

JUDGMENT OF THE COURT (Grand Chamber)

23 October 2007*

In Case C-273/04,

ACTION for annulment under Article 230 EC, brought on 28 June 2004,

Republic of Poland, represented initially by T. Nowakowski and E. Ośniecka-Tamecka, and subsequently by M. Szpunar, B. Majczyna, K. Rokicka and I. Niemirka, acting as Agents,

applicant,

supported by:

Republic of Latvia, represented by A. Zikmane and E. Balode-Buraka, acting as Agents,

Republic of Lithuania, represented by D. Kriauciūnas, acting as Agent, with an address for service in Brussels,

* Language of the case: Polish.

Republic of Hungary, represented by P. Gottfried and R. Somssich, acting as Agents,

interveners,

v

Council of the European Union, represented by F. Ruggeri Laderchi and K. Zieleśkiewicz, acting as Agents,

defendant,

supported by:

Commission of the European Communities, represented by T. van Rijn, A. Stobiecka-Kuik and L. Visaggio, acting as Agents, with an address for service in Luxembourg,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and L. Bay Larsen, Presidents of Chambers, J.N. Cunha Rodrigues, R. Silva de Lapuerta (Rapporteur), K. Schiemann, J. Makarczyk, A. Ó Caoimh, P. Lindh and J.-C. Bonichot, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M.-A. Gaudissart, head of unit,

having regard to the written procedure and further to the hearing on 23 January 2007,

after hearing the Opinion of the Advocate General at the sitting on 21 June 2007,

gives the following

Judgment

- 1 By its action, the Republic of Poland seeks the annulment of Article 1(5) of Council Decision 2004/281/EC of 22 March 2004 adapting the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of

Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, following the reform of the common agricultural policy (OJ 2004 L 93, p. 1, 'the contested decision').

- 2 By order of the President of the Court of 15 March 2005, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary and the Commission of the European Communities were given leave to intervene in these proceedings, the three Member States in support of the Republic of Poland and the Commission in support of the Council.

Legal framework

Regulation (EC) No 1259/1999

- 3 Article 1 of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy (OJ 1999 L 160, p. 113), as amended by Council Regulation (EC) No 1244/2001 of 19 June 2001 (OJ 2001 L 173, p. 1, 'Regulation No 1259/1999') provides:

“This Regulation shall apply to payments granted directly to farmers under support schemes in the framework of the common agricultural policy which are financed in full or in part by the “Guarantee” section of the [European Agricultural Guidance

and Guarantee Fund (EAGGF)], except those provided for under Council Regulation (EC) No 1257/1999 [of 17 May 1999 on support for rural development from the EAGGF and amending and repealing certain Regulations (OJ 1999 L 160, p. 80)].

These support schemes are listed in the Annex.’

- 4 Article 11(4), second indent, of Regulation No 1259/1999 provides that the Commission is to adopt amendments to the Annex as may become necessary taking into account the criteria set out in Article 1 of the regulation.
- 5 That annex is headed ‘List of support schemes fulfilling the criteria set out in Article 1’. That list was extended by Commission Regulation (EC) No 41/2004 of 9 January 2004 (OJ 2004 L 6, p. 19).

The Treaty of Accession and Act of Accession

- 6 Article 2(3) of the Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic

of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed in Athens on 16 April 2003 (OJ 2003 L 236, p. 17, 'the Accession Treaty') provides:

'Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in ... Articles 21 and 23 ... [of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) "the Act of Accession")] ... These measures shall enter into force only subject to and on the date of the entry into force of this Treaty.'

7 Article 23 of the Act of Accession provides:

'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may make the adaptations to the provisions of this Act relating to the common agricultural policy which may prove necessary as a result of a modification in Community rules. Such adaptations may be made before the date of accession.'

8 Article 20 of the Act of Accession provides that the acts listed in Annex II to the Act are to be adapted as specified in that annex.

