



REQUEST FOR WITHDRAWAL OF CERTIFICATION  
**COILLTE TEO**

TO SOIL ASSOCIATION WOODMARK,  
AUDITORS TO FSC.

Caroline Lewis  
Tony Lowes  
September 3, 2008



Allihies, County Cork, Ireland  
<http://www.friendsoftheirishenvironment.org>

Woodmark Soil Association.  
South Plaza, Marlborough St  
Bristol BS1 3NX, UK  
2 September 2008

Re: Stakeholder Consultation for surveillance of Coillte Teoranta, September 2008

Dear Mr Hellier;

We refer to our previous correspondence, representations, and meetings and wish to ensure that three sets of issues are adequately addressed.

**Part I are those issues which we succeeded bringing to your attention in 2007** through stakeholders representations to yourselves and to ASI International. These required timely closing of the nonconformities identified during this and previous audits and summarized in the 2007 nonconformity reports. There are listed as they remain outstanding.

**Part II are the issues which formed part of our representations but were not addressed** in the ASI International report or in your own previous surveillance assessments of Coillte Teo. This includes a request for a recall of the products treated with the unauthorised pesticide Flexicoat to the UK and includes four Clearfell Reports submitted to Coillte Teo and ASI for which no adequate response was obtained from Coillte Teo. [Annex III].

**Part III consists of comments on the Woodmark Generic Standard** and Checklist adapted for Ireland ST-FM-001-03IR Version 6.

As the ASI Report states:

"This prolonged process has resulted with company non-compliance with the relevant standard requirements over a period of time. **ASI audit team considers that SA accredited procedures have not been appropriately implemented and did not ensure that the certificate holder complies with all relevant FSC standard requirements.**"

Your Association's accredited procedures have not been appropriately implemented and the certificate holder has not complied with all relevant FSC standard requirements. **In these circumstances the withdrawal of the Certification Certificate is required.**

Yours, etc.,

Tony Lowes & Caroline Lewis

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Excerpt from: Assessing Access To Information, Participation, and Justice In Environmental Decision-Making in Ireland: Recommendations for Coillte Teo. Prepared for the Environmental Protection Agency, By Centre for Sustainability, Institute of Technology, Sligo in partnership with Department of Law, University College Cork, COMHAR, the Sustainable Development Council. Draft. 2008

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## PART I

### **NONCONFORMITIES IDENTIFIED IN THE "PUBLIC SUMMARY, FSC ANNUAL SURVEILLANCE OF SOIL ASSOCIATION WOODMARK PROGRAMME FOR 2007", FOREST MANAGEMENT AUDIT TO COILLTE TEORANTA IRISH FORESTRY BOARD, IRELAND (SA-FM/COC-0706) 09-14 SEPTEMBER 2007**

2007.04

SA CAR 2007.8 requires that Coillte demonstrate how a 10% broadleaves area will be achieved but does not specify at which level (overall area, FMU area, site level, number of plants, etc) this needs to be achieved. As a non-compliance SA identifies that planting rates of broadleaves are below 10 %.

Woodmark response: The figures appear to suggest movement toward the require BL content. Clarity may be achieved through confirmation of 2004-6 planting expressed as ha rather than % plants; completion of sampling project (expected Dec 07); review of modeling to 2025 may or may not demonstrate that 10% BL will be achieved; any other evidence to clearly demonstrate achieving of target. Condition raised to major. 10.2

Comment: BL target is being met through inclusion of shrub and areas less than 30 metres wide. BL % must be of current commercial planting.

Finally, specific attention should be paid to the arguments advanced below in Section 3, *FSC Criterion 10.3*. **Coillte are not planting a sufficient percentage of species found in natural forests, or even their equivalent, with the result that their current design and species mix of plantations will increase pressures on the natural forest.'**

2007.07

During the audit there was evidence of widespread practice of premature clear felling. Coillte is also replanting forests on raised bogs, which is not considered as an economically viable practice. ASI audit team considers that such silvicultural practice is not consistent with Principle 5 relating to efficient use of the forest and economical viability of activities. It is recommendation for SA to evaluate this practice against Principle 5 requirements.

**Comment: Coillte does not do a cost benefit analysis on a plantation basis and figures have not been provided that account for rises in transport costs and its effects on economic viability.**

CAR.SA.FM.IE.2007.04 / CAR.SA.FM.IE.2007.05 / CAR.SA.FM.IE.2007.11

SA audit team kept CARs open instead of upgrading them when evidence of compliance was not available. Non-compliance with relevant FSC Criterion has been ongoing for years. It should be noted that the same issue was raised in the previous certification period.

This issue is related to CAR 2006.30, which was identified during the SA reassessment, then upgraded to Major, then downgraded to a Minor CAR. CARs 2006.13 and 2006.30 were closed by the SA audit team. However, the ASI auditors

considers that during this audit SA audit team actually did not evaluate implementation of these two CARs. The ASI audit team considers that there was no justification to close these CARs.

**Further evidence of the failure of access to information and consultation is provided for in Annex I, the relevant excerpt from 'Assessing Access To Information, Participation, and Justice In Environmental Decision-Making in Ireland'**. prepared for the Environmental Protection Agency By Centre for Sustainability, Institute of Technology, Sligo in partnership with Department of Law, University College Cork and COMHAR, the Sustainable Development Council

The ASI audit team considers that the non-compliance identified by SA related to the implementation of landscape design plans has not been addressed fully by the certified operation and thus CAR 2006.30 should not have been closed.

This prolonged process has resulted with company non-compliance with the relevant standard requirements over a period of time. ASI audit team considers that SA accredited procedures have not been appropriately implemented and did not ensure that the certificate holder complies with all relevant FSC standard requirements.

The SA inspector manual clearly states that if *"conditions are not met in full then a series of steps is taken culminating in suspension and subsequent withdrawal of the certificate. If a Condition is not met it is upgraded to become a 'Final Condition'. If a Final Condition is not met, then the certificate is suspended. **If corrective action is not then taken within the time specified by Woodmark the certificate is withdrawn.**"*

**Comment: certification must be withdrawn until corrective actions are all complete.**

CAR.SA.FM.IE.2007.09

Certified operation in many cases implemented large scale clear felling.

After the audit SA raised this issue as a Major nonconformity and recommended the suspension of the certificate. However, after receiving the SA draft audit report, Coillte provided evidence to SA to demonstrate that the company complies with the standard requirements. ASI audit team considers that such evidence was not present during the audit and considers that the company could not demonstrate compliance at the time of the audit. ASI audit team considers that SA has not ensured compliance with relevant standard requirements.

**Comment: certification must be withdrawn until corrective actions are all complete.**

CAR.SA.FM.IE.2007.10

A systematic approach on HCVF definition and identification has not been fully implemented by the certified company. This nonconformity constitutes a fundamental failure at Principle level.

