

4. Fourth plea in law: Infringement of Article 52(2) of Regulation (EU) No 1306/2013, ⁽²⁾ of Article 31(2) of Regulation No 1290/2005 ⁽³⁾ and of the principle of proportionality, since, by a flat-rate correction of 10 %, the Commission did not have due regard to the nature and, in any event, limited extent of a potential infringement in connection with the selection criteria and did not take into account the circumstance that the European Union did not suffer any actual financial loss nor was there ever any real risk that it would suffer loss.

⁽¹⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

⁽²⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549).

⁽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).

Action brought on 25 January 2016 — Czech Republic v Commission

(Case T-32/16)

(2016/C 098/73)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek and J. Vláčil, acting as Agents)

Defendant: European Commission

Form of order sought

- annul Commission Implementing Decision (EU) 2015/2098 of 13 November 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes expenditure of a total of EUR 584 299,25 incurred by the Czech Republic,
- order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 52(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy.
 - The Commission decided to exclude the expenditure from EU financing although there was no breach of EU or national law. It wrongly assumed that the application of a lower maximum age in the case of support for early retirement required a change of a rural development programme within the meaning of Article 19 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development.
2. Should the Court not uphold the first plea in law, the applicant puts forward a second plea in law, alleging infringement of Article 52(2) of Regulation No 1306/2013.

- Even if the application of a lower maximum age in the case of support for early retirement without a change to a rural development programme constituted an infringement of Regulation No 1698/2005 (*quod non*), the Commission incorrectly assessed the importance of that infringement and the financial damage to the European Union. The importance of any infringement is minimal and there was no financial damage to the European Union.

Action brought on 2 February 2016 — Sigma Orionis v REA

(Case T-47/16)

(2016/C 098/74)

Language of the case: French

Parties

Applicant: Sigma Orionis SA (Valbonne, France) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: Research Executive Agency (REA)

Form of order sought

The applicant claims that the Court should:

- Declare that REA failed to fulfil its contractual obligations under grant contract H2020 by suspending all payments due to the applicant on the basis of an OLAF investigation report that was drawn up unlawfully;
- In the alternative, order the appointment of an expert whose task will be to determine the amounts indisputably payable to the applicant under the contested grant contract.

Consequently, that the defendant be ordered:

- to pay the amounts due under grant contract H2020, that is EUR 42 540 625, together with interest on late payment in accordance Article 21.11.1, calculated from the due date of the amounts payable, at the rate fixed by the European Central bank (ECB) for main refinancing operations, increased by 3.5 points,
- to compensate the applicant for the additional harm that it has suffered, assessed at this stage in the amount of EUR 1 500 000 subject to increase or reduction in the course of the proceedings,
- to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Research Executive Agency (REA) cannot rely on an investigation report drawn up on the basis of evidence obtained unlawfully to justify its decision to suspend, in their entirety, the payments due to the applicant. The applicant claims, in that regard, that in so far as REA relied on unlawfully obtained evidence, both the suspension of payments and the termination of the grant contracts are unlawful.