- 9 That annex contains a Chapter 6. A, headed 'Agricultural Legislation', in which Point 27(b) provides for the insertion in Regulation No 1259/1999 of an Article 1a worded as follows:

'Introduction of support schemes in new Member States

In the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (hereinafter referred to as "new Member State(s)") the direct payments granted under the support schemes referred to in Article 1 shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Community as constituted on 30 April 2004:

25% in 2004

30% in 2005

35% in 2006

40% in 2007

50% in 2008

60% in 2009

70% in 2010

80% in 2011

90% in 2012

100% as from 2013.'

Regulation (EC) No 1782/2003

10 Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1. as corrected in OJ 2004 L 94, p. 70) repealed Regulation No 1259/1999 as from 1 May 2004.

11 Article 1 of Regulation No 1782/2003 provides:

“This Regulation establishes:

— common rules on direct payments under income support schemes in the framework of the common agricultural policy which are financed by the “Guarantee” section of the [EAGGF] except those provided for under Regulation (EC) No 1257/1999,

— an income support for farmers (hereinafter referred to as the “single payment scheme”);

— support schemes for farmers producing ... nuts, energy crops, ... milk ...’

- 12 Since those support schemes are direct payments under Article 2 of the same regulation, they are funded by the Guarantee section of the EAGGF.
- 13 Annex I of Regulation No 1782/2003 is headed 'List of support schemes fulfilling the criteria set out in Article 1' of that regulation. That list includes support for nuts, support for energy crops and also the premium and additional payments in the dairy sector provided for in, respectively, Chapters 4 (Articles 83 to 87), 5 (Articles 88 to 92) and 7 (Articles 95 to 97) of that regulation.

The contested decision

- 14 The contested decision was adopted under Article 2(3) of the Accession Treaty and Article 23 of the Act of Accession. Article 1(5) of the Decision provides for the replacement of Point 27 of Chapter 6. A of Annex II to the Act of Accession, the provisions of which amended Regulation No 1259/1999, with provisions which amend Regulation No 1782/2003 in order to take account of adjustments to the legislation relating to the common agricultural policy (CAP) introduced by the latter regulation, which was adopted after signature of the accession instruments.
- 15 Article 1(5)(c) of that decision provides in particular for the insertion in Regulation No 1782/2003 of an Article 143a in the following terms

'Introduction of support schemes

In the new Member States direct payments shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Community as constituted on 30 April 2004:

- 25% in 2004,
- 30% in 2005,
- 35% in 2006,
- 40% in 2007,
- 50% in 2008,
- 60% in 2009,
- 70% in 2010,
- 80% in 2011,
- 90% in 2012,
- 100% as from 2013.’

¹⁶ Article 8 of the contested decision provides:

‘This Decision shall be drawn up in the Spanish, Czech, Danish, German, Estonian, Greek, English, French, Irish, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Slovak, Slovenian, Finnish and Swedish languages, all twenty one texts being equally authentic.’

Facts

- 17 The relevant events begin with the negotiations for the accession of the Republic of Poland to the Union.
- 18 As is clear from a document on the position of the Republic of Poland for the negotiations relating to agricultural matters, adopted by the Council of Ministers on 9 December 1999, and from the response of the Republic of Poland to the Common Position of the European Union of 20 June 2002 on agricultural matters, adopted by the Council of Ministers on 8 October 2002, the Republic of Poland, during those negotiations, expressed on several occasions its intention to 'adopt, as from the day of accession, the framework of legislation relating to the common organisation of agricultural markets in its entirety, provided that Polish agriculture is guaranteed access to the entire [CAP] system, including ... direct payments'.
- 19 The Union's position at that time was set out in a discussion paper issued by the Commission on 30 January 2002, which was essentially based on the need to continue the ongoing restructuring of the agricultural sector in the new Member States, on the income of farmers in those Member States and on the requirement to avoid the creation of imbalances in relation to other economic sectors or of income speculation. In the light of those considerations, the conclusion in that document was that the request of the new Member States to receive, from accession, direct payments at the same level applicable to the then 15 Member States of the Union ('the old Member States') should not be followed, but that 'direct payments should be introduced gradually in the new Member States during a transition period'.
- 20 Further, the negotiating position of the old Member States in relation to the Republic of Poland was established in the Common Position of the European Union

dated 31 October 2002, where it is stated that the latter ‘takes note of Poland’s request that direct payments be granted to its farmers after accession to the same extent as farmers in the EU. The EU considers that this request should not be followed but direct payments should be introduced in Poland gradually during a transition period’.