**Comment: certification must be withdrawn until corrective actions are all complete.**

CAR.SA.FM.IE.2007.12

ASI considers that there was no evidence available during this audit that nurseries managed by certified operations have been evaluated against relevant standard requirements by SA audit team, to ensure certified operation compliance with FSC Principles and Criteria.

**Comment: certification must be withdrawn until corrective actions are all complete.**

## PART II: MAJOR ISSUES UNADDRESSED BY THE SA AUDIT PROCESS 2007

2.1 Root cause of stakeholder dissatisfaction: the legislative commercial remit of Coillte Teo

We do not accept that key issues about Coillte's forestry policy are 'outside the scope of Woodmark's remit'.

These issues are characterised as 'The wider debate'. But they are in fact the core issues in Irish forestry, and they are key issues for FSC – the social and environment issues which have not been addressed under the commercial mandate under which Coillte operates.

FSC requires that environmental and social considerations be given equal weight to the economic in forestry. The failure of Coillte Teo. to do this is identified as the 'root cause' of stakeholder dissatisfaction but 'beyond the scope of an FSC evaluation.'

'The wider debate' about the extent to which Coillte as a state owned body should be delivering wider benefits to society is discussed [sic] elsewhere in this report (e.g. under criteria 5.1, 5.6, 10.4) but is ultimately considered to be an issue for national forest policy in Ireland **and beyond the scope of an FSC evaluation.'**

Expressed another way:

'Ultimately it is considered that the tension between the desire from stakeholders to see clearer provision of public benefit and the commercial mandate under which Coillte operates is a national forest policy issue and goes beyond the scope of an FSC evaluation.

Coillte has a clear commercial remit. Arguably this constrains the company's ability to deliver wider economic benefits to Irish society as a whole. Even though it is a state owned organisation that might be expected to provide a range of non-market benefits (economic, social and environmental), the requirement for the company to make a financial profit limits the extent to which this is possible. This is further exacerbated by the low commodity prices available for timber which in turn has resulted in Coillte seeking other sources of income. Whilst this may be the root cause of many of the negative stakeholder comments received by Woodmark, **ultimately this is an issue for national forest policy and is beyond the scope of an FSC evaluation.'**

This contradicts the basic FSC requirement that 'forest resources and associated lands should be managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations.'

The auditor's job is to determine if Coillte Teo is meeting FSC's standard for 'social and environmental' benefits – and these must include obligations incurred both through the FSC Principles and Criterion and through international agreements and binding treaties such as the Lisbon Convention.

**Comment: Major corrective action required.**

## 2.2 Carbon soil loss through forestation

Carbon sequestration through forestry was given in the Irish Department of Finance 2006 Tax Review as of far greater value to the Irish economy than the timber product itself. This report gives the average annual value 2000 - 2004 of timber as €89.54m while the average value of carbon sequestration is given €115.21m. Yet Woodmark states:

'Carbon storage. Concern that afforestation on peat sites is counterproductive in terms of Carbon storage. Woodmark recognises that this may be the case, however carbon cycle issues lie outside the scope of FSC certification.'

This falls under FSC Principle 6, Environmental Impact:

'Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.'

It is also specifically covered by the Lisbon Convention's first of their six Criteria:

'Maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycles.'

Yet the Woodmark conclusion is

'whilst criterion 1.3 refers to respect for international agreements it does not explicitly refer to the Kyoto Protocol. Carbon sequestration is therefore currently beyond the scope of an FSC evaluation.'

Criterion 1.3 states that it is a requirement of a certified company to respect 'all binding international agreements'. Both the Lisbon Convention and the Kyoto Protocol are 'binding international agreements'.

The European Environmental Agency has pointed out that 84% of Irish forestry 1990 – 2000 went onto peat soils.

**Comment: Major corrective action required.**

## 2.3 Natural regeneration

Without comment or any suggestion of corrective action, Woodmark records that out of it reafforestation of 40,000 hectares, no natural regeneration has been used by Coillte Teo.

Furthermore some of the areas in which large scale felling is planned coincide with sensitive water catchments and whilst buffer zones to such planned felling are being considered firm plans for these areas are not yet in place.

Given the known potential risks of large scale felling in these catchments it is essential that the moratorium on large scale clear fells be maintained and that alternative plans incorporating an assessment of the environmental impacts be prepared before harvesting takes place. Condition 2006.14.'

In fact, the moratorium referred to is very limited in geographical areas, limited to 6 km upriver. and limited to sites designated under the Habitats Directive – by no means all of such sites where protected species [such as the fresh water pearl mussel] live.

As for restructuring plans, Coillte has informed Friends of the Irish Environment – as part of their studies of clearfelling – that no restructuring plans are required unless the forest block is '60 hectares or more in area AND of the same age or contain areas which are within 2 years – plus or minus - the age of the main portion of the crop'. Coillte states that this 60 ha threshold was agreed with FSC.

**Comment: Major corrective action required.**

## **2.4 Fencing**

359 Fencing. Negative comment was received in relation to the condition of forest fences. In the absence of a clear fencing responsibility Coillte policy is to fence plantations where appropriate during the establishment phase to protect planted seedlings/transplants. Thereafter fencing may deteriorate, however, in the [sic] absence of Coillte having a clearly defined liability to fence it is seen as the responsibility of adjacent landowners to fence against their own livestock. This approach does not appear to be inconsistent with any FSC criteria.

It is, however, inconsistent with the Irish Code of Best Forest Practice, adherence to which is required by FSC certification:

'Other maintenance  
Fences, gates, and styles  
Proper fencing is crucial to prevent damage from trespassing animals. Gaps in the fenceline should be repaired, and styles and gates maintained and kept in a safe condition. [Irish Code of Best Forest Practice, 9.4.2]'

**Comment: Major corrective action required.**

## **2.4 Flexicoat**

Coillte has told its Minister that the adjuvant Flexicoat has been approved by the UK pesticides authority but this is not the case. [Parliamentary Question 478, 10 July 2008] The substance must be applied separately in the UK and has not been approved by the UK pesticides authority. Coillte's export of combined treatment of cypermethrin and Flexicoat treated seedlings to the UK while UK based companies must treat the plants separately is an infringement of Competition Directive. The product was licenced for use by Coillte's supplier for experimental use only, as per Coillte Teo's statements to auditors.

**Comment: Major corrective action required. Product recall required.**

## 2.5 Buffer zones

Closed too was the complaint that 'Buffer zones within which harvesting does not place have not been established around all permanent water courses' even though Coillte has admitted to FIE that neither buffer zones nor silt traps were employed within one steep site near the Rosnacree Millennium Forest in County Kerry. The resultant environmental damage photographed by FIE has to be classed as an 'ecologically catastrophic'.

