1782/2003, laying down national agricultural support ceilings for the new Member States (Article 71c of and Annex VIIIa to Regulation No 1782/2003).

In 2012 the direct payment percentage in the Republic of Lithuania did not equalise with the direct payment level of the old Member States of the European Union: in the old Member States modulation is applied only to sums exceeding EUR 5 000 and that means that not all direct payments allocated to farmers of the old Member States are modulated (reduced) by 10 %, but only those which exceed EUR 5 000. Therefore, it is unfounded and unlawful to state that in 2012 the level of direct payments in the old Member States is 90 % ('100% minus 10 % modulation'). The level of direct payments in the old Member States is greater than 90 % because a proportion of the sums — not exceeding EUR 5 000 — are not modulated.

3. Differences in the amount of direct payments in the Republic of Lithuania, compared with the old Member States

Direct payments actually made to Lithuanian farmers from the European Union budget in 2012 are among the lowest, amounting to less than half those received in the old Member States despite the 10 % modulation of the latter.

4. Infringement of the Act of Accession by the concluding words of Article 10(1) of Regulation No 73/2009, by the final subparagraph of Article 132(2) of Regulation No 73/2009, and by Commission Implementing Decision C(2012) 4391 final of 2 July 2012 adopted on the basis of that subparagraph

The Act of Accession did not lay down provisions concerning modulation of the direct payments introduced and/or reduction in Lithuania of complementary national direct payments.

The provision 'taking into account any reductions applied under Article 7(1)' in Article 10(1) in Chapter 2 of Regulation No 73/2009 is contrary to the Act of Accession because this provision accelerates the supposed equalisation of the level of direct payments in the old and new Member States.

The part of Article 132(2) of Regulation No 73/2009 '... taking into account, from 2012, the application of Article 7 in conjunction with Article 10', which enshrines the supposed equalisation in 2012 of the level of direct payments in the old and new Member States, is contrary to the Act of Accession because it lays down a specific year (2012) when the level of support received is supposedly equalised.

In Article 132(2) of Regulation No 73/2009, in breach of the Act of Accession, the term 'amount' was changed to the term 'level', which involves not the support actually received but a supposed percentage.

It is unlawful to compare direct payments in the old and new Member States by comparing support received by the old Member States (100 % minus modulation) with the support received in the new Member States in accordance with the percentage rate, laid down in the Act of Accession, for the introduction of support.

5. Infringement by the contested legal measures of the objectives of the common agricultural policy that are laid down

On the basis of the Act of Accession, agricultural support in the new Member States is calculated according to the reference yield and the base area. In 2012 the reference yield and the base area changed greatly in Lithuania, so that the modulation applied and the reduction of complementary national payments are in themselves contrary to the objectives of the common agricultural policy, in particular to the objective of increasing agricultural productivity.

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**Action brought on 31 July 2013 — Orange v Commission**

(Case T-402/13)

(2013/C 313/53)

*Language of the case: French*

**Parties**

*Applicant:* Orange (Paris, France) (represented by: J.-P. Gunther and A. Giraud, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

By the present action, the applicant seeks annulment of the Commission's decisions of 25 and 27 June 2013 addressed to France Télécom, Orange and all the companies directly or indirectly controlled by them, ordering them to undergo an inspection pursuant to Article 20(4) of Council Regulation No 1/2003.<sup>(1)</sup> Those decisions were taken in the context of proceedings under Article 102 TFEU and Article 54 of the EEA Agreement concerning the sector providing internet connectivity services (Case AT.40090).

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of the principles of necessity and proportionality, in that the Commission ordered an inspection in relation to practices which were very similar to those covered by a decision delivered by the French competition authority only nine months earlier, even though the French competition authority found no anti-competitive conduct on the part of Orange. The applicant claims that, at the time of the inspection, the Commission did not seek additional information to that which it already had at its disposal, something which it ought to have done in accordance with the case-law in this area.
2. Second plea in law, alleging that the contested decisions are arbitrary, in that the Commission does not have sufficiently serious and detailed grounds for taking a measure as intrusive as an inspection.

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<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

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**Action brought on 29 July 2013 — Gossio v Council**

(Case T-406/13)

(2013/C 313/54)

*Language of the case: French*

**Parties**

*Applicant:* Marcel Gossio (Casablanca, Morocco) (represented by: S. Zokou, lawyer)