- 21 In the absence of agreement between the parties, negotiations on this issue continued until the European Council at Copenhagen on 12 and 13 December 2002 and the Accession Conference which took place alongside it, the conclusions of which indicate that the question of the gradual introduction of direct payments within the new Member States was resolved on the basis of the European Union’s Common Position of 31 October 2002.
- 22 On 16 April 2003, at the summit of the European Council at Athens, the Republic of Poland signed the Accession Treaty.
- 23 On 29 September 2003, Regulation No 1782/2003 was adopted.
- 24 Given the necessity of adapting the Accession Treaty to the reform of the CAP brought about by that regulation, the Commission presented, on 27 October 2003, a proposal for a decision providing for application of the system of introduction by increments (‘the phasing-in system’) to all direct payments. As soon as the Polish Government was aware of this proposal, it opposed, at all stages of the legislative process and by means of numerous written communications, what it regarded as an expansion of the system of phasing-in of direct payments, contending in particular that adoption of the proposed measure would entail an alteration of the conditions of accession and would not comply with Article 23 of the Act of Accession.

25 The contested decision was adopted on 22 March 2004.

26 The Republic of Poland considered that that decision was not an adaptation of the Act of Accession, but a substantive alteration of the conditions of accession established in that instrument, and brought this action for annulment.

The admissibility of the action

Position of the parties

27 In the written procedure the Council submitted that the action had been brought out of time and was inadmissible.

28 The Council maintains that the decision was published in the *Official Journal of the European Union* on 30 March 2004 (OJ 2004 L 93). Since the application was lodged at the Registry of the Court on 28 June 2004, the action was consequently brought out of time, under the provisions of the fifth paragraph of Article 230 EC and Article 81 of the Rules of Procedure.

29 The Republic of Poland does not accept that the plea of inadmissibility is well founded.

- 30 The Republic of Poland, supported by the intervening Member States, submits, first, that the period of time available to a new Member State to bring an action for annulment of a measure adopted pursuant to Article 23 of the Act of Accession starts to run only from the date of accession of that Member State, so that there is no risk, first, that the time available to the Member State in question to bring an action is truncated and, secondly, that the Community institution producing such a measure may evade review by the Court on the initiative of the acceding States by adopting and publishing that measure at least two months before those States become Member States.
- 31 Secondly, those Member States claim that, on 30 March 2004, publication of the contested decision had not been made in all the official languages of the new Member States, as was required by Article 8 of that decision. In its reply, the Republic of Poland suggests in addition that the Official Journal in which that decision was published in the Polish language might have been back-dated, contravening the principle of legal certainty. In that regard, the Court, by order of 15 November 2006, ordered a measure of inquiry that the Director General of the Office for Official Publications of the European Communities be asked to reply in writing to the question of what was the actual date of publication of the contested decision, the date on which the decision was available to the public.
- 32 Thirdly, the Republic of Poland and the intervening Member States assert the principle of effective judicial protection, maintaining that the Community institutions cannot, solely by the choice of publication date of the adopted measure, deprive new Member States of the possibility of bringing an action for judicial review of that measure.

Findings of the Court

- 33 In the present case, the Court considers it necessary to rule at the outset on the substance of the case.

Substance

- 34 The Republic of Poland puts forward three grounds for complaint in relation to the contested decision, namely, that the Council lacked competence, as it exceeded the powers conferred on it by Article 23 of the Act of Accession, which is the legal basis for the decision; that the creation of a form of discrimination not laid down by that Act infringes the principle of equal treatment; and that the principle of good faith is violated, since the compromise reached in the accession negotiations has been unilaterally subverted.

