Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

19 June 2015*

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Public storage of sugar — Increase of costs relating to warehouse rental — Annual inventory of stocks — Physical inspections of storage sites — Legal certainty — Legitimate expectations — Proportionality — Obligation to state reasons — Existence of a risk of financial loss to the funds — Effectiveness)

In Case T-358/11,

Italian Republic, represented by G. Palmieri, acting as Agent, and by P. Marchini, avvocato dello Stato,

applicant,

v

European Commission, represented by P. Rossi and D. Nardi, acting as Agents,

defendant,

APPLICATION for annulment of Commission Implementing Decision 2011/244/EU of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33), in that it rules out certain expenditure incurred by Italy, and of the Commission's letters of 3 February 2010 and 3 January 2011, as acts preparatory to that decision,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, I. Pelikánová and E. Buttigieg (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 20 January 2015,

gives the following

* Language of the case: Italian.

Judgment

Background to the dispute

1 On 7 May 2007, an inspection visit by the services of the Commission of the European Communities began at the headquarters of the Agenzia per le erogazioni in agricoltura (AGEA, Agricultural Payments Agency) in Rome (Italy), then continued at the sugar storage warehouses in the region of Emilia Romagna (Italy), and culminated in a final meeting between the members of the inspection mission and the Italian authorities held on 11 May 2007 in Bologna (Italy). That inspection focused on the application by the Italian authorities of EU rules relating to the public storage of sugar.

2 As a result of that mission, by note of 19 June 2007, the Commission informed the Italian authorities, in accordance with Article 11(1) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90), of irregularities noted during the checks carried out and indicated the corrective measures and procedural improvements to be adopted.

3 By AGEA note of 7 August 2007, the Italian authorities submitted their comments on the complaints raised by the Commission services in the note of 19 June 2007.

4 By letter dated 5 June 2008, the Commission convened the Italian authorities to a bilateral discussion under the third subparagraph of Article 11(1) of Regulation No 885/2006.

5 At that meeting, which was held on 17 June 2008 in Brussels (Belgium), the parties discussed all the issues which had been the subject-matter of the Commission's observations. By note of 21 August 2008, the Commission services sent the Italian authorities the minutes of the meeting, which included the presentation of the positions of both the Italian authorities and the Commission, the Commission's conclusions on the defects in the system of supervision for sugar storage interventions in Italy and the financial implications relating thereto, and a request for additional information.

6 By AGEA note of 24 October 2008, the Italian authorities submitted their comments on the report of the meeting and responded to the request for additional information.

7 By letter of 3 February 2010, the Commission services sent the Italian Republic a formal communication drawn up in accordance with the third subparagraph of Article 11(2) of Regulation No 885/2006. The Commission stated that it maintained its position that certain expenditure incurred by the paying agencies accredited by the Italian Republic and declared under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and the European Agricultural Guarantee Fund (EAGF) relating to the storage of sugar did not comply with EU law and announced its intention to propose financial corrections and to exclude from European Union financing a total amount of EUR 2 077 637. The Commission stated that it had assessed that amount on the basis of three infringements of EU law. Only two of those infringements were, in this case, disputed by the Italian authorities, namely:

— a 35% increase in storage costs for sugar paid to depositaries for rented warehouses, in accordance with the second subparagraph of Article 9(5) of Commission Regulation (EC) No 1262/2001 of 27 June 2001 laying down detailed rules for implementing Council Regulation (EC) No 1260/2001 as regards the buying in and sale of sugar by intervention agencies (OJ 2001 L 178, p. 48), the Italian authorities having failed to provide the Commission with evidence that the justification for the specific increase had been subject to controls in the prescribed manner or even that such controls were provided for in the national control provisions;

— an infringement of Article 4 of Commission Regulation (EC) No 2148/96 of 8 November 1996 laying down rules for evaluating and monitoring public intervention stocks of agricultural products (OJ 1996 L 288, p. 6) and of Article 8(1) read in conjunction with Article 2(3)(a) of Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the EAGF of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States (OJ 2006 L 171, p. 35), in so far as inventory controls on sugar in the possession of the intervention agency for accounting year 2006 were not carried out before the end of that year, that is before 30 September 2006.

8 On the basis of Commission Document No VI/5330/97 of 23 December 1997, entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee' ('Document VI/5330/97'), the Commission proposed the application of a correction in the amount of EUR 499 033, corresponding to 10% of the expenditure relating to storage costs, on account of the 35% increase in storage costs for financial years 2006 to 2009, and in the amount of EUR 781 044, corresponding to 5% of the storage and financing costs for financial year 2006, on account of the late performance of inventory controls.

9 By letter of 22 March 2010, the Italian authorities requested the intervention of the Conciliation Body.

10 On 22 September 2010, the Conciliation Body issued its final report.

11 By AGEA note of 17 December 2010, the Italian authorities provided additional information to the Commission services, in accordance with the Conciliation Body's request.

12 By letter of 3 January 2011, the Commission informed the Italian Republic of its final position at the end of the conciliation procedure. The Commission's opinion has remained unchanged since the letter of 3 February 2010. As a result, it has maintained its position of excluding a total amount of EUR 2 077 637 from European Union financing.

13 By AGEA note of 18 January 2011, the Italian authorities responded to the Commission's final position.

14 On 15 April 2011, the Commission adopted Implementing Decision 2011/244/EU excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF, under the EAGF and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33), by which it excluded the expenditure incurred by the Italian Republic relating to the public storage measure for sugar for financial years 2006 to 2009, through individual and flat-rate financial corrections amounting to EUR 2 077 637, because it does not comply with EU rules ('the contested decision').

15 The reasons for the financial corrections were set out in the Summary Report of 16 March 2011 on the results of the Commission's inspections carried out in the context of the conformity clearance pursuant to Article 7(4) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 2009 L 160, p. 103) and Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) ('the summary report').

Procedure and forms of order sought by the parties

16 The Italian Republic brought the present action by application lodged at the Registry of the General Court on 27 June 2011.

17 It also submitted evidence asking the Court to adopt different measures of inquiry and of organisation of procedure.

18 On hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of its Rules of Procedure, requested the parties to respond to certain questions in writing. The parties complied with those measures of organisation of procedure within the prescribed period.

19 The Italian Republic claims that the Court should:

— partially annul the contested decision, in so far as it concerns the Italian Republic;

— annul the final position of the Commission contained in its letter of 3 January 2011, drawn up following the report of the Conciliation Body, and paragraph 2 of the reasons set out therein, as an act preparatory to the contested decision;

— annul the Commission's letter of 3 February 2010, as an act preparatory to the contested decision;

— as an incidental claim, uphold a preliminary plea of illegality in respect of Commission Regulation (EC) No 915/2006 of 21 June 2006 amending Regulation (EC) No 2148/96 (OJ 2006 L 169, p. 10);

— order the Commission to pay the costs.

20 The Commission contends that the Court should:

— dismiss the action;

— declare the plea of illegality against Regulation No 915/2006 inadmissible or, in the alternative, dismiss it as unfounded;

— order the Italian Republic to pay the costs.

Law

A – *Admissibility of the action in so far as it seeks the annulment of the Commission's letters of 3 February 2010 and 3 January 2011*

21 In the application, the Italian Republic seeks, in addition to the annulment of the contested decision, the annulment of the letters of 3 February 2010 and 3 January 2011 which were sent to it by the Commission in the course of the procedure.

22 At the hearing, in response to an oral question from the Court, the Commission pleaded the inadmissibility of the heads of claim seeking annulment of the letters of 3 February 2010 and 3 January 2011 by stating that they were preparatory in nature.

23 The Italian Republic, while stating in the application that the letters of 3 February 2010 and 3 January 2011 were acts preparatory to the contested decision (see paragraph 19 above), maintained at the hearing the head of claim seeking their annulment, arguing that they have an effect independent of the contested decision, in particular with regard to the reasoning contained therein.

24 According to settled case-law, only measures the legal effects of which are binding on and capable of affecting the interests of the applicant by bringing about a distinct change in his legal position are acts or decisions which may be the subject of an action for annulment in terms of Article 263 TFEU. To determine whether an act or decision produces such effects, it is necessary to look to its substance (see order of 22 November 2007 in *Investire Partecipazioni* v *Commission*, T-418/05, EU:T:2007:354, paragraph 32 and the case-law cited).

25 Moreover, in the case of acts or decisions drawn up in several stages, in particular following an internal procedure, it is clear from that same case-law that in principle only measures definitively laying down the position of the institution upon the conclusion of that procedure may be contested, and not provisional measures intended to pave the way for the final decision (see judgment of 14 December 2006 in *Germany* v *Commission*, T-314/04 and T-414/04, EU:T:2006:399, paragraph 38 and the case-law cited, and the order in *Investire Partecipazioni* v *Commission*, cited in paragraph 24 above, EU:T:2007:354, paragraph 33 and the case-law cited).

26 Finally, whilst measures of a purely preparatory character may not themselves be the subject of an application for annulment, any legal defects therein may be relied upon in an action directed against the definitive act for which they represent a preparatory step (see order in *Investire Partecipazioni* v *Commission*, cited in paragraph 24 above, EU:T:2007:354, paragraph 35 and the case-law cited).

27 In this case, it should be noted that, by the letter of 3 February 2010, the Commission sent the Italian Republic a formal communication drawn up in accordance with the third subparagraph of Article 11(2) of Regulation No 885/2006 (see paragraph 7 above), and, by letter of 3 January 2011, it communicated to the Italian Republic its final position at the end of the conciliation procedure (see paragraph 12 above). Those letters were part of the procedure laid down by Article 11 of Regulation No 885/2006 which led to the adoption by the Commission, on 15 April 2011, of the contested decision, which excludes certain expenditure from European Union financing, in accordance with Article 7(4) of Regulation No 1258/1999 and Article 31 of Regulation No 1290/2005. Thus, the final decision of the Commission to exclude the amounts from European Union financing, which is the subject of the present action, had not yet been adopted when the letters of 3 February 2010 and 3 January 2011 were sent.

28 It follows that the letters on 3 February 2010 and 3 January 2011 constitute acts preparatory to the contested decision, which the Italian Republic itself asserts in the application. They therefore do not have legal effects which are binding on and capable of affecting the interests of the Italian Republic as referred to in the case-law cited in paragraph 24 above.