We note the closing of the Corrective Action on the felling of trees marked for retention when 'An example was seen where trees intended for retention had been inadvertently felled by a harvesting contractor'. In the case of the one of the felling sites studied by FIE, the broadleaves were actually felled not during the felling operation or the restoration by mistake – but afterwards, deliberately. [Gour, Castletownbere. Co. Cork.]

## 2.6 Water Quality

Closed again was the issue of negative impacts upon water quality and damage to freshwater species in sensitive, heavily forested water catchments' even though 'further work is required and best practice adopted throughout the organisation.' And closed too is the issue of harvesting creating sediment in water as there 'were no significant loss of sediment reported in various water monitoring reports.' We are, therefore, supposed to believe that Coillte is harvesting almost 10,000 hectares a year of forestry, much of it on fragile upland peat soils, with no significant loss of sediment?

**Comment: Major corrective action required.**

## 2.6 Illegal state aid

€8 million of forestry premium grants awarded to from Coillte Teoranta but subsequently excluded from community financing under the guarantee section of the European agricultural guidance and guarantee fund and confirmed by the European Court of Justice has not been refunded to the State and continues illegal state aid.

**Comment: Withdrawal of certification until payment**

## **Part III Comments on Woodmark Generic Standard and Checklist Adapted for Ireland**

**Date: 26th August 2008**

**Version: ST-FM-001-03IR Version 6**

*5.4. 1 Managers have information on the range of the forest's potential products and services, including 'lesser known' timber species, Non Timber Forest Products (NTFPs) and opportunities for forest recreation.*

*Forest managers are enhancing the multiple benefits that the forest provides, both to local people and to the wider public, including:*

- Recreational access (see Principle 3)*
- Water resources (see Principle 6)*
- Protection of landform and soils (see Principle 6)*
- Landscape and cultural heritage (see Principles 3 and 6)*
- Employment (see Principles 4 and 5)*

*Biodiversity (see Principle 6) [IFCI 5.D.1]*

*5.6 6 Even-aged woodlands/forests are gradually being restructured to diversify ages and habitats.*

Comment: This is not what we see on the ground with large scale clearfell (>5ha), and reforestation of primarily Sitka spruce. This is particularly due to the way the FMUs were restructured to ensure adequate broadleaf/ biodiversity area within each FMU. Individual forests therefore do not appear to require either biodiversity areas or species prescriptions. Unfortunately this results in isolated pockets of biodiversity which leads to genetic isolation and increases the risk of extinctions.

### *PRINCIPLE #6: ENVIRONMENTAL IMPACT*

*Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.*

Comment: Forest management continues to damage soils, pollute water resources and degrade forest biodiversity causing a breakdown of ecological functions and damaging the integrity of the forest. . Whilst 99% of the productive forest estate forest is being managed under high impact silvicultural systems using at least 95% exotic species, this principle cannot be met.

### *FSC Criterion 8.2 c*

*Forest management should include the research and data collection needed to monitor: The composition and observed changes in the flora and fauna.*

*4 Conservation areas (see 6.2) are regularly monitored to ensure that there is no evidence of deterioration or disturbance.*

*5 Forest managers provide for appropriate monitoring of the effects of forestry operations on plant and animal species, including aquatic habitats (names, abundance, distribution, habitat requirements, biology, ecology, behaviour)*

*commensurate with the extent and intensity of the forest management, and the rarity and fragility of the forest ecosystem and known species within it. Monitoring should include changes in rare and other notable species (e.g. invasive species). [BASED ON IFCI 8.A.2]*

Comment: This is not done. For example in the Gour, Co Cork clearfell of almost 20ha and extensive road construction and 'landscaping' the water quality was not monitored other than taking two water samples following clearfell. No assessment was made of the impact of sediment and nutrients entering the nearby Pulleen Harbour NHA on native biota.

*FSC Criterion 8.2 e*

*Forest management should include the research and data collection needed to monitor: Costs, productivity, and efficiency of forest management.*

Comment: Although Coillte produce annual accounts this is not done at plantation level (Letter from Coillte to FIE dated 17<sup>th</sup> May 2007). Therefore it is impossible to say if an individual plantation is cost effective under the current management practices. This can result in the clearfell of an individual forest that is both un-economic and is results in negative environmental and social costs.

*10.3.2 2 No more than 75% of the managed area is taken up by a single tree species, unless this is consistent with the natural distribution pattern for the species in the region concerned.*

*[In the case of exotic species, no more than 75% of the managed area may be taken up by a single exotic species]*

Comment: This is too high. Exotic conifer species have the capacity for natural regeneration ([http://www.coford.ie/iopen24/pub/defaultarticle.php?cArticlePath=196\\_421\\_422\\_247](http://www.coford.ie/iopen24/pub/defaultarticle.php?cArticlePath=196_421_422_247)). Non-native (exotic) invasive species are one of the biggest threats to native biodiversity. This impact has not been adequately assessed.

*FSC PRINCIPLE # 10: PLANTATIONS*

*Plantations shall be planned and managed in accordance with Principles and Criteria 1 - 9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.*

Comment: Plantations must not be managed under systems that breach Principles and Criteria 1-9. Current management practices result in the breach of principle 6.

*10. 4 The species chosen for plantations are suited to the site and matched to the objectives. Decisions on species selection should take into account current and future market expectations for forest products.*

*The proportions of different types of species are as follows. The Forest Design Plan should show how these percentages will be achieved:*

< 65% Primary Species  
> 20% Secondary Species

Comment: In Ireland primary species are both Sitka Spruce and Lodge pole Pine. At the Irish forest policy and associated documents are used to inform the Woodmark Generic Standard why has this classification been disregarded?

*FSC Criterion 10.2a*

*The design and layout of plantations should promote the protection, restoration and conservation of natural forests, and not increase pressures on natural forests*

*FSC Criterion 10.3*

*Diversity in the composition of plantations is preferred, so as to enhance economic, ecological and social stability. Such diversity may include the size and spatial distribution of management units within the landscape, number and genetic composition of species, age classes and structures.*

Comment: As the plantations do not consist of species found in Irelands natural forests there may be increased pressure on natural forests. To explain this, the 'natural' forests would be of broadleaved species such as ash, oak, alder, birch etc with some Scots Pine and Yew. Many of these are slow growing species and they are not planted for commercial use by Coillte. In the future there is likely to be a global deficit of hardwood timber and imported timber is likely to increase in price exacerbated by transport costs which are likely to increase significantly. There may also be further pressure on forests for local use for firewood, particularly in rural areas – there is already evidence of this. As Coillte are not planting a sufficient percentage of species found in natural forests, or even their equivalent, their current design and species mix of plantations will increase pressures on the natural forest.