The first ground of complaint: the Council's lack of competence because of infringement of Article 23 of the Act of Accession

Position of the parties

- 35 The substance of the Republic of Poland's first ground of complaint, in which it is supported by the intervening Member States, is that Article 23 of the Act of Accession cannot serve as the legal basis for adoption of the measures provided for in Article 1(5) of the contested decision, which extend the phasing-in system to new direct payments. Those measures are not a 'necessary adaptation' of the Act of Accession to the reform of the CAP within the meaning of Article 23, since, first, they are a substantive alteration of the conditions of accession established in that instrument and, secondly, it has been neither demonstrated nor explained in the preamble to the decision that they are necessary because of modification of the Community rules.
- 36 Thus, Article 143a of Regulation No 1782/2003, inserted by Article 1(5) of the contested decision, in fact amends the Act of Accession, since it establishes percentages and a schedule which apply generally to all direct payments to be

awarded in the new Member States, whereas, previously, Articles 1 and 1a of Regulation No 1259/1999 limited the phasing-in system exclusively to direct payments granted under the support schemes exhaustively listed in the Annex to that regulation.

37 According to the Republic of Poland, to increase in this way the number of aid payments subject to the phasing-in system goes beyond ‘necessary adaptations’ within the meaning of Article 23 of the Act of Accession, which is exclusively technical in nature and cannot lead to an alteration of the outcome of the accession negotiations. An alteration of the kind made by the contested decision to the list of payments subject to that system could be effected only after the date of accession, on the basis of Article 9 of the Act of Accession.

38 Lastly, in its reply, the Republic of Poland contests the Council’s argument that the Annex to Regulation No 1259/1999 is exclusively declaratory in nature. In that regard, it claims that it follows both from a literal and from a teleological interpretation of Article 1 of that regulation that the phasing-in system applies exclusively to direct payments granted under the support schemes exhaustively listed in the Annex to that regulation, so that the scope of that system could not be wider than the scope of Regulation No 1259/1999 itself. The applicant also refers to the procedure for amendment of that annex provided for in Article 11 of that regulation, which suggests that the Annex creates rights, and is not declaratory.

39 The Council, supported by the Commission, does not accept the premiss on which all of the Republic of Poland’s argument rests, namely that the phasing-in system for direct payments applies only to the direct payments listed exhaustively in the Annex to Regulation No 1259/1999.

- 40 The wording of Article 1a of that regulation, it is argued, is such that it applies to all 'direct payments granted under the support schemes referred to in Article 1' of that regulation. Article 1 contains a general definition of the meaning of direct payments which covers all forms of aid existing or prospective, granted directly to farmers under support schemes falling under the CAP and funded in full or in part by the Guarantee section of the EAGGF. That general definition of direct payments is evidence that Regulation No 1259/1999 is intended to apply to all direct payments established within the CAP. From this perspective, the Annex to the regulation is only declaratory in nature, as is confirmed by the power to amend that Annex conferred on the Commission in Article 11(4), second indent, of that regulation.
- 41 Since the premiss on which the argument of the Republic of Poland rests is misconceived, the first objection is unfounded. Consequently, the Council did not, by adopting the contested decision, exceed the bounds of the competence conferred on it by Article 23 of the Act of Accession, since that decision is exactly what is meant by an 'adaptation' in that article. In the Council's opinion, the application of the phasing-in system as a general rule to all direct aid was moreover decided during the accession negotiations and is expressly provided for in the Act of Accession, which inserted Article 1a in Regulation No 1259/1999. The fact that Regulation No 1782/2003 provides for the application of this system to all direct aid does not represent either a novelty or a substantive alteration in the light of the approach followed during the accession negotiations.

Findings of the Court

- 42 The first ground of complaint relates, in essence, to the extent of the powers conferred on the Council by Article 23 of the Act of Accession.