29 That conclusion cannot be invalidated by the applicant's argument concerning the reasoning contained in the letters in question. The Italian Republic was entitled to rely on any legal defects in the reasons contained in those acts in support of the present action against the contested decision, as is clear from case-law recalled in paragraph 26 above, so that the action must be declared inadmissible in so far as it seeks annulment of the Commission's letters of 3 February 2010 and 3 January 2011.

B – *Substance*

30 Only the flat-rate corrections applied by the contested decision to the expenditure incurred by the Italian Republic are affected by the present action, namely, first, the flat-rate financial correction of 10% for the expenditure relating to the 35% increase in storage costs for sugar for financial years 2006 to 2009, that is, in total, EUR 499 033, and, secondly, the flat-rate financial correction of 5% on account of the late performance of inventory controls for financial year 2006, that is EUR 781 044.

1. *Preliminary considerations*

31 It must be pointed out that the European Agricultural Funds finance only interventions undertaken in accordance with EU provisions within the framework of the common organisation of agricultural markets (see judgment of 23 September 2004 in *Italy* v *Commission*, C-297/02, EU:C:2004:550, paragraph 45 and the case-law cited).

32 According to the settled case-law concerning the European Agricultural Funds, it is for the Commission to prove an infringement of the rules on the common organisation of the agricultural markets. The Commission is therefore obliged to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question. However, the Commission is required not to show exhaustively that the checks carried out by the national authorities were inadequate or that the figures they have transmitted are irregular, but to produce evidence of its serious and reasonable doubt regarding such checks or figures (see judgment of 24 February 2005 in *Greece* v *Commission*, C-300/02, EU:C:2005:103, paragraphs 33 and 34 and the case-law cited, and judgment of 22 November 2006 in *Italy* v *Commission*, T-282/04, EU:T:2006:358, paragraphs 95 and 96).

33 The Member State concerned, for its part, cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. If it is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures. The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of accounts; consequently, it is for that State to adduce the most detailed and comprehensive evidence that its checks have been carried out and its figures are accurate and, if appropriate, that the Commission's assertions are incorrect (see judgments in *Greece* v *Commission*, cited in paragraph 32 above, EU:C:2005:103, paragraphs 35 and 36 and the case-law cited, and *Italy* v *Commission*, cited in paragraph 32 above, EU:T:2006:358, paragraph 97 and the case-law cited).

34 It is in the light of those considerations that the Court must examine the pleas relied upon by the Italian Republic.

2. *The flat-rate financial correction of 10% for the expenditure relating to the 35% increase in storage costs for accounting years 2006 to 2009*

35 It is clear from the summary report that the flat-rate correction of 10% applied in this case by the contested decision was based on deficiencies affecting the system of supervision concerning implementation of the increase in storage costs under the second subparagraph of Article 9(5) of Regulation No 1262/2001. The Commission criticised the Italian Republic, in essence, for not having established an adequate system of supervision for applications by operators to ensure that the 35% increase in storage costs laid down in Article 9(5) of Regulation No 1262/2001 in respect of the storage of sugar in rented warehouses had been granted in duly justified and justifiable cases. The Commission noted that systematic application of that increase, without establishing procedures to check that the additional storage costs were actually incurred, or, at least, without the Italian authorities having proven that such procedures had been provided for in national instructions for controls, constituted a high risk of loss for the funds.

36 The first two pleas relied on by the Italian Republic support the challenge to the financial correction concerning expenditure relating to the 35% increase in storage costs and are formally based on infringement of essential procedural requirements: the first on account of the Commission's failure to conduct a proper investigation of the case prior to the adoption of the contested decision and the second on account of the failure to state reasons.

a) The scope of the first plea

37 At the outset it should be noted that, while the discussion between the parties relates, in essence, to the interpretation of the second subparagraph of Article 9(5) of Regulation No 1262/2001 and to the nature of the controls that national authorities are obliged to carry out before applying the 35% increase in storage costs provided for in that provision, the Italian Republic formally raised in its application, in connection with the correction applied in that regard by the Commission, only (the first and second) pleas in law alleging infringement of essential procedural requirements on account of a failure to conduct a proper investigation and a failure to state reasons, which relate to formal aspects of the contested decision and the procedure leading to its adoption.

38 In response to a written question from the Court, the applicant has nevertheless indicated that its first plea should be understood as based not only on infringement of essential procedural requirements on account of a failure to conduct a proper investigation, but also on an error of assessment and an infringement of the second subparagraph of Article 9(5) of Regulation No 1262/2001.

39 At the hearing, the Commission raised in that regard a plea of inadmissibility, arguing that such a redefined plea should be considered a new plea, in accordance with the case-law and regardless of the extent and scope of the arguments relied on by the Commission before the Court in response to the applicant's arguments.

40 In that regard, it is appropriate to recall that, according to the case-law on the application of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(c), of the Rules of Procedure, the applicant is not obliged expressly to state on which particular rule of law his complaint is based, provided that his line of argument is sufficiently clear and precise for the opposing party and the European Union Courts to be able to identify the rule without difficulty (see, to that effect, judgment of 10 May 2006 in *Galileo International Technology and Others* v *Commission*, T-279/03, ECR, EU:T:2006:121, paragraphs 38 to 41; see, to that effect and by analogy, judgment of 13 November 2008 in *SPM* v *Council and Commission*, T-128/05, EU:T:2008:494, paragraph 65). Accordingly, pleas may be expressed in terms of their substance rather than their legal classification provided that the application sets them out with sufficient clarity (judgment of 26 March 2010 in *Proges* v *Commission*, T-577/08, EU:T:2010:127, paragraph 21).

41 In this case, on the one hand, the Italian Republic complains that the Commission did not, before applying the flat-rate correction of 10%, investigate the conditions on the Italian sugar market. On the other hand, it presents a series of arguments seeking to prove that the Italian authorities did determine and examine the circumstances of the Italian sugar market which justified, in its view, an increase of at least 35% in storage costs for sugar, a matter which the Commission failed to take into account when adopting the contested decision. That second series of arguments of the Italian Republic can be understood only as criticising the Commission, first, for failing to recognise that the 35% increase in storage costs, as provided for in the second subparagraph of Article 9(5) of Regulation No 1262/2001, was correctly applied by the Italian authorities in view of the results of the market survey which was carried out and, secondly, for having considered that the Italian authorities had failed to provide sufficient evidence to dispel the Commission's doubts as to the risk to the funds in the light of an alleged lack of appropriate controls.

42 It is true that some of those arguments were raised by the Italian Republic in the context of not the first but the second plea, alleging infringement of essential procedural requirements on account of the failure to state reasons, as the Commission pointed out at the hearing. However, the Court cannot be restricted in its examination of the pleas and complaints of the parties by the formal classification that those parties give to their arguments, provided that their arguments emerge with sufficient clarity from their pleadings, as is clear from the case-law recalled in paragraph 40 above.

43 Furthermore, it should be noted that the Commission responded to the first and second pleas as a whole, not only by challenging the alleged failure to conduct a proper investigation, but also by inviting the Court, in paragraph 94 of the defence, principally, to consider that Article 9(5) of Regulation No 1262/2001 had not been complied with in this case by the Italian authorities as regards the formal requirements for granting the aid. In that context, it argued in particular, with regard to its interpretation of the second subparagraph of Article 9(5) of Regulation No 1262/2001, that by granting without distinction the maximum increase of 35% to almost all of the producers who used external storage sites, without those producers having justified, on a case-by-case basis, the higher amount of the costs actually incurred, the Italian Republic infringed that provision. The failure to fulfil the requirements for individual controls which, according to the Commission, arise from that provision has exposed the funds to a serious risk and justified the correction of 10% imposed by the contested decision.

44 Moreover, the Commission has not responded to the second plea, alleging the failure to state reasons, but examined it with the first plea by responding to it using arguments on the merits.

45 In those circumstances, if the view were taken that the first plea is based only on the infringement of essential procedural requirements on account of the failure to conduct a proper investigation, as the Commission maintains, a large part of the arguments submitted by the parties before the Court would be rendered ineffective. Therefore, having regard to the case-law recalled in paragraph 40 above, and to the extent that the substance of the Italian Republic's arguments emerges from the application with sufficient clarity, with the result that the Commission was properly able to present its defence, and to the extent that the Court is able to identify and examine those arguments, the first plea should be understood as being based not only on the infringement of essential procedural requirements on account of the failure to conduct a proper investigation, but also on an error of assessment and on infringement of the second subparagraph of Article 9(5) of Regulation No 1262/2001.

b) The first plea, alleging an infringement of essential procedural requirements on account of the failure to conduct a proper investigation, an error of assessment and infringement of the second subparagraph of Article 9(5) of Regulation No 1262/2001

46 On the one hand, the Italian Republic argues that, contrary to the recommendations of the Conciliation Body, the Commission failed to carry out an adequate investigation concerning the conditions on the Italian market which justified a request on the part of sugar undertakings to increase storage costs. The Commission's agents ought, in the Italian Republic's opinion, to have investigated the situation on the warehouse rental market, in particular among storage companies, during the inspection mission that they carried out in May 2007. By asking the Italian Republic to prove the existence of 'special circumstances' and to complete a formal market survey, the Commission reversed the burden of proof.

47 On the other hand, the Italian Republic maintains that it adduced, in the course of the administrative procedure, sufficient evidence to establish that it had investigated the causes of the request for an increase in sugar storage costs. The Italian Republic points out that, when assessing the Italian authorities' application of the 35% increase, it is necessary to take into account, inter alia, the particularly large quantities of sugar that the intervention agency had been forced to buy in respect of the 2004/2005 and 2005/2006 marketing years, the shortage of warehouses fulfilling the characteristics required by the EU rules and the actual increase in storage prices for products similar to sugar. The Commission failed to take into consideration evidence adduced in that regard by the Italian authorities during the administrative procedure.

48 The Commission contends that the Italian authorities wrongly applied the increase at issue in a generalised manner, whereas they should, on a case-by-case basis, have carried out checks on the applications made by the sugar undertakings to establish that additional storage costs were actually incurred at the rented warehouses, since the principle of sound financial management requires that only expenditure actually and effectively incurred is to be charged to the funds.