*FSC Criterion 10.5*

*A proportion of the overall forest management area, appropriate to the scale of the plantation and to be determined in regional standards, shall be managed so as to restore the site to a natural forest cover.*

*1Consistent with Criterion 6.2b, at least 15% [IFCI 6.D.1] of the area of the plantation must be managed to enhance its natural characteristics and with biodiversity as a major objective.*

Comment: This needs clarification. Is it 15% of each plantation or of the overall forest management area and how has this been determined?

*FSC Criterion 10.6*

*Measures shall be taken to maintain or improve soil structure, fertility, and biological activity. The techniques and rate of harvesting, road and trail construction and maintenance, and the choice of species shall not result in long term soil degradation or adverse impacts on water quality, quantity or substantial deviation from stream course drainage patterns.*

Comment: Current conifer plantations managed using high impact forestry operations compacts soils and break down soil structure, reduces both soil fertility and biological activity, and has an adverse impact on water quality. (Plynlimon, Hubbard Brook, Glendalough, Aquafor report, etc).

### **FSC Criterion 10.7**

*1 The risk of plantations being damaged by wind, fire, pests and diseases is kept to a minimum through careful management, which includes:*

- *Robust and well-researched planting design and restructuring plans*
- *Creation of a diverse forest in terms of ages, species and open ground*
- *Sensitive and careful implementation of silvicultural operations*

Comment: This is not taking place. Forests are still undergoing large scale clear fells followed by reforestation of the primarily exotic conifer species to be managed under the same silvicultural system. Stakeholders submissions to forest management plans are not taken on board (See Coillte , FIE Gour forest complaint).

### *FSC Criterion 10.8*

*Appropriate to the scale and diversity of the operation, monitoring of plantations shall include regular assessment of potential on-site and off-site ecological and social impacts, (e.g. natural regeneration, effects on **water resources and soil fertility**, and impacts on local welfare and social well-being), in addition to those elements addressed in principles 8, 6 and 4. **No species should be planted on a large scale until local trials and/or experience have shown that they are ecologically well adapted to the site, are not invasive, and do not have significant negative ecological impacts on other ecosystems.** Special attention will be paid to social issues of land acquisition for plantations, especially the protection of local rights of ownership, use or access.*

*1 There is no large scale planting of species that have not been shown to be appropriate to the site on the basis of local trials or experience.*

*2 Plantations are not established on sites of important or sensitive ecosystems; areas of high or unique biological diversity; planned conservation or protection areas; or where there are possible adverse effects on an important water catchment area.*

*3 All new plantations or new plantings greater than 5,000 ha are subject to a formal environmental and social impact assessment.*

Comment: Reforestation is still occurring on peat soils in breach of points 1 & 2. Point 3 requires clarification. 5,000ha seems very large in the Irish context. There is insufficient monitoring of the effect on water quality (you cannot say forestry has no impact on the basis of one water sample) and soil monitoring appears to be non-existent.

ENDS

## ANNEX I

Excerpt from:

Assessing Access To Information, Participation, and Justice In Environmental Decision-Making in Ireland.  
Environmental RTDI Programme 2000–2006 [Draft.]  
Prepared for the Environmental Protection Agency By Centre for Sustainability, Institute of Technology, Sligo in partnership with Department of Law, University College Cork and COMHAR, the Sustainable Development Council

Regarding Coillte Teoranta

- That the Minister under Section 38.-(1) of the Forestry Act, 1988, with the consent of the Minister for Finance, issue directions in writing to the company which underline the provisions of SI 133 of 2007 and require Coillte to provide:
  - o a structured system for the generation and public reporting of environmental information relating to all its activities that are likely to have significant environmental impacts, including those being carried by subcontractors.
  - o the necessary infrastructure and capacity building to make access to information effective. To include training for the appropriate staff on the provision of environmental information and training for the staff responsible for this provision to enable them to assist the public in understanding the information.
- That the proposed new Forestry Act includes the above provisions, but that these are broadened to include all forestry companies and not just Coillte.
- That Coillte provides a variety of channels to access information. The fact that according to CSO figures barely 50% of the population has access to the internet would suggest the need for Coillte to work to proactively provide information through other routes. The location of detailed files as paper copies only and only at regional offices is a problem for access.
- That an integrated electronic reporting infrastructure is established to enable central access to all environmental data relating to each activity and location managed or owned by Coillte. This would have a triple purpose in terms of management, research and of public information access. Further that this software converts this data in real-time into user friendly information available through the GIS, as well as on site at regional offices. Where relevant the information should appear as a graph/bar diagram etc showing the value as a percentage of the limit value, together with a layman's explanation of the significance of the particular

parameter being measured. The software system must also allow the member of the public to go beyond the graphics to access the raw data if they want to.

- That interactive GIS environmental maps be extended to show real-time environmental information. This use of GIS has great potential for wide access use through public offices, libraries schools etc.
  
- That Coillte is required to periodically publish non-technical information regarding environmental performance of individual forests or activities in the local newspaper(s).
  
- That easily visible notices are placed at the entrances to forests and sites of forestry activities describing the activity or forest and announcing where and when the reader can obtain information regarding the environmental aspects of the particular location.
  
- That all subcontractors are informed of their responsibilities under SI 133 and where necessary that their staff are required to undergo training on the environmental implications of the contracted activity.
  
- That the ongoing internal public information training programme is prioritised as an important activity within Coillte
  
- That Coillte should be required to engage with the communities that surround their activities in a constructive way, to share information and develop good practice. This engagement should initially include the training of Coillte staff in facilitation skills and dialogue processes by competent and experienced practitioners, and drawing on the experiences of foresters both from within Coillte and from other countries that have already developed successful strategies in this regard.
  
- That the FSC process be used as a vehicle to enable the development of best practice in the generation, integrated management and dissemination of environmental information.

## ANNEX II

**IMPORTANT LEGAL NOTICE** - The information on this site is subject to a [disclaimer and a copyright notice](#).

### JUDGMENT OF THE COURT (Fifth Chamber)

16 October 2003 [\(1\)](#)

(EAGGF - Clearance of accounts - Financial years 1997 and 1998 - Aid for afforestation of agricultural land - Article 2(1)(c) and (2)(b) of Regulation (EEC) No 2080/92 - Concept of a private-law legal person - Principle of the protection of legitimate expectations - Duty to cooperate in good faith)

In Case C-339/00,

**Ireland**, represented by D.J. O'Hagan, acting as Agent, assisted by R. Brady, SC, and A.M. Collins, BL, with an address for service in Luxembourg,

applicant,

v

**Commission of the European Communities**, represented by M. Niejahr and K. Fitch, acting as Agents, assisted by J. O'Reilly, SC, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49) in so far as it excludes from Community financing the sum of EUR 4 844 345.35 in afforestation aid paid by Ireland for the financial years 1997 and 1998,

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges,

Advocate General: A. Tizzano,

Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 26 June 2002, at which Ireland was represented by A.M. Collins and E. Fitzsimons, SC, and the Commission by M. Niejahr and K. Fitch,

after hearing the Opinion of the Advocate General at the sitting on 6 February 2003,

gives the following

## **Judgment**

1.

