

Action brought on 5 September 2017 — Republic of Lithuania v European Commission**(Case T-603/17)**

(2017/C 357/38)

*Language of the case: Lithuanian***Parties**

Applicant: Republic of Lithuania, represented by D. Kriauciūnas, R. Krasuckaitė, R. Dzikovič and M. Palionis

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Commission Implementing Decision (EU) 2017/1144 of 26 June 2017 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) ⁽¹⁾ in so far as it applies to Lithuania a financial correction of EUR 4 207 894,93;
- order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In its application the applicant puts forward three pleas in law.

By applying a flat-rate 5 % financial correction of EUR 4 207 894,93 on the ground of deficiencies in key controls, the European Commission ('the Commission') breached Article 52(2) of Regulation (EU) No 1306/2013 ⁽²⁾ in that, when deciding on the extent of the non-conformity, the nature of the infringements and the financial damage caused to the European Union:

1. it mistakenly took the view that the quality of the on-the-spot checks carried out in Lithuania was inadequate and was to be regarded as constituting a deficiency in a key control, because:
 - 1.1. it misinterpreted and misapplied Article 26(1)(a) of Regulation (EU) No 65/2011 ⁽³⁾ and, basing itself on that interpretation, unjustifiably established that, during the on-the-spot check, the Lithuanian institutions had failed to verify whether the payment claims submitted by the support beneficiary were supported by accounting and other suitable documents;
 - 1.2. it misinterpreted Article 26(1)(d) of Regulation (EU) No 65/2011 and, basing itself on that interpretation, unjustifiably established that, during the on-the-spot check, the Lithuanian institutions had failed to verify that the publicly funded operations had been implemented in accordance with, in particular, the rules on public tendering;
 - 1.3. it misinterpreted Article 25(4) of Regulation (EU) No 65/2011 and, basing itself on that interpretation, found that the inspectors undertaking the on-the-spot check had failed to comply with the requirement that they be independent of the workers who had been involved in carrying out the administrative checks of the same operation;
2. it mistakenly took the view that the quality of the checks carried out on the soundness of the expenditure effected in Lithuania was to be regarded as constituting a deficiency in a key control, because:
 - 2.1. it misinterpreted Article 24(2)(d) of Regulation (EU) No 65/2011 and, basing itself on that interpretation, unjustifiably established that the reasonableness of the costs submitted had not been adequately verified;
 - 2.2. in any event, it unjustifiably applied a 5 % financial correction, as the established scale of the potential non-compliance with the system for checking the validity of expenditure is significantly smaller;

3. it failed to have regard for the harm actually caused to the European Union in respect of the expenditure connected with voluntary work, and incorrectly took the view that there had been an inadequate verification as to whether the expenditure for the activity connected with immovable property satisfies the requirements, and consequently erred in establishing that there had been a deficiency in a key control, because:
 - 3.1. it improperly failed to take account of the data supplied by the Lithuanian institutions concerning the examination ordered by the Agency and carried out by independent experts, in the course of which it was established what actual damage may have been caused to the EU funds and what the amount of that damage was, and also what damage was connected with deficiencies in the system of checks of in-kind contributions (voluntary unpaid work), and unjustifiably applied a flat-rate 5 % financial correction;
 - 3.2. it incorrectly held that Article 24(2)(c) and (d) of Regulation (EU) No 65/2011 had not been complied with during the conducting of the administrative checks on applications for support and the verification of project expenditure — in-kind contributions (immovable property).

⁽¹⁾ OJ 2017 L 165, p. 37.

⁽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⁾ Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2011 L 25, p. 8).

**Action brought on 6 September 2017 — ICL-IP Terneuzen and ICL Europe Coöperatief v
Commission**

(Case T-610/17)

(2017/C 357/39)

Language of the case: English

Parties

Applicants: ICL-IP Terneuzen, BV (Terneuzen, Netherlands) and ICL Europe Coöperatief UA (Amsterdam, Netherlands) (represented by: R. Cana and E. Mullier, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare the application admissible and well-founded;
- annul the Commission Regulation (EU) 2017/999 of 13 June 2017 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2017, L 150, p. 7) as far as it includes nPB on Annex XIV of the REACH Regulation;
- order the defendant to pay the costs of these proceedings; and
- take such other or further measure as justice may require.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission committed a manifest error of assessment by failing to take into account all relevant facts and breached the principle of sound administration.
 - The applicants submit that the European Commission made a manifest error of assessment by failing to carefully and impartially consider the relevant information submitted to the European Commission by the Applicants which showed that the Substance did not meet the criteria for prioritisation and inclusion on Annex XIV of the REACH Regulation. According to the applicants, if the European Commission had taken the information into account, the scoring received by the substance would have been lower or similar to the scoring of other substances which were not prioritised in the same round of prioritisation, and the substance would not have been included in Annex XIV to the REACH Regulation by the contested Regulation.