49 It is clear from the arguments recalled above that the parties disagree, in essence, on the nature of the checks that the national authorities must carry out before applying the 35% increase provided for in the second subparagraph of Article 9(5) of Regulation No 1262/2001 in relation to the costs relating to storage in the rented warehouses. It is therefore necessary to clarify, from the outset, the obligations incumbent on the Member States when applying the second subparagraph of Article 9(5) of Regulation No 1262/2001.

The checks which the national authorities must carry out pursuant to the second subparagraph of Article 9(5) of Regulation No 1262/2001

50 Regulation No 1262/2001 introduced common rules for the taking over and management of sugar produced under quota and subject to intervention measures, in particular with regard to the storage conditions and costs for that sugar.

51 Article 9(5) of Regulation No 1262/2001 provides:

‘[The] storage costs for sugar stored in silos or warehouses of sugar undertakings may not exceed EUR 0.048 per 100 kilograms and per 10-day period.

However, the intervention agency may increase that by a percentage not exceeding 35% where the sugar is stored in silos or warehouses rented by the party making the offer outside sugar undertakings and, in special circumstances, by a percentage not exceeding 50%.’

52 It should be noted that the second subparagraph of Article 9(5) of Regulation No 1262/2001 stipulates neither the procedures nor the extent of the checks that Member States are obliged to carry out before applying the 35% increase.

53 However, it is clear from the case-law that Article 8(1) of Regulation No 1258/1999, drafted in terms similar to those of Article 9(1) of Regulation No 1290/2005, imposes on the Member States the obligation to take the measures necessary to satisfy themselves that the transactions financed by the European Agricultural Funds are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence, even if the specific act of EU law does not expressly provide for the adoption of particular supervisory measures (judgments of 6 December 2001 in *Greece* v *Commission*, C-373/99, EU:C:2001:662, paragraph 9, and 30 September 2009 *Netherlands* v *Commission*, T-55/07, EU:T:2009:371, paragraph 62).

54 It has been stated in the case-law that, with particular regard to the correct utilisation of European Union resources, it is clear from those provisions, viewed in the light of the obligation of faithful cooperation with the Commission laid down in Article 4 TEU, that Member States are required to set up comprehensive administrative checks and on-the-spot inspections thus guaranteeing the proper observance of the substantive and formal conditions for the grant of the premiums in question (see judgment of 9 January 2003 in *Greece* v *Commission*, C-157/00, ECR, EU:C:2003:5, paragraph 11 and the case-law cited). If no comprehensive system of checks exists or if the system introduced by a Member State is defective to the point of giving rise to doubts as to compliance with those conditions, the Commission is entitled to disallow certain expenditure incurred by the Member State

in question (judgments of 12 June 1990 in *Germany* v *Commission*, C-8/88, ECR, EU:C:1990:241, paragraphs 20 and 21; 14 April 2005 *Spain* v *Commission*, C-468/02, EU:C:2005:221, paragraph 36; and 30 September 2009 *Portugal* v *Commission*, T-183/06, EU:T:2009:370, paragraph 31).

55 It follows that, even if the EU rules on the granting of premiums do not expressly require Member States to introduce supervisory measures and inspection procedures, such as those mentioned by the Commission during the clearance of the accounts of the European Agricultural Funds, nevertheless that obligation may follow, in some cases implicitly, from the fact that under the rules relating to the European Agricultural Funds it is for the Member States to organise an effective system of inspection and supervision (see judgments of 24 April 2008 in *Belgium* v *Commission*, C-418/06 P, ECR, EU:C:2008:247, paragraph 70 and the case-law cited, and 4 September 2009 *Austria* v *Commission*, T-368/05, EU:T:2009:305, paragraph 76 and the case-law cited).

56 The question therefore arises of whether the obligations to which the Commission refers in the summary report, that is to say checking the eligibility of expenditure relating to warehouse rental, implicitly arise from the fact that under the rules in question, it is for the Member States to organise an effective control system.

57 In that regard, it must be stated that the second subparagraph of Article 9(5) of Regulation No 1262/2001 provides that, if the sugar is stored in rented warehouses, the storage costs for sugar may be increased 'by a percentage not exceeding 35%'. It implicitly, but necessarily, follows from such wording that a less significant increase must be applied by the intervention agency if the costs actually incurred by the beneficiary in relation to the rental of warehouses are lower than that ceiling of 35%. Such a check that the expenditure which will be charged to the funds is lawful and correct can only be carried out, as the Commission argues, in the context of individual checks on the basis of the supporting evidence adduced by the depositary concerning, first, the circumstances which compelled it to use an external warehouse and, secondly, the additional costs incurred through the use of that warehouse. The effectiveness of checks to ascertain whether the actual costs incurred by beneficiaries relating to the rental of warehouses are indeed consistent with the 35% increase would be seriously weakened, if not impossible, if that increase were applied solely on the basis of general information concerning the situation on the market concerned, such as scales of the prices charged on the market for similar products or information concerning the shortage of appropriate warehouses.

58 It follows that, having regard to the requirement for sound financial management set out in Article 317 TFEU, which underpins the implementation of the European Agricultural Funds, and to the national authorities' responsibilities for that implementation, as recalled in paragraphs 53 to 55 above, the second subparagraph of Article 9(5) of Regulation No 1262/2001 must be interpreted as meaning that it requires that the Member States organise a system of supervision allowing verification, on a case-by-case basis, that expenditure for the storage of sugar in rented warehouses was actually incurred, so that only expenditure duly justified by the beneficiaries and expenditure actually incurred by the latter are charged to the funds.

59 Therefore, it is necessary to verify, in the light of that interpretation of the second subparagraph of Article 9(5) of Regulation No 1262/2001, whether the system of supervision introduced by the Italian Republic fulfils the implicit obligations as described above.

The checks carried out by the Italian authorities in the context of implementing the second subparagraph of Article 9(5) of Regulation No 1262/2001

60 In that regard, it should be noted that the Italian Republic does not argue that the Italian authorities carried out individual checks on applications by operators to increase storage costs for sugar to verify that the costs were actually incurred. Nor does it present any arguments suggesting that such checks were carried out. It has, in particular, failed to provide any evidence, such as national instructions, of the existence of procedures for checking applications by operators.

61 The Italian Republic recognises that the implementation of the second subparagraph of Article 9(5) of Regulation No 1262/2001 requires the national authorities to verify the existence of actual conditions justifying the granting of a 35% increase for storage costs. However, it considers that an investigation into the conditions on the market for sugar and its storage in Italy was such as to justify such an increase (see paragraph 47 above). The Italian Republic no longer really disputes that the 35% increase was applied generally to all sugar producers who were involved in the intervention and who used external warehouses.

62 Moreover, the file shows that, during various meetings between the Italian authorities and representatives of sugar producers and storage undertakings, the Italian authorities not only sought to inquire into general conditions concerning the Italian sugar market and sugar storage but also negotiated with operators the sugar storage costs which should be covered by European Union aid. In the light of the conclusions it was possible to draw from those meetings, the Italian authorities decided to apply a general 35% increase in storage costs for sugar in rented warehouses.

63 The Italian Republic disputes the existence of such negotiations to establish the price of storage prior to the intervention, since the product was already stored in the approved stores.

64 However, it was the Italian authorities themselves who informed the Commission of negotiations concerning the price of sugar storage.

65 In the letter of 24 October 2008, relied on by the applicant in paragraph 12 of the application, the AGEA informed the Commission that '[t]he Italian Minister for Agriculture, the AGEA, sugar producers and warehouse owners met to negotiate and establish a reasonable price for the rented warehouses', that '[t]he negotiated price was almost exactly the price reimbursed by the Commission, including the 35% increase' and, finally, that 'the technical and administrative procedure [followed by the AGEA] show[ed] that the AGEA [had] carried out a detailed examination of the various elements that led to the operational decision to reimburse to the sugar industries the storage costs increased by 35%'. That position of the Italian authorities also follows from paragraph 3.3 of the minutes of the bilateral meeting, which were not challenged by the Italian Republic. Similarly, in paragraph B.5 of the Conciliation Body's report, reference is made to the position of the Italian authorities that, 'after months of negotiations, [the Italian authorities and the various operators involved in the field of sugar storage and production] reached an agreement on price and that agreement required the application of the 35% price increase to the prices set out in the regulation[, the] Italian authorities refer[ing] to letters on the file demonstrating that the price was at the centre of the negotiations'. It is also apparent from the documents annexed to the letter of the AGEA of 17 December 2010 that meetings between the Italian authorities and the operators concerned resulted in the conclusion of storage contracts including a 35% increase for sugar stored in rented warehouses.

66 In that context, it is not relevant, contrary to what is argued by the Italian Republic (see paragraph 63 above), to know whether the negotiations took place before or after the sugar was stored by the producers in rented warehouses. Similarly, the fact that those negotiations could have resulted in the storage companies not applying the price corresponding to the 50% increase, also provided for by the

provisions of the second subparagraph of Article 9(5) of Regulation No 1262/2001, does not support the conclusion that the negotiations made it possible as such to ensure the protection of the financial interests of the European Union.

67 As the Commission notes, such behaviour by the Italian authorities was likely to facilitate the application by the operators of a market price for warehouse rental which was not justified by market conditions but was in line with the aid ceilings contained in EU rules. However, the requirement for sound financial management, as recalled in paragraph 58 above, requires that the national authorities ensure that aid corresponds to market realities and that the markets do not seek to adapt to the aid provided for by EU law, as the Commission argues.

68 Thus, and irrespective of whether the behaviour of the operators concerned can be described, in this case, as abuse for the purposes of the case-law relied on by the Commission and, therefore, without there being any need to examine whether that complaint by the Commission is a new one, as claimed by the Italian Republic, it should be noted that the Commission is entitled to argue that it is not for the national authorities, responsible for protecting the financial interests of the European Union, to negotiate with the operators concerned the conditions for the application of EU rules and, consequently, to adopt a decision to apply generally the 35% increase in storage costs for sugar.

