



Reports of Cases

Case T-260/16

Kingdom of Sweden
v
European Commission

(EAGF and EAFRD — Expenditure excluded from financing — Decoupled direct aid — On-the-spot checks — Remote sensing — Evaluation of the risk factors — Corrective measures to be taken by the Member State concerned — Assessment of the financial damage — Proportionality)

Summary — Judgment of the General Court (Second Chamber), 25 September 2018

1. *Agriculture — Financing by the EAGF — Clearance of accounts — Period capable of being the subject-matter of a financial correction — Period prior to the date of the written communication of the results of the checks — Lawfulness*

(Commission Regulation No 885/2006, Art. 11)

2. *Agriculture — Financing by the EAGF — Clearance of accounts — Disallowance of expenses arising from irregularities in applying EU rules — Challenge by the Member State concerned — Burden of proof — Shared by the Commission and the Member State*

(Council Regulation No 1290/2005, Art. 31(1) to (3))

3. *Agriculture — Financing by the EAGF — Grant of aid and premiums — Obligation on the Member States to organise an effective system of administrative and on-site inspections — Scope — Use of remote sensing to check the farm areas benefiting from aid — Duty to carry out on-the-spot inspections where there are deficiencies in remote-sensing checks — Scope*

(Commission Regulation No 1122/2009, Arts 33 and 35)

4. *Actions for annulment — Judgment annulling a measure — Scope — Partial annulment of an EU legal act — Condition — Severability of the annulable elements from the contested act — Decision of the Commission concerning the clearance of accounts in relation to expenses financed by EAGGF, EAGF and EAFRD — Severability of the grounds and operative part of a decision applying a financial correction — Partial annulment — Consequences*

(Arts 263 TFEU and 266 TFEU; European Parliament and Council Regulation No 1306/2013, Art. 52(2))

5. *Agriculture — Financing by the EAGF — Clearance of accounts — Disallowance of expenses arising from irregularities in applying EU rules — Assessment of losses suffered by the funds — Irregular expenses not capable of being determined with sufficient precision — Assessment based on flat-rate corrections — Lawfulness*

(European Parliament and Council Regulation No 1306/2013, Art. 52(2))

6. *Agriculture — Financing by the EAGF — Clearance of accounts — Disallowance of expenses arising from irregularities in applying EU rules — Flat-rate financial correction — Commission's refusal to take into account information provided by the Member State concerned allowing a calculation by extrapolation without assessing its reliability or whether it could have been used with proportionate effort — Not permissible*

(European Parliament and Council Regulation No 1306/2013, Art. 52(2))

1. Concerning the procedure for the clearance of the accounts of the European Agricultural Guarantee Fund (EAGF), in the first communication referred to in Article 11 of Regulation No 885/2006 laying down detailed rules for the application of Council Regulation No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD, the Commission must state, with sufficient precision, the purpose of the investigation carried out by its services and the deficiencies found during that investigation, which may be invoked subsequently as evidence of the serious and reasonable doubt it entertains about the checks carried out by the national authorities or about the figures submitted by them, and which may, accordingly, justify the financial corrections applied in the final decision excluding from European Union financing certain expenditure incurred by the Member State concerned under the EAGF. However, where irregularities justifying the application of a financial correction persist after the date of the written communication of the results of the checks, the Commission is entitled and even obliged to take account of that situation when it determines the period to which the financial correction in question is to relate.

Furthermore, it is apparent from the provisions of Article 11 of Regulation No 885/2006 that, if the Member State fails to implement corrective measures in response to the irregularities found by the Commission, the Commission may exclude the expenditure affected by non-compliance with the EU rules until such time as the corrective measures which it imposes are actually implemented.

(see paras 40, 41, 54)

2. See the text of the decision.

(see paras 69-72, 106)

3. Under the procedure for the clearance of the accounts of the European Agricultural Guarantee Fund (EAGF), although it is apparent from Articles 33 and 35 of Regulation No 1122/2009 laying down detailed rules for the implementation of Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for by that Regulation, as well as for the implementation of Regulation No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector, that the two control methods may be validly used by the Member States, the use of on-the-spot inspections is, however, mandatory in respect of all parcels for which remote sensing does not make it possible to verify the accuracy of the declaration as to area.

In addition, although Regulation No 1122/2009 does not expressly state that the two control methods must give similar results, the fact remains that the weaknesses of the remote sensing checks must be mitigated by making use of on-the-spot checks to ensure effective verification of compliance with the terms under which aid is granted. Accordingly, if use of one or other of the forms of control reveals significant differences in the detection of errors, this can be only a temporary situation and one which must be rectified by making changes to way in which risk factors are taken into account, such that, with time, the error rates tend to be similar or, at the very least, to be moving closer to one another. In those circumstances, the persistence of a significant difference between the error rates according to the control method used appears to be evidence of the serious and reasonable doubt that the

Commission could have entertained in relation to the method used by the national authorities in order to achieve better targeting of the risk to the Fund, in view of the number of risk factors used and the need to assess and update them annually.

(see paras 78, 79, 81)

4. See the text of the decision.

(see paras 103, 104)

5. See the text of the decision.

(see paras 108, 110)

6. In accordance with its own guidelines concerning the financial consequences of deficiencies in the checks carried out by the Member States concerning the clearance of the accounts of the European Agricultural Guarantee Fund (EAGF), the Commission could use the flat-rate method only if the use of the other methods, in particular calculation by means of extrapolation, had to be rejected. The flat-rate calculation method is residual in nature in the light of the provisions of Article 52(2) of Regulation No 1306/2013 on the financing, management and monitoring of the common agricultural policy, even though, in practice, the Commission makes frequent use of it.

In that regard, in a situation where the authorities of the Member State concerned provide the Commission with relevant information allowing for the calculation by extrapolation of the amounts unduly paid, by refusing to take into consideration the information provided without assessing either its level of reliability or whether it could have been used with proportionate effort, on the ground that it was irrelevant in any event, the Commission disregards the subsidiary nature of the use of the flat-rate method, which is clear from the provisions of Article 52(2) of Regulation No 1306/2013.

(see paras 112, 116, 118)