43 In order to determine whether that ground of complaint is well founded, it is first necessary to analyse the concept of ‘necessary adaptations’ within the meaning of that article and then to determine the scope of the phasing-in system for direct payments initially set up in Article 1a of Regulation No 1259/1999 as modified by the Act of Accession, and then to decide whether, by adopting the contested decision, the Council exceeded those powers.

— The meaning of ‘necessary adaptations’ in Article 23 of the Act of Accession

44 It must first be observed that the objective of Article 23 of the Act of Accession was to enable the Council to adopt the measures necessary to ensure that the Act of Accession was brought into alignment with changes in legislation made by the institutions within the CAP between the signature of that Act and the actual accession of the new Member States.

45 However, the power thus granted cannot be interpreted broadly; otherwise the Court would misconstrue the outcome of the negotiations of the conditions of accession of those States.

46 In that regard, the Court has already ruled on the meaning of ‘necessary adaptations’ in the context of acts of accession, holding that the adaptation measures provided for by such acts, as a general rule, authorise only adaptations intended to render earlier Community measures applicable in the new Member States, to the exclusion of all other amendments (see, to that effect, in relation to Article 169 of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of

Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21), Case C-259/95 *Parliament v Council* [1997] ECR I-5303, paragraphs 14 and 19; and, in respect of Article 57 of the Act of Accession, Case C-413/04 *Parliament v Council* [2006] ECR I-11221, paragraphs 31 to 38, and Case C-414/04 *Parliament v Council* [2006] ECR I-11279, paragraphs 29 to 36).

- 47 While it is true that those judgments related to provisions dealing with adaptation of acts of the institutions which had not been adapted by the act of accession in question, it remains the case that, as the Advocate General states at point 64 of his Opinion, the very restricted meaning which those judgments attach to 'adaptation' is stated in general terms, whatever the provision of the act of accession concerned which is the legal basis of the measure adopted, and therefore there is all the more reason to apply that meaning when, as in the present case, it is the provisions of the act of accession itself which are adapted in order to take account of a modification of the Community rules to which those provisions related.
- 48 From this perspective, the concept of 'adaptation' must be restricted to measures which cannot in any way affect the scope of one of the provisions of the Act of Accession relating to the CAP nor substantially alter its content, but which solely represent adjustments designed to ensure consistency between the Act and new provisions adopted by the Community institutions between the signature of the Act of Accession and actual accession.
- 49 As regards the requirement that the adoption of any such measure of adaptation must be necessary, it is sufficient to hold that such a requirement stems directly from any modification of the Community rules in response to a new regulatory step on the part of the Community institutions which affects the CAP and leads to a conflict between the provisions of the Act of Accession and the new body of rules resulting from that modification.

50 In the light of the above considerations, it must be determined whether the contested decision can be described as a ‘necessary adaptation’.

51 In that regard, it is first necessary to analyse the content and scope of the amendments to the Act of Accession made by Article 1(5) of that decision, and to place that measure within the general context of the CAP of which it is part.

— The scope of the system of phasing-in of direct payments

52 The argument of the Republic of Poland that the system of phasing-in of direct payments set up in Article 1a of Regulation No 1259/1999 as amended by the Act of Accession applies only to a closed set of direct aid payments as listed in the Annex to that regulation, and not to all direct payments, is incompatible both with a literal and with a systemic or teleological interpretation of the provisions in question.

53 It must first be stated that Article 1a provided that in the new Member States, ‘direct payments granted under the support schemes referred to in Article 1 shall be introduced in ... increments’ in accordance with the schedule set out in Article 1. It expressly follows therefrom that the phasing-in system was intended to apply to all the direct payments granted under support schemes referred to in Article 1 of Regulation No 1259/1999.