By application lodged at the Court Registry on 15 September 2000, Ireland brought an action under the first paragraph of Article 230 EC for annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49) (the contested decision) in so far as it excludes from Community financing the sum of EUR 4 844 345.35 in afforestation aid paid by that Member State for the financial years 1997 and 1998.

### **Legal background**

*Legislation governing clearance of the EAGGF accounts*

2.

Article 5(2)(c) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), (Regulation No 729/70) provides:

The Commission, after consulting the Fund Committee:

...

(c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

...

3.

The conciliation procedure referred to in Article 5(2)(c) of Regulation No 729/70 is governed by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 1994 L 182, p. 45). Article 1(1) of that decision set up a conciliation body which may intervene in the clearance procedure. According to Article 1(2)(a), the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts.

4.

Regulation No 729/70 was repealed and replaced by Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

5.

Article 16 of Regulation No 1258/1999 provides in that regard:

1. Regulation (EEC) No 729/70 shall be repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation and should be read in accordance with the correlation table set out in the Annex.

6.

Article 20 of Regulation No 1258/1999 states:

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

It shall apply to expenditure effected as from 1 January 2000.

*Legislation governing aid for forestry measures*

7.

Council Regulation (EEC) No 2080/92 of 30 June 1992 instituting a Community aid scheme for forestry measures in **agriculture** (OJ 1992 L 215, p. 96) provides for grants of Community aid for the afforestation of agricultural land. That aid falls under the expenditure referred to in Article 5(2)(c) of Regulation No 729/70.

8.

The second recital in the preamble to Regulation No 2080/92 states:

... experience in matters of afforestation of agricultural land by farmers shows that existing aid schemes for promoting afforestation are insufficient; ... afforestation of agricultural land withdrawn from agricultural production in recent years has proved unsatisfactory.

9.

According to the sixth recital in the preamble to Regulation No 2080/92:

..., in order to increase afforestation of agricultural land as a way of furthering the aims of the common agricultural policy (CAP), it is necessary to introduce premiums to compensate for the income loss incurred by farmers during the non-productive period of afforested agricultural land.

10.

According to the seventh recital in the preamble to that regulation:

..., in many cases, private persons other than farmers are in a position to undertake afforestation of agricultural land and ... provisions should be made for incentives to be offered to such persons; ..., therefore, a premium per hectare should be introduced for the benefit of private persons other than farmers who undertake afforestation of agricultural land.

11.

Article 2 of Regulation No 2080/92 provides:

1. The aid scheme may comprise:

(a) aid for afforestation costs;

(b) an annual premium per hectare afforested to cover maintenance cost in the first five years;

(c) an annual premium per hectare to cover losses of income resulting from afforestation of agricultural land;

...

2. (a) Aid as referred to in paragraph 1(a) and (b) may be granted to any natural or legal person undertaking afforestation of agricultural land.

(b) Aid as referred to in paragraph 1(c) shall be eligible only if it is granted to:

- farmers not participating in the early-retirement scheme introduced by Council Regulation (EEC) No 2079/92 of 30 June 1992 instituting a Community aid scheme for early retirement from farming ...,

- any other private-law, natural or legal person.

...

3. The scheme may also comprise a Community contribution to the costs of afforestation of agricultural land undertaken by the competent public authorities of the Member States.

12.

Under the first indent of Article 4(1) of Regulation No 2080/92:

Member States shall implement the aid scheme referred to in Article 2 by means of national or regional multiannual programmes covering the objectives laid down in Article 1 and which set out in particular:

- the amounts and duration of the aid referred to in Article 2 on the basis of actual expenditure on afforestation and the maintenance of species or types of trees used for afforestation or on the basis of loss of income.

13.

Article 5 of Regulation No 2080/92 provides:

1. Member States shall communicate to the Commission, by 30 July 1993, the draft national or regional programmes referred to in Article 4 and any existing or proposed laws, regulations or administrative provisions by which they intend to apply this Regulation, together with an estimate of the annual cost of implementing the programmes.

2. The Commission shall examine the texts communicated by the Member States in order to determine:

- their compliance with this Regulation, taking account of its objectives and the links between the various measures,
- the nature of the measures eligible for part-financing,
- the total amount of expenditure eligible for part-financing.

3. The Commission shall decide on the approval of national or regional programmes on the basis of the factors listed in paragraph 2. ...

...

### **Facts and pre-litigation procedure**

14.

Until the end of the 1980s, the Irish State owned approximately 400 000 hectares of forest, which it managed directly.

15.

By the Forestry Act 1988, the Irish Parliament authorised the incorporation of Coillte Teoranta (the Forestry Board) to develop forestry and perform functions previously exercised by the Minister for Finance and the Minister for Energy.

16.

Coillte Teoranta was incorporated on 8 December 1988 as a private company under the Companies Act 1963, that is to say, a company limited by shares which limits the number of its members to 50, restricts the right to transfer shares and prohibits any invitation to the public to subscribe for shares. The Minister for Finance acquired all the shares in Coillte Teoranta. Nevertheless, under the Forestry Act 1988, this company was under an obligation to exercise its activities independently of the State and on a purely commercial basis.

17.

The issue of Coillte Teoranta's status and its classification as a private-law legal person within the meaning of Article 2(2)(b) of Regulation No 2080/92 was raised in the course of meetings between the Commission and the Irish Department of **Agriculture**, Food and Forestry held between July and October 1992.

18.

By letter of 26 January 1993, that department answered various questions put by the Commission with regard to the status of Coillte Teoranta.

19.

The Commission made no observations with respect to that reply.

20.

In July 1993, Ireland submitted to the Commission, in accordance with Regulation No 2080/92, a national multi-annual afforestation programme, which was approved by the Commission on 27 April 1994.

21.