69 Such evidence, consistent with a generalised application by the Italian authorities of the 35% increase in storage costs for sugar, is capable of raising serious and reasonable doubts, for the purposes of the case-law invoked in paragraph 32 above, as to the existence of an effective and adequate control system to ensure that the substantive and formal requirements for granting that increase were fulfilled in all cases. Such general application of the 35% increase as a result of negotiations with the operators concerned is, therefore, manifestly likely to expose the funds to a serious risk, since unsubstantiated or even non-existent costs could have been charged to the funds.

70 The Italian Republic has failed to provide concrete and precise evidence, in accordance with the case-law recalled in paragraph 33 above, capable of refuting the validity of the Commission's reasonable doubts.

71 In that context, it is first of all necessary to reject the Italian Republic's complaint alleging the failure to conduct a proper investigation, in that the Commission failed to examine the situation on the Italian sugar and sugar storage market (see paragraph 46 above). It is clear from the case-law recalled in paragraphs 32 and 33 above that, although it was for the Commission to prove infringements of the rules by furnishing evidence of serious and reasonable doubts, it was for the Italian Republic to provide concrete and precise evidence capable of refuting the Commission's findings.

72 That conclusion cannot be invalidated by the argument which the Italian Republic bases on the recommendations contained in the final report of the Conciliation Body. In that regard, it should be recalled that, under Article 1(2) of 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 EAGGF Guarantee Section (OJ 1994 L 182, p. 45), 'the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts'. It follows that the Commission is not bound by the conclusions of the Conciliation Body (see, to that effect, judgments of 21 October 1999 in *Germany* v *Commission*, C-44/97, ECR, EU:C:1999:510, paragraph 18, and 16 September 2013 *Poland* v *Commission*, T-486/09, EU:T:2013:465, paragraph 45). Thus, even if the Conciliation Body recommended that the Commission revise the proposal to apply the financial corrections to the increased storage costs taking into account the specific conditions of the Italian market and the crisis which had affected it, this does not amount to an obligation for the Commission to carry out a specific investigation in that regard.

73 The Italian Republic's argument that the Commission failed to consult its legal service, although that consultation had been announced by its agents during the inspection mission, cannot succeed. Such consultation is, as the Commission maintains, an element of the Commission's internal decision-making procedure and cannot in any event be regarded as decisive in the context of the conclusion which it reached in this case at the end of the administrative procedure.

74 Next, it is important to note that the circumstances relied on by the Italian Republic — such as the crisis situation on the Italian market resulting from overproduction of sugar during the 2004/2005 and 2005/2006 marketing years, which obliged producers to seek warehouses external to the sugar undertakings, the limited number of warehouses fulfilling the requirements for sugar storage or the storage prices charged for products similar to sugar — are not capable of invalidating the conclusion that the lack of individual controls for determining that the aid was granted in justified and justifiable cases exposed the funds to a serious risk of loss.

75 Even if the survey carried out by the Italian authorities relating to the situation on the market could be regarded as sufficient to justify, from a general economic standpoint, a 35% increase, which the Commission disputes, it cannot in any event replace case-by-case checks to establish that the costs to be charged to the funds were actually incurred. Such a general survey, which, moreover, involved the economic operators directly concerned with obtaining an increase in storage costs, as indicated in paragraphs 62 to 65 above, was not likely to protect sufficiently the financial interests of the European Union, in so far as it did not make it possible to ensure that each beneficiary was in a situation justifying the grant of such an increase or that the beneficiary had actually incurred, on account of the rental of warehouses, additional costs of 35% relating to the storage of the sugar.

76 The same applies to the notes submitted by sugar producers in support of their requests for an increase of 50% for storage costs, to which the Italian Republic refers.

77 As regards, first, a letter from an association of sugar producers in Italy, presented as Annex A46 to the application, the Italian Republic admitted, in response to a written question from the Court, that that document had not been sent during the administrative procedure leading to the adoption of the contested decision, as the Commission claimed. Accordingly, having regard to the case-law that the legality of a decision concerning State aid is to be assessed in the light of the information available to the Commission when the decision was adopted (judgment of 22 January 2013 in *Greece* v *Commission*, T-46/09, ECR, EU:T:2013:32, paragraph 149; see also, by analogy, judgment of 22 December 2008 in *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 81), it is not necessary to take that document into account for the purposes of assessing the legality of the contested decision (see, to that effect, judgment of 15 July 2014 in *Italy* v *Commission*, T-463/07, EU:T:2014:665, paragraph 108).

78 As regards, secondly, the notes presented to the Italian authorities by certain sugar undertakings concerning their requests for an increase of 50% for the storage costs, presented as Annex A45 to the application, the fact remains that those notes are not capable of proving that the Italian authorities carried out adequate checks to ensure that the actual storage costs incurred by those undertakings corresponded to a 35% increase.

79 The notes in question describe the overproduction of sugar in Italy and the lack of storage space in warehouses belonging to the sugar undertakings and constraints connected with the storage of sugar in external warehouses. Accordingly, they could establish, at most, some circumstances that may require the sugar undertakings to use external warehouses. However, they do not establish that the sugar storage costs actually borne by the sugar undertakings corresponded to the storage costs increased by 35%, in particular, since there was in those notes no reference to the costs relating to the storage of sugar in rented warehouses.

80 Even if the Italian Republic's position is the result of its interpretation of the second subparagraph of Article 9(5) of Regulation No 1262/2001, to the effect that individual checks that the costs were actually incurred are not required when applying the 35% increase laid down by that provision, provided that the general objective circumstances justify such an increase, it should be noted that such an interpretation cannot be upheld, as is clear from paragraphs 57 and 58 above.

81 In that regard, it should be recalled that the Court of Justice has held that even in cases where EU law is applied objectively but incorrectly as a result of an interpretation in good faith by national authorities, costs incurred in that connection must, under Article 2(2) of Regulation No 1258/1999 and Article 3 of Regulation No 1290/2005 be borne by the Member States. This narrow interpretation of the criteria for allowing expenditure under the funds is dictated by the objective pursued by those regulations. Since implementation of a common agricultural policy must ensure equal treatment as between economic operators of the Member States, national authorities of a Member State are not permitted, by means of a broad interpretation of a given provision, to favour operators of that State as against those of other Member States in which a stricter interpretation is applied (see, to that effect, judgment in *Spain* v *Commission*, cited in paragraph 54 above, EU:C:2005:221, paragraph 28 and the case-law cited).

82 The Commission recalls, as was pointed out in paragraph 6.1.5 of the summary report, that the Italian Republic was the only Member State which systematically granted an increase for storage costs.

83 Finally, the Italian Republic is wrong to suggest, in the context of the first and second pleas, that the Commission has not taken into account the evidence adduced in the course of the administrative procedure in the present case. As is clear from the correspondence exchanged in the course of that procedure, in particular the letter of 3 February 2010, as well as the minutes of the bilateral meeting and the summary report, the Commission actually took into account information and explanations provided by the Italian authorities, but considered that they were not sufficient to dispel the doubts that it had concerning the reality and effectiveness of the checks relating to the application of the 35% increase for storage costs. In addition, the fact that the Commission has not responded to each of the arguments of the Italian Republic does not, in itself, justify the conclusion that it refused to take them into consideration.

84 It is clear from all the foregoing that the first plea must be rejected.

c) The second plea, alleging infringement of essential procedural requirements on account of the failure to state reasons

85 In the second plea, the Italian Republic maintains that the Commission failed to examine the evidence presented by the Italian authorities showing that the market survey had been carried out, and consequently the 35% increase in storage costs was justified, and that the Commission failed to state its reasons for not considering that evidence as sufficient to replace a market study or to establish that all the sugar undertakings had requested an increase in the costs of sugar storage.

86 The Commission did not respond to the second plea, understood as alleging a failure to state reasons.

87 In that regard, it should be recalled that the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the EU Court to exercise its power of review (see judgments of 14 July 2005 in *Netherlands* v *Commission*, C-26/00, ECR, EU:C:2005:450, paragraph 113 and the case-law cited, and 19 June 2009 *Qualcomm* v *Commission*, T-48/04, ECR, EU:T:2009:212, paragraph 174 and the case-law cited).

88 The complaint alleging an absence of reasons or inadequacy of the reasons stated must be distinguished from an objection based on the inaccuracy of the grounds of the decision. The latter falls within the assessment of the substantive legality of the contested decision and not of essential procedural requirements and cannot therefore constitute an infringement of Article 296 TFEU (see judgments of 15 December 2005 in *Italy* v *Commission*, C-66/02, ECR, EU:C:2005:768, paragraphs 26 and 55 and the case-law cited, and 9 October 2012 *Italy* v *Commission*, T-426/08, EU:T:2012:526, paragraph 17 and the case-law cited).

89 To the extent that, by the second plea, the Italian Republic essentially criticises the Commission for failing to state reasons for the contested decision on account of the failure to respond expressly to the evidence which it had submitted seeking to prove that the Italian authorities actually verified the circumstances justifying the grant of the 35% increase in storage costs for sugar, it calls into question the merits of the contested decision. The mere fact that the Italian Republic considered certain evidence as essential or as necessarily invalidating the Commission's findings regarding the lack of appropriate checks, which relates to the assessment as to the substance and was assessed in the context of the first plea (see, in particular, paragraph 83 above), is not capable of altering the scope of the Commission's obligation to state reasons.

90 Consequently, the Court cannot examine such a plea, when considering whether the obligation to state reasons has been fulfilled. In a plea based on a failure to state reasons or a lack of adequate reasons, objections and arguments which seek to challenge the merits of the contested decision must therefore be regarded as misplaced and irrelevant (judgment of 1 July 2009 in *Operator ARP* v *Commission*, T-291/06, ECR, EU:T:2009:235, paragraph 48).

91 In any event, the requirement to state adequate reasons under Article 296 TFEU must be appraised by reference to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments in *Italy* v *Commission*, C-66/02, cited in paragraph 88 above, EU:C:2005:768, paragraph 26, and 2 December 2009 *Commission* v *Ireland and Others*, C-89/08 P, ECR, EU:C:2009:742, paragraph 77).

92 It is also clear from the settled case-law that the Commission is not obliged, in stating the reasons for its decisions, to adopt a position on all the arguments relied on by the parties concerned during the administrative procedure. It is sufficient if it sets out the facts and legal considerations having decisive importance in the context of the decision (judgments of 4 July 1963 in *Germany* v *Commission*, 24/62, ERC, EU:C:1963:14, pp. 131, 143, and 11 January 2007 *Technische Glaswerke Ilmenau* v *Commission*, C-404/04 P, EU:C:2007:6, paragraph 30; see also judgment of 29 June 1993 in *Asia Motor France and Others* v *Commission*, T-7/92, ECR, EU:T:1993:52, paragraph 31 and the case-law cited).