- 54 Article 1 contained, in its first paragraph, a general definition of the concept of direct payments to which that regulation was to apply, namely 'payments granted directly to farmers under support schemes in the framework of the common agricultural policy which are financed in full or in part by the "Guarantee" section of the EAGGF, except those provided for under Regulation (EC) No 1257/1999'.
- 55 That wording indicates that, with the single explicitly specified exception of aid schemes set up by Regulation No 1257/1999, Regulation No 1259/1999 was intended to apply to any aid corresponding to that definition, in other words, aid awarded directly to farmers in the framework of support schemes under the CAP and funded in full or in part by the Guarantee section of the EAGGF.
- 56 The fact that Regulation No 1259/1999 was intended to apply to any system, existing or prospective, which provided for direct payments, as inferred from a literal interpretation of the provisions in question, is confirmed by recital 1 of the preamble to that regulation, which states that one of the objectives of the regulation is that 'for direct payments under the various income support schemes in the [CAP] some common conditions should be established'.
- 57 In addition, that literal interpretation is confirmed by the purpose of adoption of Article 1a of Regulation No 1259/1999 as amended by the Act of Accession. It is clear from the preparatory work for the accession conference that the intention of the conference was to impose the phasing-in mechanism in the new Member States for all direct payments.
- 58 Thus, in the discussion paper of 30 January 2002, the Commission recommended the gradual introduction of direct payments, and did not attach conditions which

would be likely to restrict its scope. That approach was followed in the Common Position of the European Union of 31 October 2002, in which the old Member States expressed their wish to introduce direct payments gradually during a transition period, without qualifying that general formulation in a manner capable of restricting its scope. Lastly, the conclusions of the European Council at Copenhagen of 12 and 13 December 2002, which reflect the outcome of the accession negotiations, state that the question of the gradual introduction of direct payments in the new Member States was resolved in accordance with the Common Position of 31 October 2002, and accordingly that question did not give rise to a compromise whereby the scope of the phasing-in system was restricted.

59 Further, that literal interpretation is in no way affected by the wording of the second paragraph of Article 1 of Regulation No 1259/1999.

60 In relation to direct payments, that second paragraph of Article 1 states that '[t]hese support schemes are listed in the Annex'.

61 Contrary to what is contended by the Republic of Poland, that provision cannot be interpreted to mean that Article 1 referred only to the support schemes listed exhaustively in the Annex to Regulation No 1259/1999.

62 Such an argument cannot be reconciled with a systemic interpretation of the second paragraph of Article 1 of that regulation, which relates to the Annex to the regulation.

- 63 Reading the second paragraph of Article 1 in conjunction with Article 11(4), second indent, of Regulation No 1259/1999 shows that the scope of that regulation is determined by the general definition in the first paragraph of Article 1, and not by the list contained in the Annex to that regulation.
- 64 Article 11(4), second indent, of that regulation authorises the Commission to adopt, while respecting the 'management committee procedure', 'amendments to the Annex as may become necessary taking into account the criteria set out in Article 1'.
- 65 It is patent from reading that provision that the Community legislature merely intended to give to the Commission an implementing power with the aim of ensuring the continuing updating of the Annex to Regulation No 1259/1999 should new aid schemes be established which satisfied the criteria defined in the first paragraph of Article 1 of that regulation. Thus, the Commission is solely authorised to amend that Annex to include within it direct payments set up or modified by the Community legislature which meet those criteria.
- 66 It is also undeniable that inclusion of an aid scheme in that Annex can occur only if that scheme satisfies the conditions defined in the first paragraph of Article 1 of Regulation No 1259/1999, the Annex merely giving particular examples for the purposes of that provision.
- 67 It follows that the essential criterion determining the scope of Regulation No 1259/1999 is to be found in the conditions set out in the first paragraph of Article 1 of that regulation, and not in the inclusion of a specific aid scheme in the Annex to that regulation.

68 Lastly, as the Advocate General states at point 72 of his Opinion, a teleological interpretation of Articles 1 and 1a of Regulation No 1259/1999 leads to the same conclusion, since the objective which justified the introduction of the system of phasing-in of direct payments in the new Member States supports the view that that system should be regarded as being general in scope.