- On 8 December 1994, the Commission approved the Operational Programme for **Agriculture**, Rural Development and Forestry (1994-1999).
22. In July 1996, the Minister for **Agriculture**, Food and Forestry published a Strategic Plan for Development of the Forestry Sector in Ireland, which stated that Coillte Teoranta satisfied the conditions necessary for the grant of aid under Community schemes.
23. Until 1997, the EAGGF reimbursed to Ireland the amounts claimed in respect of afforestation aid paid to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92.
24. Since September 1994, Coillte Teoranta has funded part of the cost of its operations by way of loans borrowed from commercial banks against grants and premiums to be received under Regulation No 2080/92 for afforestation programmes. Relying on estimates drawn up at the end of 1998, Coillte Teoranta has thus borrowed IEP 24 400 000 in anticipation of receiving premiums for land afforested between 1993 and 1998.
25. Following various exchanges of correspondence and a bilateral meeting, the Commission informed the Irish Government, by letter of 3 August 1999, that it was proposing to adopt a decision excluding from Community financing certain amounts of afforestation aid paid to Coillte Teoranta from 1 August 1996. According to that letter, Coillte Teoranta was a public entity which, under Article 2(2)(b) of Regulation No 2080/92, could not claim the premium provided for in Article 2(1)(c). By that letter, the Commission also rejected the Irish authorities' complaint alleging that there had been an infringement of the principle of the protection of legitimate expectations.
26. By letter of 11 October 1999, Ireland requested initiation of a conciliation procedure under Decision 94/442.
27. In its final report of 30 March 2000, the conciliation body set up by Decision 94/442 found that it was impossible to reconcile the positions of the two parties.
28. On 5 July 2000, the Commission adopted the contested decision.

### **The first plea**

#### *Arguments of the parties*

29. By its first plea, Ireland submits that the Commission lacked competence to adopt the contested decision on the basis of Regulation No 729/70, as that regulation had been repealed by Regulation No 1258/1999.
30. Ireland argues that, upon the entry into force of Regulation No 1258/1999 in July 1999, Article 16(1) of that regulation repealed Regulation No 729/70. Since

Regulation No 729/70 had been repealed by the time the contested decision was adopted, it was, in Ireland's view, incapable of providing the legal basis for that decision. Moreover, neither could Regulation No 1258/1999 constitute an appropriate basis because, under Article 20 of that regulation, it is to apply only to expenditure effected from 1 January 2000, that is to say, from a date occurring after the expenditure at issue had been effected.

31.

Ireland adds that the Community legislature could easily have inserted a transitional provision into Regulation No 1258/1999 but did not do so.

32.

The Commission contends, on the contrary, that Regulation No 729/70 was the correct basis for the contested decision. It takes the view that Regulation No 1258/1999 is not in fact applicable to the present case since the expenditure in question was effected in the financial years 1997 and 1998 and thus predates 1 January 2000.

33.

The Commission accepts that the transition between the two regulations is not a model of clarity. However, it argues that the repeal of Regulation No 729/70 does not preclude its application to expenditure effected before 1 January 2000. There is necessarily implied into Regulation No 1258/1999 a transitional provision to ensure that expenditure effected under Regulation No 729/70 will continue to be dealt with under the earlier regulations until the new regulations are fully effective.

#### *Findings of the Court*

34.

It is necessary to determine whether the contested decision could properly be adopted on the basis of Regulation No 729/70.

35.

Although Article 16(1) of Regulation No 1258/1999 provides for the repeal of Regulation No 729/70, it follows from the 16th recital in the preamble to Regulation No 1258/1999 that the aim of the legislature was, in the light of the new amendments which had been made to Regulation No 729/70, to recast the applicable provisions with a view to ensuring clarity.

36.

The provisions of Regulation No 729/70 are thus reproduced in Regulation No 1258/1999. Indeed, Article 16(2) of the latter regulation provides that references to the repealed regulation are to be construed as references to Regulation No 1258/1999 and should be read in accordance with the correlation table set out in the annex. Regulation No 1258/1999 thus represents a continuation of the rules laid down by Regulation No 729/70.

37.

It is in this context that Article 16(1) of Regulation No 1258/1999 must be interpreted. As the Advocate General noted in points 20 to 24 of his Opinion, the purpose of Article 16(1), read in conjunction with Article 20 of that regulation, is not to interrupt the application of the rules on the financing of the common

agricultural policy, thereby creating a legal vacuum undermining the effectiveness of Regulations No 729/70 and No 1258/1999.

38.

Thus, as undesirable as the absence of transitional provisions making it possible to identify clearly the relationship between Regulations No 729/70 and No 1258/1999 and thereby to ensure that legislation is sufficiently comprehensible may be, the repeal declared in Article 16(1) of Regulation No 1258/1999 did not limit the Commission's obligation to monitor the conformity with the Community rules of expenditure effected by the Member States up to 31 December 1999 in the field of the common **agriculture** policy.

39.

In the light of all these findings, it must be held that the contested decision, in so far as it covers the financial years 1997 and 1998, was properly adopted on the basis of Regulation No 729/70.

### **The second plea**

40.

By its second plea, Ireland submits, first, that the contested decision misapplies Regulation No 2080/92 inasmuch as Coillte Teoranta is a private-law legal person for the purposes of Article 2(2)(b) of that regulation. It argues, second, that, in adopting that decision, the Commission acted in breach of its obligations relating to cooperation in good faith, legal certainty and sound administration and that it infringed the principle of the protection of legitimate expectations.

*The first limb of the second plea: misapplication of Regulation No 2080/92*

### **Arguments of the parties**

41.

Ireland claims that Coillte Teoranta is a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92 and that it was therefore entitled to receive the aid referred to in Article 2(1)(c) of that regulation.

42.

Ireland argues that, even though the term private-law legal person as opposed to public-law legal person is unusual in countries of the common law tradition, Coillte Teoranta was established in the form of a private company under the Companies Act 1963 and that form is equivalent to that of private-law companies in the Member States in which that concept is commonly used, such as the French Republic, the Federal Republic of Germany or the Kingdom of Spain.

43.

The fact that Coillte Teoranta is a public undertaking wholly owned by the State does not preclude it from being a private-law legal person. Ireland claims that the Council expressly defined the persons eligible for aid in terms of their legal status and not in terms of the rules of economic ownership, whether public or private, to which they are subject.

44.