93 In the particular context of the preparation of decisions on the clearance of accounts of the European Agricultural Funds, the grounds for a decision must be considered adequate if the Member State to which the decision is addressed was closely involved in the decision-making process and was aware of the reasons why the Commission considered that it was not required to charge the sum in dispute to the agricultural fund in question (see, to that effect, judgments of 20 September 2001 in *Belgium* v *Commission*, C-263/98, ECR, EU:C:2001:455, paragraph 67; 9 September 2004 *Greece* v *Commission*, C-332/01, ECR, EU:C:2004:496, paragraph 67; and 26 September 2012 *Italy* v *Commission*, T-84/09, EU:T:2012:471, paragraph 17).

94 In this case, the file shows that the Italian authorities were closely involved in the process by which the contested decision came about. It must be noted that the Commission's doubts concerning the checks relating to the increase in storage costs were, on several occasions, brought to the attention of those authorities in writing, that discussion took place and that the matter was referred to the Conciliation Body. Furthermore, the Commission indicated in a precise and detailed manner, in the official communication of 3 February 2010, the final position of 3 January 2011 and the summary report, the reasons which led it to apply the financial correction of 10%. Thus, as regards the context in which the contested decision was adopted, the Italian authorities were aware of the subject-matter of the complaints made by the Commission as well as the amounts of and the legal basis for the correction at issue. The Italian Republic was therefore able effectively to challenge the substantive legality of the contested decision, as is clear from the arguments which it presented in the first plea, so that a more developed statement of reasons in the contested decision was not necessary.

95 Consequently, the statement of reasons for the contested decision must be held, in any event, to be sufficient and the second plea, alleging failure to state reasons, must be rejected.

3. *The flat-rate financial correction of 5% for accounting year 2006, on account of the late performance of inventory controls*

96 It is clear from the contested decision that the Commission applied a correction of 5% to the expenditure declared by the Italian Republic concerning the storage of sugar for financial year 2006, on account of the late performance of inventory controls. In the summary report, the Commission relies in that respect on Article 2(3)(a) and Article 8 of Regulation No 884/2006 and Article 4 of Regulation No 2148/96 (paragraph 6.1.1 of the summary report). A delay in the performance of the annual inventory controls, which were carried out only in February 2007 for accounting year 2006, constitutes a manifest risk of irregularity and loss to the funds (paragraph 6.1.3 of the summary report). Paragraph 6.1.5 of the summary report, entitled 'Final Commission position', clarifies that that correction, which is not linked to the amendment of the legislation, namely the entry into force of Regulation No 915/2006, relates to the requirement that inventory controls, intended to establish that the stored quantities as per the stock accounting are indeed reflected by the physical stock situation, be performed towards the end of the storage year, that is in September 2006.

97 In support of the challenge to the flat-rate financial correction of 5% for the late performance of inventory controls for financial year 2006, the Italian Republic relies on four pleas, in this instance the third, fourth, sixth and seventh pleas, and, in the alternative, as a fifth plea, on an objection of illegality against Regulation No 915/2006. Those pleas are, respectively, as follows: the third alleges infringement and misinterpretation of Article 8 of Regulation No 884/2006 and Annex I thereto, as well as Article 4 of Regulation No 2148/96, as amended by the Annex to Regulation No 915/2006, and infringement of the principles of legal certainty, non-retroactivity of rules, protection of legitimate expectations and proportionality; the fourth alleges infringement of essential procedural requirements, on account of the failure to state reasons; the sixth alleges infringement of essential procedural requirements, on account of the failure to state reasons, the lack of evidence and the distortion of the facts, and; the seventh alleges infringement of essential procedural requirements, on account of the failure to state reasons and the absence of evidence as to the alleged risk of harm to the funds, as well as infringement of the principle of effectiveness.

a) The third plea, alleging infringement and misinterpretation of Article 8 of Regulation No 884/2006 and Annex I thereto, as well as Article 4 of Regulation No 2148/96, as amended by the Annex to Regulation No 915/2006, and infringement of the principles of legal certainty, non-retroactivity of rules, protection of legitimate expectations and proportionality

98 It is necessary to examine, in the first place, the complaint alleging infringement of the principles of legal certainty, non-retroactivity of rules and protection of legitimate expectations.

The complaint alleging infringement of the principles of legal certainty, non-retroactivity of rules and protection of legitimate expectations

99 In this complaint, the Italian Republic essentially argues that the immediate application of an obligation to draw up inventories relating to operations already carried out some time before the entry into force of Regulation No 884/2006 and Regulation No 915/2006 in June 2006, that is to say shortly before the close of the accounting year in September 2006, conflicts with the principles of legal certainty, non-retroactivity of rules and protection of legitimate expectations. The national authorities placed their trust in the application of Article 4 of Regulation No 2148/96, which, pursuant to Article 14 of Regulation No 884/2006, was to remain in force 'at least' until 30 September 2006. It follows from those elements that, on 30 September 2006, the Italian authorities had no obligation to draw up inventories in accordance with the formal scheme which entered into force in June 2006.

100 The Commission disputes the arguments of the Italian Republic and contends that this plea should be rejected.

– Regulation No 915/2006

101 Regulation No 915/2006 aims, in accordance with recital 2 in the preamble thereto and Article 1 thereof, to amend Annex III to Regulation No 2148/96 in order to establish new detailed rules as regards the procedure for the physical inspection of the stores as regards sugar. In accordance with Article 2, it entered into force on the seventh day following its publication in the Official Journal, that is on 29 June 2006. Those detailed rules for the physical inspection of stocks were applicable to the 2005/2006 marketing year, at issue in this case, subject to transitional measures laid down in that regulation (see paragraphs 105 and 106 below).

102 However, it should be noted, as argued by the Commission, that the correction of 5% was not based on an infringement by the Italian authorities of detailed rules for the physical inspection of stores for sugar as introduced by Regulation No 915/2006. It is clear both from the contested decision and the summary report and from the exchanges between the Commission and the Italian authorities during the administrative procedure that at no time was such a complaint raised by the Commission.

103 Furthermore, in response to the Conciliation Body's comment that, before the entry into force of Regulation No 915/2006, the relevant EU rules were inadequate, and having made reference to transitional measures introduced by that regulation concerning inventory controls for public sugar stocks, inter alia, during the 2005/2006 marketing year, the Commission expressly stated, in paragraph 6.1.5 of the summary report, that the correction of 5% was not linked to the entry into force of Regulation No 915/2006, but related to the requirement that inventory controls were to be carried out until September 2006 (see paragraph 96 above).

104 In those circumstances, the Italian Republic's argument, as clarified in response to a written question from the Court, that the Commission ought to have applied to it a transitional arrangement as provided for in Regulation No 915/2006 for the 2004/2005 and 2005/2006 marketing years cannot succeed.

105 As regards transitional measures, Recital 4 in the preamble to Regulation No 915/2006 states as follows:

'Given that intervention in sugar commenced for the 2004/05 marketing year without detailed inventory rules having been laid down, the manner in which certain Member States have organised the storage of sugar stocks makes it excessively difficult to carry out an inventory according to the normal procedures. Transitional rules should therefore be laid down for sugar stocks from the 2004/05 and 2005/06 marketing years.'

106 In that regard, Annex III to Regulation No 2148/96 was amended by Regulation No 915/2006, in the form of the addition of new provisions entitled 'VII — Bulk sugar' and 'VIII — Packed sugar'. That annex states as follows with respect to the transitional regime to be applied as regards the physical inspection procedures for sugar stocks subject to intervention during the 2004/2005 and 2005/2006 marketing years:

'… Physical inspection procedure for public stocks of sugar from the 2004/05 and 2005/06 marketing years

1. In the event that the inventory procedures described in point A are not possible, the intervention agency shall officially seal all points of access or outlet to the silo/store. The intervention agency shall inspect the integrity of the seals on a monthly basis to ensure that they remain intact. These inspections should be detailed in a report. No access shall be permitted to the stocks without the presence of the intervention agency's inspector.

   The Member State shall ensure that the procedure for seals gives good assurance as to the integrity of the intervention products stored.

2. An inspection to verify storage conditions and the good conservation of the product must also be conducted at least once a year.'

107 As is apparent from those provisions, a transitional regime was provided for by Regulation No 915/2006 in the event of the impossibility, for the 2004/2005 and 2005/2006 marketing years, of following the physical inspection procedures for sugar storage sites in accordance with the detailed rules introduced by Regulation No 915/2006. However, the Commission did not complain that the Italian authorities failed to follow those procedures, as was noted in paragraphs 102 and 103 above.

108 In any event, the Italian Republic does not claim that the Italian authorities had difficulty in implementing the physical inspection procedures introduced by Regulation No 915/2006. It is true that it argues that there were certain 'objective difficulties in coordinating' with the public body responsible for inventory controls, in this instance Agecontrol. However, it does not submit that the new detailed rules for physical inspections introduced by Regulation No 915/2006 were the cause of those difficulties or that, for that reason, the alternative procedures under the transitional measures were followed.

109 It follows that the present complaint must be rejected as ineffective in so far as it relates to Regulation No 915/2006.

– Regulation No 884/2006

110 As is apparent from the recitals to and Article 1 of Regulation No 884/2006, that regulation establishes the conditions and rules applicable to the financing by the EAGF of the intervention measures in the form of public storage, to the management and control of corresponding operations by the paying agencies and to the eligibility and method of calculating expenditure that may be charged to the EAGF. According to recital 13 to and Article 14 thereof, the provisions of Regulation No 884/2006 replace in that regard those of several regulations, which, similarly, are thereby repealed, including Regulation No 2148/96 and Council Regulation (EEC) No 3492/90 of 27 November 1990 laying down the factors to be taken into consideration in the annual accounts for the financing of intervention measures in the form of public storage by the EAGGF, Guarantee Section (OJ 1990 L 337, p. 3).