69 The concern not to slow down the necessary restructuring of the agricultural sector in those Member States and not to create significant disparities in income or social imbalances by the granting of aid not proportionate to the income level of farmers and the general population was applicable to for the whole of the agricultural sector, and therefore to all direct aid, existing or prospective. Further, if the system of phasing-in of direct payments had been intended to apply only to certain crops, namely those for which direct payments had already been set up before adoption of the Act of Accession, there would have been a risk that the farmers of those Member States would have abandoned them in order to concentrate on the crops for which they could immediately obtain full direct payments.

70 It follows from all of the foregoing that the interpretation of Article 1a of Regulation No 1259/1999 as amended by the Act of Accession which is advocated by the applicant, namely that the system of phasing-in of direct payments provided for in that provision applies only to a closed set of direct aid payments listed in the Annex to that regulation, and not to all direct payments corresponding to the criteria defined in the first paragraph of Article 1 of that regulation, cannot be reconciled either with the letter or the spirit of that regulation.

71 In the light of that conclusion, and in light of the concept of ‘necessary adaptations’ within the meaning of Article 23 of the Act of Accession as explained in paragraphs 44 to 48 of this judgment, the Court must determine whether, by adopting the contested decision, the Council has exceeded the powers conferred on it by Article 23 of the Act of Accession.

— Whether the contested decision is consistent with the concept of ‘necessary adaptations’ within the meaning of Article 23 of the Act of Accession

- 72 As set out in paragraphs 53 to 70 of this judgment, Article 1a of Regulation No 1259/1999 as amended by the Act of Accession, read in conjunction with Article 1 of that regulation, established a general system of phasing-in of payments in relation to all direct aid corresponding to the criteria defined in the first paragraph of Article 1 granted in respect of the new Member States.
- 73 Article 1a was inserted into Regulation No 1259/1999 by Chapter 6. A, point 27, of Annex II to the Act of Accession, which is thus brought into alignment with the system of phasing-in of direct aid payments set up by that regulation.
- 74 Next, Regulation No 1259/1999 as modified in this way by the Act of Accession, was repealed as from 1 May 2004 by Regulation No 1782/2003. It is clear from Article 1 and from Annex I to the latter regulation that Regulation No 1782/2003 adds, to those already in existence, schemes of direct support to farmers producing nuts and energy crops, and provides for additional payments within the scheme of direct support to the dairy sector.
- 75 Lastly, by the contested decision, the Council replaced the provisions of point 27 of Chapter 6. A of Annex II to the Act of Accession, which amended Regulation No 1259/1999, with provisions amending Regulation No 1782/2003, in order to take

account of adjustments made to the CAP by the adoption of the latter regulation. Accordingly, the contested decision inserts an Article 143a in Regulation No 1782/2003, an article which repeats, in relation to direct payments in the new Member States, the schedule and the percentages established earlier by Article 1a of Regulation No 1259/1999 as amended by the Act of Accession.

⁷⁶ As has been set out in paragraphs 57 and 58 of this judgment, the principle of the general application of the phasing-in system to all direct aid was agreed in the accession negotiations and expressly provided for by the Act of Accession which inserted Article 1a in Regulation No 1259/1999.

⁷⁷ That article established a schedule indicating for each year a percentage for the introduction in the new Member States of the direct aid referred to in Article 1 of that regulation.

⁷⁸ It is common ground that Article 1(5) of the contested decision is limited to providing for the phasing-in of direct payments in the new Member States according to the same schedule and percentages as those previously established in Article 1a of Regulation No 1259/1999 as amended by the Act of Accession.

⁷⁹ Therefore, it cannot be held that the contested decision introduced a substantive amendment either to the scope of the phasing-in system, or to the fundamental content of the obligations and rights flowing from it, since neither the schedule, nor the percentages, nor the aid concerned were affected. In those circumstances, the contested decision must be held to be a 'necessary adaptation' of the Act of Accession, following reform of the CAP.

80 Consequently, by adopting that decision, the Council did not exceed the competence conferred on it by Article 23 of the Act of Accession to make the adaptations to the provisions of the Act relating to the CAP which might prove necessary as a result of a modification of Community rules.