Ireland also submits that Regulation No 2080/92 is intended to ensure that a maximum area of agricultural land is afforested by granting financial support to

- the natural and legal persons undertaking that afforestation. The provisions on the persons eligible for aid must therefore, as Ireland suggests, be construed broadly.
45. Ireland submits, moreover, that Coillte Teoranta is not a public authority within the meaning of Article 2(3) of Regulation No 2080/92. It concedes that, in Case C-306/97 *Connemara Machine Turf* [1998] ECR I-8761 (paragraph 35) and Case C-353/96 *Commission v Ireland* [1998] ECR I-8565 (paragraph 40), which were concerned with the public procurement sector, the Court ruled that Coillte Teoranta was a public authority whose public supply contracts are subject to control by the State. However, it argues that the term public authority should be applied with caution as, in those judgments, the concept in question was examined in a different context - namely that of public procurement - and in the light of a directive which has since been repealed. Ireland submits that Coillte Teoranta is not a body governed by public law for the purposes of the new public procurement directives. It points out, in particular, that the company is managed on a commercial basis and that the Irish State does not play a role in its decision-making process.
46. In any event, Ireland argues that, even if, contrary to the position defended by it, Coillte Teoranta were to be regarded as a public authority within the meaning of Article 2(3) of Regulation No 2080/92, that would not preclude it from being at the same time a private-law legal person and, therefore, from being able to claim the aid in question under Article 2(1)(c) of that regulation.
47. Ireland adds that, in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), which replaced Regulation No 2080/92, the Council made a point of defining the persons eligible for aid differently. It submits further that, under Commission Regulation (EC) No 1750/1999 of 23 July 1999 laying down detailed rules for the application of Regulation No 1257/1999 (OJ 1999 L 214, p. 31), forests of whose capital the State holds at least 50% are excluded from afforestation aid. Ireland draws the contrary inference that, since Regulation No 2080/92 did not contain such an exclusion, Coillte Teoranta was entitled to receive the aid in question.
48. The Commission contends, conversely, that Coillte Teoranta is not a private-law legal person for the purposes of Article 2(2)(c) of Regulation No 2080/92, but that it is, on the contrary, a public authority within the meaning of Article 2(3) and was therefore not eligible to receive the aid in question.
49. The Commission relies on the purpose of Regulation No 2080/92. It claims that that regulation was adopted as part of the 1992 reform of the common agricultural policy. Since the existing aid schemes had failed to encourage farmers to withdraw sufficient areas of land from agricultural production, the regulation was, according to the Commission, intended to provide greater incentives to do so. It

- provided, in particular, for compensation for loss of income suffered during the non-productive period of newly afforested land.
50. The Commission claims that it is clear from the seventh recital in the preamble to Regulation No 2080/92 that the aid in question is intended for farmers and other private persons but not for Member States or bodies governed by public law.
51. The Commission argues that there is no doubt that Coillte Teoranta is a public undertaking entirely subject to State control. It observes that, before incorporation of the company in 1988, the forests were directly managed by the competent Ministers. Today, Coillte Teoranta is wholly owned by the State and managed on behalf of the Government.
52. Not only does the State hold all the shares in the company and appoint its officers but it may also intervene in its financing. Coillte Teoranta is also subject to obligations to provide public services, compliance with which is monitored by the State.
53. The Commission takes the view that the judgments in *Connemara Machine Turf* and *Commission v Ireland*, cited above, in which the Court ruled that Coillte Teoranta was a public authority are relevant even though they were concerned with the public procurement sector. According to the Commission, the Court concluded in those judgments that Coillte Teoranta is a public-law body. Since that concept is exclusive, the Commission claims that Coillte Teoranta cannot at the same time be a private-law person.
54. Next, the Commission argues that the change made to the definition of the persons eligible for aid by Regulations No 1257/1999 and No 1750/1999 does not affect the substance of its reasoning. Regulation No 2080/92 was, according to the Commission, already to be interpreted as excluding forests of whose capital the State holds at least 50%.

#### Findings of the Court

55. As Ireland has pointed out, the concept of a private-law legal person used in Article 2(2)(b) of Regulation No 2080/92 does not exist in the legal systems of all the Member States. No purpose is therefore served in the present case by referring to the definition used in certain national legal systems.
56. It is, however, appropriate to interpret that concept in the light of the purpose and scheme of Regulation No 2080/92.
57. It is apparent from the second recital in the preamble to Regulation No 2080/92 that it was necessary to improve the existing aid schemes because, in particular, those schemes had failed adequately to encourage farmers to afforest agricultural land by withdrawing it from agricultural production. As is stated in the sixth and seventh recitals in the preamble to that regulation, in order to achieve that aim, the

- Community legislature decided to compensate the loss of income suffered by farmers during the non-productive period of newly afforested land and to extend that compensation to other private persons.
58. It should be observed that a distinction is drawn in Article 2(2) of Regulation No 2080/92 between the persons eligible for aid according to the type of aid in question.
59. The wording of the provisions in Article 2(2)(b), which relate to aid intended to cover loss of income from **agriculture**, is restrictive in comparison to that of Article 2(2)(a), which concerns aid intended to cover afforestation costs and the costs of maintaining the afforested land. Whereas the latter aid may be granted to any natural or legal person undertaking afforestation of agricultural land, the aid relating to loss of income may be granted only to farmers who meet certain requirements or to any other private-law, natural or legal person. In the light of the sixth and seventh recitals in the preamble to Regulation No 2080/92, it must be held that the expression any other private-law, natural or legal person in Article 2(2)(b) covers only private persons in contrast to the expression any natural or legal person in Article 2(2)(a), which covers both private persons and non-private persons such as legal persons owned and controlled by the State.
60. It follows that legal persons owned and controlled by the State are eligible for aid to cover the costs of afforestation and maintenance of forests in the same way as any other natural or legal person but that they are not, however, eligible for aid to compensate for a loss of income from **agriculture**.
61. In the present case, Ireland itself has stated that Coillte Teoranta is and always has been a public undertaking wholly owned by the State. Moreover, the Court has already held in *Connemara Machine Turf* and *Commission v Ireland* that that company was controlled by the State and no new evidence has been adduced which might show that this was no longer the case in the financial years 1997 and 1998. Neither the company's obligation to manage its affairs on a commercial basis nor the fact, alleged by Ireland, that the State does not, in practice, intervene in the company's management can prevail over the finding that the company is wholly owned and controlled by the State and that the State could therefore intervene. It follows that Coillte Teoranta is not a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92.
62. Furthermore, the fact that the distinction between private and public undertakings is more clearly drawn in Regulations No 1257/1999 and No 1750/1999 does not mean that that distinction was not drawn in Regulation No 2080/92.
63. In light of the above, it must be held that, as a public undertaking, Coillte Teoranta was not eligible to receive aid to compensate for a loss of income arising from afforestation and that the Commission did not err in law in its application of

Article 2(2)(b) of Regulation No 2080/92. The first limb of the second plea must therefore be rejected as unfounded.

*The second limb of the second plea: failure to comply with duties relating to cooperation in good faith, legal certainty and sound administration and infringement of the principle of the protection of legitimate expectations*

#### Arguments of the parties

64.

Ireland submits that it was reasonable for it to take the view that Coillte Teoranta was among the persons eligible for aid referred to in Article 2(2)(b) of Regulation No 2080/92 on account of the very inaction of the Commission. The Commission's failure to act is inconsistent with the duty to cooperate in good faith laid down in Article 5 of the EC Treaty (now Article 10 EC) and the contested decision infringes the principle of the protection of legitimate expectations.

65.

