

Action brought on 22 January 2021 — Romania v Commission**(Case T-33/21)**

(2021/C 163/50)

*Language of the case: Romanian***Parties**

Applicant: Romania (represented by: E. Gane and L. Bațagoi, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul in part Commission Implementing Decision (EU) 2020/1734 of 18 November 2020 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⁾, as regards the expenditure, in a total amount of EUR 18 717 475,08, incurred by Romania's accredited paying agency and declared under the EAFRD, which represents a flat-rate correction (25 %) applied to payments made in the financial years 2017, 2018 and 2019 under sub-measure 1a of measure 215 of the National Rural Development Programme (NRDP) 2007-2013;
- order the 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 the unlawful use, by the Commission, of the power to exclude amounts from Union financing under Article 52 of Regulation No 1306/2013, in breach of Articles 76 to 78 of Regulation No 1605/2002, Article 40(3) of Regulation No 1698/2005, and Article 12(6) and (7) of Regulation No 907/2014, as well as the principles of legal certainty, legitimate expectations and sound administration
 - After approving the methods for calculating the payments relating to sub-measure 1a and the results thereof through the adoption of Implementing Decision C(2012)3529 final approving the revision of Romania's rural development programme for the 2007-2013 programming period, the Commission should have taken responsibility where those payments were considered contrary to Article 40(3) of Regulation No 1698/2005 after subsequent audits.
 - At the same time, the Commission wrongly concluded, after the audits had been conducted, that the methods for calculating the payments relating to sub-measure 1a had led to overcompensation of beneficiaries, thereby infringing Article 40(3) of Regulation No 1698/2005.
 - The Commission misapplied both Article 12(6) and (7) of Regulation No 907/2014 and its own Guidelines on the calculation of the financial corrections when it established the reason to apply the corrections and the type of corrections to be applied.
 - The contested decision infringes the principle of the protection of legitimate expectations, since, by adopting Implementing Decision C(2012)3529 final, the Commission created legitimate expectations both for the Romanian authorities and for beneficiaries in relation to the regularity of the methods for calculating the payments relating to sub-measure 1a and the results thereof.
 - The Commission infringed the principles of legal certainty and sound administration through its conduct, which consisted in divergent positions and a late reply to the Romanian authorities in relation to a situation which the Commission itself had created.

2. Second plea in law, alleging infringement of the duty to state reasons laid down in the second paragraph of Article 296 of the Treaty on the Functioning of the European Union

- As regards sub-measure 1a, the Commission did not set out a sufficient and adequate statement of reasons, either with respect to the fact that the allegedly incorrect calculation methods constitute a situation which is among the scenarios governed by Article 12(6) and (7) of Regulation No 907/2014 or an instance of unlawful conduct for the purposes of the Commission's Guidelines on the calculation of the financial corrections, or with regard to its changing position in relation to the legal classification of the allegedly incorrect calculation methods.

(¹) OJ 2020 L 390, p. 10.

Action brought on 3 February 2021 — Sistem ecologica v Commission

(Case T-81/21)

(2021/C 163/51)

Language of the case: English

Parties

Applicant: 'Sistem ecologica' production, trade and services d.o.o. Srbac (Srbac, Bosnia-Herzegovina) (represented by: D. Diris, D. Rjabytnina, and C. Kocks, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- declare unlawful OLAF's failure to take, in regard to it, the measures laid down by the relevant rules, namely, to notify it of the decision to open inquiries or an investigation concerning it individually, to inform it of inquiries or investigations liable to implicate it personally, and to enable it to express its views on all the facts concerning it before conclusions relating to it individually are drawn from those inquiries or investigations;
- annul the decision taken by OLAF on 25 November 2020 refusing the applicant's request to grant access to its investigation file;
- annul the decision taken by OLAF on 25 November 2020 to consider the applicant's comments of 16 October 2020 as complaints;
- annul the decision taken by OLAF on 27 November 2020 rejecting the applicant's complaints of 16 October 2020;
- annul the decision taken by OLAF on 8 December 2020 that the investigation concerning it was closed;
- annul the decision taken by OLAF on 21 December 2020 that the applicant's complaints of 14 December 2020 will not be considered as complaints;
- declare that the information and data relating to it and any relevant evidence forwarded to the national authorities constitute inadmissible evidence, among which OLAF's mission report of 16 January 2020, communication of 9 June 2020, and final report of 8 December 2020;
- declare any investigative procedures carried out in the investigation following the aforementioned decisions unlawful;
- declare any conclusions drawn from those investigations unlawful;