81 It follows from all of the foregoing that the first ground of complaint of the Republic of Poland, that the Council, by adopting the contested decision, exceeded the competence conferred on it by Article 23 of the Act of Accession, must be rejected as unfounded.

The second ground of complaint: infringement of the principle of non-discrimination

Position of the parties

82 The Republic of Poland, supported by the intervening Member States, considers that the extension of the phasing-in system to all direct payments discriminates between the farmers of the old Member States and those of the new Member States, since the treatment of all farmers should have been based on identical principles from the time of accession of the new Member States.

- 83 The Council and the Commission base their position on the finding under the first ground of complaint, namely that Article 1a of Regulation No 1259/1999 contains a general definition referring to any direct payment granted under the CAP which satisfied the specified conditions.
- 84 From that perspective, the contested decision does not, it is argued, extend the scope of the phasing-in system beyond what was provided for by the Act of Accession, as originally worded, and therefore the alleged discrimination was created by primary law and not by that decision. Moreover, the Council states that the agricultural situation in the new Member States is radically different from that prevailing in the old Member States and requires a gradual adaptation to Community rules.

Findings of the Court

- 85 The applicant's second ground of complaint is, in essence, that, as a result of the contested decision, the exception to the principle of equal treatment which is entailed by the phasing-in system has been extended beyond the limits defined in the Act of Accession, and that the decision thus represents an arbitrary extension of a discriminatory system which exacerbates the difference in treatment of old and new Member States.

- 86 In that regard it is sufficient to recall that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Joined Cases C-87/03 and C-100/03 *Spain v Council* [2006] ECR I-2915, paragraph 48 and case-law cited there).
- 87 There is no need to consider the argument of the Council that the contested decision cannot be discriminatory since it stems directly from the Act of Accession, since it is undisputed in the present case that the agricultural situation in the new Member States was radically different from that in the old Member States, which justified a gradual application of Community rules, in particular those rules relating to direct support schemes, in order not to disrupt the necessary on-going restructuring in the agricultural sector of the new Member States.
- 88 It follows from these considerations that the applicant is not in a situation comparable to that of the old Member States which have unrestricted access to the direct support schemes, and that prevents any valid comparison being made (see, by analogy, Case C-73/90 *Spain v Council* [1992] ECR I-5191, paragraph 34).
- 89 The second ground of complaint must therefore be rejected as unfounded.

The third ground of complaint: infringement of the principle of good faith

Position of the parties

⁹⁰ The third ground of complaint relied on by the Republic of Poland alleges infringement of the principle of good faith which governs the law of treaties. According to that Member State, the Treaty of Accession, of which the Act of Accession forms part, was negotiated, signed and ratified in good faith by all the contracting parties, and the Community should not therefore, by means of measures introduced after signature of that Act, have undermined the objectives of the Act nor disregarded the legitimate expectations of the parties and persons on their territories.

⁹¹ As regards this ground of complaint, the Council, while accepting that good faith governed the accession negotiations, submits that all parties to the Treaty of Accession, including the applicant, freely agreed to the provisions which granted to the Council the power to adapt those provisions of the Annex to the Act of Accession which related to the CAP before actual accession. The exercise of that power by adoption of the contested decision cannot therefore, on any view, be regarded as an infringement of the principle of good faith.

Findings of the Court

- 92 As regards the third ground of complaint, it is obvious that, as was held in paragraph 79 of this judgment, the contested decision reproduces the principle and the method of applying the phasing-in system relating to direct payments in the new Member States as they were stated in the Act of Accession, without extending its scope, and consequently that decision cannot, notwithstanding the applicant's contention to the contrary, be held to be a subversion of the compromise reached in the accession negotiations.
- 93 As the third plea in law cannot be upheld either, the action must be dismissed in its entirety.

Costs

- 94 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 Council has applied for the Republic of Poland to be ordered to pay the costs and the latter has been unsuccessful, the Republic of Poland must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the interveners must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Dismisses the action;**
- 2. Orders the Republic of Poland to pay the costs;**
- 3. Orders the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, and the Commission of the European Communities to bear their own costs.**

[Signatures]