111 Regulation No 884/2006, which, according to the first paragraph of Article 15 thereof, was to enter into force on the seventh day following that of its publication in the Official Journal, that is to say on 30 June 2006, was applicable, under the second paragraph of the same article, from 1 October 2006.

112 In that regard, it is necessary to bear in mind the principle that amending legislation applies, unless otherwise provided, to the future consequences of situations which arose under the previous legislation (see judgments of 29 June 1999 in *Butterfly Music*, C-60/98, ECR, EU:C:1999:333, paragraph 24 and the case-law cited, and 29 January 2002 *Pokrzeptowicz-Meyer*, C-162/00, ECR, EU:C:2002:57, paragraph 50). Although procedural rules are generally held to apply to all disputes pending at the time when they enter into force, substantive rules must be interpreted, in order to ensure respect for the principles of legal certainty and the protection of legitimate expectations, as applying to situations existing before their entry into force only in so far as it clearly follows from their wording, objectives or general scheme that such an effect must be given to them (see judgments of 24 September 2002 in *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, ECR, EU:C:2002:524, paragraph 119 and the case-law cited, and 1 July 2009 *ThyssenKrupp Stainless* v *Commission*, T-24/07, ECR, EU:T:2009:236, paragraph 85 and the case-law cited).

113 Moreover, according to the case-law, it is open to the legislature to separate the date for the entry into force from that of the application of the act that it adopts, by delaying the second in relation to the first. Such a procedure may in particular, once the act has entered into force and is therefore part of the legal order of the European Union, enable the Member States or EU institutions to perform, on the basis of that act, the prior obligations which are necessary for its subsequent full application to all persons concerned (judgment of 17 November 2011 in *Homawoo*, C-412/10, ECR, EU:C:2011:747, paragraph 24).

114 If an administrative measure states that it is to take effect as from a specific date, this means that it begins to take effect on that actual day (judgment of 14 April 1970 in *Cafiero* v *Commission*, 42/69, ECR, EU:C:1970:23, p. 161, paragraph 7).

115 It follows that, subject to specific provisions that provided for the application of certain of its provisions on a date prior to that of its taking effect as provided for in the second paragraph of Article 15 thereof, Regulation No 884/2006 was applicable from 1 October 2006.

116 The Italian Republic raises the alleged retroactive application by the Commission of Regulation No 884/2006 with regard to the obligation to carry out inventory controls, in that Article 8 of that regulation introduced for the first time a requirement to establish an annual inventory for operations which had already taken place some time before its entry into force.

117 In that regard, it must be pointed out that no recital or provision of Regulation No 884/2006 can be understood as seeking to establish the starting point for the taking effect of the provisions of Article 8 of that regulation on a date other than that contained in the second paragraph of Article 15 thereof. Accordingly, that provision must be regarded as being applicable from 1 October 2006.

118 It is clear from the summary report that the Commission relied on that provision concerning the correction of 5% relating to accounting year 2006, which extends from 1 October 2005 to 30 September 2006.

119 Accordingly, it is therefore in infringement of the principles of non-retroactivity of rules and protection of legitimate expectations that the Commission applied Article 8 of Regulation No 884/2006 to the Italian authorities' obligation to establish an inventory during accounting year 2006.

120 In response to a written question from the Court, the Commission admitted that it was Article 3 of Regulation No 3492/90 and not Article 8 of Regulation No 884/2006 which was applicable in this case, *ratione temporis*, to the obligation to establish an annual inventory.

121 Accordingly, it is also necessary to consider whether such an error, committed by the Commission, means that the contested decision is vitiated by a purely formal defect or, instead, a substantial procedural defect such as to entail its annulment as regards the correction of 5%, on account of infringement of the principles of legal certainty and protection of legitimate expectations.

122 The Commission explains that, during the administrative procedure, it made reference to Article 8 of Regulation No 884/2006 in so far as it was the regulation in force in the course of that procedure, on the basis of which it indicated to the Italian authorities the corrective measures to be taken. However, the Commission maintains, in essence, that the obligation laid down in Article 8 of Regulation No 884/2006 was not new, which is confirmed by the correlation table annexed to that regulation, according to which the provisions of Article 8 of Regulation No 884/2006 correspond to those of Article 3 of Regulation No 3492/90.

123 In that regard, it must be recalled that the principle of legal certainty, which is a general principle of EU law, requires that EU law must be clear and its application foreseeable for all interested parties. That principle requires that the binding nature of any act intended to produce legal effects must be derived from a provision of EU law which must be expressly indicated as its legal basis and which prescribes the legal form to be taken by that act (see judgments of 12 December 2007 in *Italy* v *Commission*, T-308/05, ECR, EU:T:2007:382, paragraph 123 and the case-law cited, and 29 September 2011 *Poland* v *Commission*, T-4/06, EU:T:2011:546, paragraph 82 and the case-law cited).

124 As regards the examination of the obligation to state reasons for measures creating legal effects, failure to specify the precise provision need not necessarily constitute a material defect where it is possible to determine the legal basis for an act on the basis of other elements thereof. None the less, explicit reference is indispensable where, in its absence, the parties concerned and the EU Courts would remain uncertain as to the precise legal basis (see judgments in *Italy* v *Commission*, cited in paragraph 123 above, EU:T:2007:382, paragraph 124 and the case-law cited, and *Poland* v *Commission*, cited in paragraph 123 above, EU:T:2011:546, paragraph 83 and the case-law cited).

125 In this case, the fact remains that Article 3 of Regulation No 3492/90, to which the Commission refers only in its written pleadings before the Court, was relied upon neither in the contested decision and the summary report nor during the administrative procedure. The Commission in fact relied upon Article 8 of Regulation No 884/2006.

126 However, such a purely formal error as to the legal basis is not such as to lead to annulment of the contested decision on account of infringement of the principles of legal certainty and protection of legitimate expectations.

127 First, that error did not make it impossible for the Italian Republic to determine the obligations which the Commission had criticised the Italian Republic for infringing. Contrary to the Italian Republic's claims, Article 8 of Regulation No 884/2006, relied on by the Commission in the contested decision, did not introduce for the first time, shortly before the end of accounting year 2006, an obligation to establish an annual inventory, since that obligation was already laid down, before the entry into force of Regulation No 884/2006, by Article 3 of Regulation No 3492/90, as the Commission argues. The paying agency's obligations under the provisions of Article 3 of Regulation No 3492/90 are identical to those laid down by the provisions of Article 8 of Regulation No 884/2006, on which the Commission based its decision, since those two articles lay down an obligation to establish an annual inventory during each accounting year (see paragraphs 137 and 138 below).

128 The Italian Republic provides no support whatsoever for the argument by which it challenges the continuity between Regulation No 3492/90 and Regulation No 884/2006. However, it should be noted that it is clear from the second paragraph of Article 14 of Regulation No 884/2006 that references to the regulations repealed by it, in particular Regulation No 3492/90, must be construed as references to that regulation and be read in accordance with the correlation table set out in Annex XVI thereto.

According to that table, Article 3 of Regulation No 3492/90 corresponds to Article 8(1) of Regulation No 884/2006. The provisions thus confirm the continuity between the obligations to establish an annual inventory of products eligible for intervention which apply from accounting year 2006, pursuant to Regulation No 884/2006, and those which existed previously, pursuant to Regulation No 3492/90.

129 The Italian Republic cannot reasonably plead in that regard that it had no knowledge of the obligations arising for the national authorities from Article 3 of Regulation No 3492/90. Even though the Commission was wrong not to rely on that provision in the course of the administrative procedure, it is settled case-law that, as from the date of their publication in the Official Journal, the applicable EU provisions constitute the only relevant substantive rules, of which all are deemed to be aware (see judgment of 5 June 1996 in *Gunzler Aluminium* v *Commission*, T-75/95, ECR, EU:T:1996:74, paragraph 50 and the case-law cited). The Italian Republic could therefore not overlook the existence of the obligation to establish an annual inventory of products subject to intervention in the form of public storage during each accounting year, as laid down in Article 3 of Regulation No 3492/90.

130 Secondly, it is also clear from the foregoing that, even if the Commission had based the correction of 5% on Article 3 of Regulation No 3492/90, it would have arrived at the same outcome on the merits, namely it would have found that the Italian authorities failed to establish an annual inventory during accounting year 2006. Accordingly, the error in identifying the provision applicable *ratione temporis* to the obligation to establish an annual inventory did not, in any event, have any decisive influence as to the outcome of the Commission's substantive examination (see, to that effect and by analogy, judgment in *Gunzler Aluminium* v *Commission*, cited in paragraph 129 above, EU:T:1996:74, paragraph 55).

131 In that context, moreover, it must be stated that the Commission also relied in the contested decision on Article 4 of Regulation No 2148/96 as regards the national authorities' obligations to carry out annual inventory controls in the form of physical inspections of storage sites (see paragraph 96 above) and not the equivalent provision of Regulation No 884/2006, namely, according to the correlation table set out in Annex XVI to that regulation, 'Annex I, point A. I' to that regulation. Consequently, the complaint alleging infringement of the principle of legal certainty and legitimate expectations, in that the Italian authorities relied on the application of Article 4 of Regulation No 2148/96 to determine the obligations relating to annual inventory controls for accounting year 2006 (see paragraph 99 above), must be rejected as irrelevant.

132 It follows that the Italian Republic cannot reasonably rely in this case on an infringement of the principles of legal certainty, non-retroactivity of rules and protection of legitimate expectations with regard to the application of Article 8 of Regulation No 884/2006. The present complaint must therefore be rejected in its entirety.

The complaint alleging a misinterpretation and incorrect application of Article 8 of Regulation No 884/2006 and Annex I thereto and of Article 4 of Regulation No 2148/96, as amended by the Annex to Regulation No 915/2006

133 As has been pointed out in paragraph 96 above, it is clear from the contested decision that the correction of 5% was imposed on the Italian Republic for financial year 2006 on account of 'late inventory controls' in infringement of Article 8 of Regulation No 884/2006 and Article 4 of Regulation No 2148/96. According to the summary report, that failure posed a financial risk to the funds, since the other checks carried out as regards accounting year 2006 did not make it possible to establish that the entire quantities listed in the stock accounts were actually present and therefore to ensure that storage and other costs were paid on the basis of the correct data.