Ireland states that the issue of the status of Coillte Teoranta was the subject of discussions between the competent Irish Department and the Commission from July to October 1992. Following those discussions, the Commission requested that Ireland provide details of the status of that company. Ireland supplied the information required by its letter of 26 January 1993, to which a number of documents were attached, including the Forestry Act 1988, which provided for the establishment of Coillte Teoranta, and the company's memorandum and articles of association. The Commission did not reply to that letter. In 1994, the Irish multi-annual afforestation programme was approved by the Commission. In addition, the aid paid by Ireland to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92 was reimbursed in respect of the financial years prior to 1997 without any comment being made.

66.

Ireland adds that Coillte Teoranta has borrowed considerable amounts from banks in anticipation of the reimbursements which it might obtain from the EAGGF.

67.

The Commission does not deny the facts presented by Ireland in this regard. It concedes that it may be regrettable that it did not reply to the letter of 26 January 1993 but maintains that it has neither failed to comply with its duty to cooperate in good faith nor infringed the principle of the protection of legitimate expectations.

68.

The Commission submits that Ireland participated in the negotiations on Regulation No 2080/92 and that it must therefore have known that the aid for loss of income arising from afforestation was not intended for public undertakings such as Coillte Teoranta. That Member State ought to have realised that there was no legal basis allowing the Commission to reimburse, by way of the EAGGF, expenditure effected in breach of the rules governing the system of the common agricultural policy. Moreover, the Commission argues that its silence cannot be

- interpreted as consent. It adds that, in any event, Ireland did not insist on receiving a reply to its letter of 26 January 1993.
69. The Commission submits that its approval of the multi-annual afforestation programme communicated by Ireland under Regulation No 2080/92 could not give rise to a legitimate expectation on the part of Ireland that Coillte Teoranta was entitled to the aid in question. The Commission maintains that that document barely mentioned Coillte Teoranta and that there was nothing in it to indicate that Ireland had decided to pay the aid in question to that company as if it were a private undertaking.
- Findings of the Court
70. By this plea, Ireland submits, essentially, that the contested decision breaches the duty to cooperate in good faith and infringes the principle that legitimate expectations must be protected.
71. Under Article 5 of the Treaty, the duty to cooperate in good faith governs relations between the Member States and the institutions. It entails an obligation on the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law and imposes on Member States and the Community institutions mutual duties to cooperate in good faith (see order in Case C-2/88 *Imm. Zwartveld and Others* [1990] ECR I-3365, paragraph 17, and Case C-275/00 *First and Franex* [2002] ECR I-10943, paragraph 49).
72. It should be noted that, as the Advocate General stated in point 73 of his Opinion, the duty to cooperate in good faith is, by its very nature, reciprocal.
73. In the present case, Ireland took part in the discussions leading to the adoption of Regulation No 2080/92. It was therefore deemed to be just as aware of the implications of that adoption as was the Commission.
74. The Commission had expressed to Ireland the doubts which it entertained as to the status of Coillte Teoranta and, therefore, that Member State must have known that there was uncertainty surrounding the classification of that company as a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92.
75. While the Commission could have repeatedly expressed its doubts to Ireland, it was, in any event, for the latter to ensure that any doubt which might have existed as to Coillte Teoranta's eligibility for the aid in question was removed.
76. The complaint raised by Ireland of a failure to comply with the duty to cooperate in good faith must therefore be rejected.
77. Ireland also claims that the Commission's conduct, in particular the fact that it failed to reply to Ireland's letter of 26 January 1993, approved Ireland's multi-

- annual afforestation programme and did not, prior to 1997, call into question the aid granted to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92 and charged to the EAGGF, led it reasonably to believe that the aid was in conformity with the applicable rules.
78. While it may be regrettable that the Commission did not make observations on Ireland's letter of 26 January 1993, its failure to reply could not, either of itself or in combination with the other facts of the case, give rise to a legitimate expectation on the part of Ireland.
79. First of all, the Commission's failure to reply to a letter is not, in principle, capable of giving rise to a legitimate expectation on the part of the person who sent it. In the present case, Ireland's letter of 26 January 1993 was itself a response to a request made by the Commission and did not call directly for a reply.
80. Furthermore, with respect to the Commission's approval of the Irish multi-annual afforestation programme, that programme referred to Coillte Teoranta only incidentally and did not state clearly that there was an intention to grant to that undertaking premiums for loss of income. Moreover, no such intention was specified in the Operational Programme for **Agriculture**, Rural Development and Forestry (1994-1999) or in the Strategic Plan for Development of the Forestry Sector in Ireland published by the Department of **Agriculture**, Food and Forestry. That approval could not therefore be interpreted as an acknowledgement that there was a sound basis for the grant of the premiums in question.
81. Nor, finally, could the fact that the Commission did not call into question the aid granted to Coillte Teoranta prior to 1997 lead Ireland to believe that the grant of aid to that undertaking for loss of income would never be called into question in the future. The Court has ruled on several occasions that, where the Commission has tolerated irregularities on grounds of fairness, the Member State concerned does not acquire any right to demand that the same position be taken with regard to irregularities committed in the following financial year by virtue of the principle of legal certainty or the principle of the protection of legitimate expectations (see, *inter alia*, Case C-54/95 *Germany v Commission* [1999] ECR I-35, paragraph 12). This must apply *a fortiori* in cases in which the Commission had not detected the type of irregularities in question during the preceding financial years.
82. Accordingly, it must be held that the Commission did not, by its conduct, give Ireland reason to believe that the aid granted to Coillte Teoranta for loss of income would be co-financed by the EAGGF. On the contrary, it had informed the Irish authorities of its doubts as early as 1992. Its subsequent failure to adopt a position on Coillte Teoranta's eligibility to receive the aid in question could not give rise to a legitimate expectation in that regard on the part of Ireland, particularly as that Member State had been closely involved in the drafting of the relevant legislation and was under an obligation to apply that legislation correctly.

83. Therefore, Ireland's complaint that the Commission infringed the principle of the protection of legitimate expectations must likewise be rejected and the second limb of the second plea accordingly declared unfounded.

84. In light of the above findings, the second plea must be rejected as unfounded.

85. Since Ireland has been unsuccessful in all of its pleas, the application must be dismissed in its entirety.

**Costs**

86. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against Ireland and the latter has been unsuccessful in its pleas, Ireland must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

- 1. Dismisses the application;**
- 2. Orders Ireland to pay the costs.**

Timmermans  
La Pergola  
Jann

von Bahr

Rosas

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass

Registrar

V. Skouris

President

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1: Language of the case: English.

## ANNEX III

FIE Clearfell Report:

<http://friendsoftheirishenvironment.net/index.php?do=library&action=view&id=47>  
(3.72MB)