134 The Italian Republic submits that it carried out a series of controls on the sale of sugar involved in the intervention, inter alia through monthly accounts, a copy of which was presented before the Court. Moreover, the system of computerised loading and unloading records that was established allowed the status of the inventory to be monitored and updated daily, thereby reflecting all inventory changes. Thus, the Italian authorities made every effort to carry out checks on the entry and exit of the product as well as controls on the stocks remaining in the warehouse, by checking all quantities 'as if an inventory were being established on a permanent basis'.

135 The Commission disputes the arguments of the Italian Republic.

136 As follows from the case-law recalled in paragraph 31 above, the European Agricultural Funds finance only interventions undertaken in accordance with EU provisions within the framework of the common organisation of agricultural markets. It is therefore necessary to assess the alleged infringements which gave rise to the contested financial correction in the light of the specific obligations arising for national authorities from the EU rules as regards inventory controls for products in intervention storage.

137 Under Article 3 of Regulation No 3492/90:

'Intervention agencies shall, during each accounting year, establish an inventory for each product which has been the subject of Community intervention.

They shall compare the results of this inventory with the accounting data: any discrepancies in quantity or quality ascertained during inspections shall be entered in the accounts in accordance with Article 5.'

138 That provision was repealed by the first paragraph of Article 14 of Regulation No 884/2006 with effect from 1 October 2006 and replaced, in accordance with the correlation table set out in Annex XVI, by the equivalent provision of Article 8 of Regulation No 884/2006, laying down an identical obligation for the paying agency to draw up an annual inventory during each accounting year.

139 Article 2(3)(a) of Regulation No 884/2006 defines the accounting year as the period from 1 October of one year to 30 September of the following year.

140 Article 4 of Regulation No 2148/96 provides:

'1. The intervention agency shall be responsible for the accuracy of the information collected pursuant to Articles 1, 2 and 3. To that end, it shall throughout the year undertake on-the-spot inspections of stores, at irregular intervals and unannounced where possible.

Each store shall be inspected at least once every year in accordance with the rules set out in Annex III, and the inspections shall cover in particular:

(a) the procedure for collecting the information referred to in Articles 2 and 3;

(b) the conformity of the records held on the spot by the storekeeper with the information sent to the intervention agency; and

(c) the physical presence in the store of the quantities listed in the storekeeper's records used for the latest monthly statement provided by him, assessed visually or, in case of doubt or dispute, by weighing or measuring.

The physical presence shall be established by a sufficiently representative physical inspection, covering at least the percentages laid down in Annex III and making it possible to conclude that the entire quantities listed in the accounts are actually present.

…’

141 Regulation No 2148/96 was also repealed, with effect from 1 October 2006, by Regulation No 884/2006. According to the correlation table set out in Annex XVI to the latter regulation, Article 4 of Regulation No 2148/96 corresponds to ‘Annex I, point A. I’ to Regulation No 884/2006.

142 The detailed rules for the physical inspection of public stores of agricultural products, as defined in Annex III to Regulation No 2148/96, were amended by Regulation No 915/2006. In that context, Annex III to Regulation No 2148/96 was amended to include new provisions relating to the physical inspection procedures applicable to bulk sugar (‘VII — Bulk sugar’) and to packed sugar (‘VIII — Packed sugar’) (see also paragraph 101 above).

143 It follows from the abovementioned provisions that the annual inventory must be established by the paying agency in each accounting year and that the results of that inventory must be compared with the accounting data, pursuant to Article 3 of Regulation No 3492/90, replaced, in essence, by Article 8 of Regulation No 884/2006. Such an accounting year extends from 1 October of one year to 30 September of the following year. The annual inventory is established in particular on the basis of the results of inventory controls covered by Article 4 of Regulation No 2148/96, performed by means of the on-the-spot physical inspection of storage sites, in accordance with the procedures referred to in Annex III to that regulation. Those checks by means of the on-the-spot physical inspection of storage sites are, according to the case-law, essential to ensure that the expenditure relating to storage is correct and constitute key controls within the meaning of Annex 2 to Document VI/5330/97 (see, to that effect, judgment of 20 June 2006 in *Greece* v *Commission*, T-251/04, EU:T:2006:165, paragraph 79).

144 It follows that the failure to carry out inventory controls prior to 30 September 2006 is contrary to the combined provisions of Article 4 of Regulation No 2148/96 and Article 3 of Regulation No 3492/90, as replaced, in essence, by Article 8 of Regulation No 884/2006.

145 The Italian authorities did not dispute during the administrative procedure that they had failed to carry out inventory controls on 30 September 2006, as is apparent, inter alia, from the minutes of the bilateral meeting and the last paragraph of point 5 of the report of the Conciliation Body.

146 The Italian Republic no longer really disputes this before the Court. First, with regard to its line of argument, it appears that it does not dispute that that obligation was incumbent upon it under Article 4 of Regulation No 2148/96, which it invokes in order to indicate that the Italian authorities relied on the fact that that provision would remain in force until 30 September 2006 (see paragraph 131 above).

147 Secondly, in its pleadings before the Court, it claimed that in February 2007 Agecontrol had carried out qualitative and quantitative inventory controls and established the status of the stock on 30 September 2006. In response to a written question from the Court, the Italian Republic confirmed that it was appropriate to understand those statements as indicating that the inventory controls had been carried out only in February 2007 by Agecontrol, which then sent the Commission the summary document relating to those controls.

148 By contrast, the Italian Republic argues, in essence, that the other controls carried out by the Italian authorities relating to the storage of sugar — in particular the checks on the entry and exit of the product, during which certain controls concerning the quantity of sugar in storage were also carried out, the monthly accounts and the system of computerised loading and unloading records aimed at updating on a daily basis the status of the stock — made it possible to guarantee the same outcome as the inventory controls, namely to ensure that storage costs would be paid for sugar actually in storage.

149 In that regard, it must be noted that the existence of the controls relied on by the Italian Republic is insufficient to remedy the shortcomings identified in the contested decision and in the summary report with regard to the failure to carry out annual inventory controls on 30 September 2006.

150 The obligation to carry out annual inventory controls during each accounting year was expressly laid down by Article 4 of Regulation No 2148/96 and Article 3 of Regulation No 3492/90, as replaced, in essence, by Article 8 of Regulation No 884/2006, as was pointed out in paragraphs 143 and 144 above.

151 According to settled case-law, where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective (see judgments of 21 March 2002 in *Spain* v *Commission*, C-130/99, ECR, EU:C:2002:192, paragraph 87 and the case-law cited, and 28 March 2007 *Spain* v *Commission*, T-220/04, EU:T:2007:97, paragraph 89 and the case-law cited).

152 Furthermore, as the Commission pointed out in paragraph 6.1.3 of the summary report, Document VI/5330/97 states that 'alternative checks cannot automatically be accepted as compensating for the non-compliance' and that '[w]hen the regulations explicitly require a particular check, the Member State has no choice other than to apply this check, or to seek authority for dispensation'.

153 The Italian Republic argues incorrectly that the inventory controls were not necessary, on the alleged ground that they would in any event be carried out at the time of the entry and exit of stocks and that the quantities of sugar in stock would be determined at that time. It cannot disregard the obligation to inspect each store at least once every year, which derives from Article 4 of Regulation No 2148/96, by means of physical inspections. In that regard, the need for an annual inspection and not merely a check carried out on the entry and exit of stocks is justified by the fact that the storage conditions may lead to a change in the quantities stored. Checking the status of stocks during the annual inspection thus makes it possible to prevent unnecessary storage costs, that is to say those relating to quantities of sugar which do not exist or no longer exist, being charged to the European Union funds (see, to that effect and by analogy, judgment of 2 February 2012 in *Greece* v *Commission*, T-469/09, EU:T:2012:50, paragraphs 127 and 128).

154 Furthermore, inventory controls by physical inspection of the premises are essential in order to reconcile the accounting data with the actual situation of stocks of products subject to intervention and to conclude that the entire quantities listed in the stock accounts are actually present. According to the case-law, administrative controls and on-the-spot inspections were designed by the EU legislature as two means of verification which, although separate, complement each other (see, to that effect, judgment of 3 October 1996 in *Germany* v *Commission*, C-41/94, ECR, EU:C:1996:366, paragraph 43). The keeping of monthly accounts, checks on sugar on entry and exit from stocks and the system of computerised loading and unloading records cannot, under any circumstances, afford the same degree of reliability as annual inventory controls carried out by means of physical inspections of premises which make it possible to reconcile data resulting from stock accounts with data obtained during those inspections.

155 Finally, it is important to bear in mind that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from rules of EU law. In particular, a Member State may not plead practical difficulties in order to justify its failure to implement appropriate controls (see judgments of 21 February 1991 in *Germany* v *Commission*, C-28/89, ECR, EU:C:1991:67, paragraph 18 and the case-law cited, and 12 November 2010 *Italy* v *Commission*, T-95/08, EU:T:2010:464, paragraph 77 and the case-law cited).

156 Therefore, even supposing that they are established, the Italian Republic cannot validly refer to the difficulties which it allegedly encountered in planning the controls with Agecontrol.

157 It is clear from the forgoing that the finding made in this case by the Commission that the annual inventory controls for financial year 2006 were not carried out before 30 September 2006 constitutes an element which can give rise to serious doubts, as referred to in the case-law cited in paragraph 32 above, as to the existence of an adequate and effective series of controls to ensure that only expenditure relating to the sugar actually present at storage sites is charged to the funds. The Italian Republic has put forward no evidence to contradict that finding and thus has been unable to adduce detailed and comprehensive evidence that those checks have been carried out and that the Commission's assertions are incorrect, for the purposes of the case-law cited in paragraph 33 above.

158 The Commission was therefore correct to consider that the late performance of annual checks of sugar stocks for the purposes of the combined provisions of Article 4 of Regulation No 2148/96 and Article 3 of Regulation No 3492/90, as replaced, in essence, by Article 8 of Regulation No 884/2006, represented a risk to the funds, a risk which could not be fully offset by the other controls relied on by the Italian authorities.

159 That conclusion cannot be invalidated by the Italian Republic's argument that Regulation No 2148/96 'did not cover the product "sugar"'.

160 It is certainly true, as argued by the Italian Republic, that Regulation No 2148/96 contained, at the outset, no provision detailing physical inspection procedures for sugar stocks, since they were introduced only by Regulation No 915/2006, which entered into force on 29 June 2006 and was applicable to the 2005/2006 marketing year subject to the transitional provisions laid down in that regulation (see paragraph 101 above).

161 However, the provisions introduced by Regulation No 915/2006 establish the physical inspection procedures for storage sites with regard to sugar, while the actual obligation to carry out those checks had already been laid down by Article 4 of Regulation No 2148/96 with regard to all agricultural products in public intervention stocks. As noted in paragraphs 102 and 103 above, the complaint raised by the Commission is not based on non-compliance with the physical inspection procedures for sugar storage sites introduced by Regulation No 915/2006, but the late performance of annual inventory controls for the purposes of Article 4 of Regulation No 2148/96 and Article 3 of Regulation No 3492/90, as replaced, in essence, by Article 8 of Regulation No 884/2006.

162 In any event, the Italian Republic does not demonstrate how the absence of physical inspection procedures for sugar storage sites or their introduction by Regulation No 915/2006 would explain, in themselves, the late performance of the annual inventory controls concerning that product.

163 Furthermore, as the Commission points out, nothing prevented the Italian Republic from implementing control procedures for storage sites similar to those laid down for other products, as it claims to have done with regard to other types of controls.

164 In that regard, it should be recalled that it is for Member States to carry out adequate controls for the purposes of an effective system of control and monitoring, even if the EU rules have not exhaustively defined the detailed arrangements for those controls (see judgment of 31 January 2012 in *Spain* v *Commission*, T-206/08, EU:T:2012:33, paragraph 77 and the case-law cited).

165 It follows that the present complaint is unfounded and must be rejected.

The complaint alleging infringement of the principle of proportionality

166 As regards the claim that the correction applied in this case is disproportionate, it is important to note from the outset that this complaint is not concerned with the method whereby the Commission arrived at the amount of EUR 781 044 in respect of the application of the flat-rate correction of 5% to financial

year 2006. The Italian Republic argues only that the Commission should have taken account of the late amendment, in June 2006, of the intervention arrangements in the form of storage in the sugar sector by Regulation No 884/2006 and Regulation No 915/2006, that is to say in the course of accounting year 2006. It considers that the correction of 5% should have been applied at most for the period after the entry into force of those regulations. Moreover, according to the Italian Republic, the Commission should also have taken into account the transitional arrangements allegedly contained in those regulations.

167 However, as was stated in the context of the examination of the first and second complaints of the third plea, the entry into force of Regulation No 884/2006 and Regulation No 915/2006 did not affect the Italian authorities' obligations with regard to the implementation of a system of inventory controls, in so far as those regulations did not alter the obligations in relation to which shortcomings were found to exist in this case (see, in particular, paragraphs 127 and 161 above).

168 Consequently, the complaint alleging infringement of the principle of proportionality on account of the amendment of the scheme at issue during accounting year 2006 must be rejected.

169 In any event, it is sufficient to recall that it is settled case-law that the Commission may refuse to meet the cost of all the expenditure incurred if it finds that there are not sufficient control mechanisms (see, to that effect, judgment of 24 February 2005 in *Netherlands* v *Commission*, C-318/02, EU:C:2005:104, paragraph 45 and the case-law cited).

170 In this case, it appears that the shortcomings identified by the Commission services concern late performance of controls which play a major role in determining that expenditure is correct, with the result that it could reasonably be concluded that the risk of loss to the funds was significant. As a result, the amount not recognised by the Commission, limited to 5% of the expenditure concerned, cannot be regarded as excessive and disproportionate.

171 It follows that, by imposing, in this case, a flat-rate correction amounting to 5% of the expenditure at issue, the Commission did not infringe the principle of proportionality in so far as the delay in performing the inventory controls infringed the requirements stemming from EU rules.

172 Consequently, the third plea must be rejected in its entirety.

b) The fourth plea, alleging infringement of essential procedural requirements on account of the failure to state reasons

173 According to the Italian Republic, the Commission did not state to the requisite legal standard the reasons for the rejection of the proposal by the Conciliation Body that the correction linked to late performance of inventory controls should be limited to the storage costs which were declared between the date of entry into force of Regulation No 915/2006 and the end of financial year 2006.

174 In that regard, it is necessary to find, as did the Commission, that the obligations concerning inventory controls were already contained in the rules prior to the entry into force of Regulation No 915/2006 (see paragraph 161 above). Contrary to what the Italian Republic maintains, that latter regulation therefore did not introduce for the first time the obligations in relation to which shortcomings were found to exist in this case. Consequently, the entry into force of Regulation No 915/2006 cannot have any impact on the existence of the obligations of the Member States with regard to the obligation to carry out inventory controls as such.

175 The Commission clearly explained that fact during the administrative procedure, in particular in its final position on 3 January 2011 following the report of the Conciliation Body. The Commission also referred to that fact in paragraph 6.1.5 of the summary report.

176 Moreover, as pointed out in paragraph 72 above, in any event, the opinion of the Conciliation Body is not binding on the Commission.

177 Consequently, in accordance with the case-law recalled in paragraphs 91 to 93 above, the reasons for the contested decision must be regarded as sufficient and the present plea must therefore be rejected.

c) The plea of illegality against Regulation No 915/2006

178 In the alternative to the third and fourth pleas, the Italian Republic raises a plea of illegality against Regulation No 915/2006, in that it introduces an obligation to inventory the remaining stocks of sugar only some three months before the new deadline for drawing up inventories. According to the Italian Republic, it is contrary to the principles relied on in the third plea to make actions compulsory, by means of a regulation, in respect of events which are past and to penalise their omission by means of the financial adjustment procedure.

179 The Commission disputes the arguments of the Italian Republic.

180 It should be borne in mind that, in accordance with settled case-law, Article 277 TFEU expresses a general principle conferring upon any party to proceedings the right to challenge indirectly during the proceedings, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is contested (see, to that effect, judgments of 6 March 1979 in *Simmenthal* v *Commission*, 92/78, ECR, EU:C:1979:53, paragraphs 39 to 41, and 20 September 2011 *Regione autonoma della Sardegna and Others* v *Commission*, T-394/08, T-408/08, T-453/08 and T-454/08, ECR, EU:T:2011:493, paragraph 206 and the case-law cited).

181 However, as the Commission correctly points out, a plea of illegality raised indirectly under Article 277 TFEU, when challenging the legality of a decision in the main proceedings, is admissible only if there is a link between the contested measure and the provision forming the subject-matter of the plea. Since Article 277 TFEU is not intended to enable a party to contest the applicability of any measure of general application in support of any action whatsoever, the general measure claimed to be illegal must be applicable, directly or indirectly, to the issue with which the action is concerned and there must be a direct legal connection between the contested individual decision and the general measure in question (see judgments in *Regione autonoma della Sardegna and Others* v *Commission*, cited in paragraph 180 above, EU:T:2011:493, paragraph 207 and the case-law cited, and 6 September 2013 *Deutsche Bahn* v *Commission*, T-289/11, T-290/11 and T-521/11, ECR, EU:T:2013:404, paragraph 56 and the case-law cited).

182 In this case, the applicant pleads the illegality of Regulation No 915/2006. However, as noted in paragraphs 102 and 103 above, the Commission did not base the contested decision on the provisions of that regulation, inasmuch as it has criticised the Italian authorities not for failing to follow the specific physical inspection procedures introduced by that regulation, but for failing to carry out, on 30 September 2006, the inventory controls as such, which controls were already provided for by Article 4 of Regulation No 2148/96 and Article 3 of Regulation No 3492/90, as replaced, in essence, by Article 8 of Regulation No 884/2006 (see also paragraph 161 above).

183 Accordingly, the plea of illegality is directed against a regulation having no bearing on the resolution of the dispute in the main proceedings and with no direct legal link with the latter. It must therefore be rejected as inadmissible.

d) The sixth plea, alleging infringement of essential procedural requirements on account of the failure to state reasons, lack of evidence and distortion of the facts

184 In paragraph 6.1.3 of the summary report, in the context of the complaint concerning the late performance of inventory controls and the risk it entails for the funds, the Commission made reference to the 127 000 tonnes of sugar which were removed from the stocks, without official verification or weighing, between 30 September 2006, the date on which inventory controls should have taken place, and February 2007, when inventory controls were in fact performed.

185 The Italian Republic submits that the Commission has not established such a finding by any evidence and that it has thus distorted the facts. It also states that those movements were related to product removal operations.

186 In response to a written question from the Court, the Commission stated that it had based its finding regarding the removal of 127 000 tonnes of sugar on a table from the 'E-Faudit' system, dated 30 March 2007, which had been communicated to it by the Italian authorities.

187 It should be noted that the document at issue, produced by the Commission with its reply to the Court's question, reproduces the movements of sugar stocks between October 2006 and February 2007. It is clear from that document that the amount of sugar present in the stocks at the end of February 2007 was below the reference quantity at the beginning of the month of October 2006, amounting, in particular, to 127 000 tonnes removed from the intervention stock without physical movement.

188 The Italian Republic has not disputed the veracity of the data contained in that table and has not denied that it was sent to the Commission by the Italian authorities during the administrative procedure.

189 It follows that the Italian Republic is wrong to maintain that the Commission distorted the facts and has not presented adequate reasons regarding the fact that the 127 000 tonnes in question were removed from the intervention stock without physical movement between October 2006 and February 2007, in so far as the evidence in that regard was provided to the Commission by Italian authorities themselves.

190 In any event it should be recalled that the correction of 5% applied by the Commission in this case is a flat-rate correction based on the fact that the late performance of annual inventory controls exposed the funds to a risk of harm, in so far as it was not possible to rule out the possibility that the financial costs and unjustified storage, since they related to missing quantities of sugar, could be charged to the funds. It is therefore not an individual correction which is applied on account of specific and precise costs borne by the funds, while a quantity of sugar, in particular the 127 000 tonnes in question, was absent from the stocks.

191 The Commission confirmed at the hearing that the finding concerning the observation that a quantity of 127 000 tonnes of sugar was absent from the stocks without physical movement between October 2006 and February 2007 had served to illustrate to it the consequences of the late performance of inventory controls, since the delay in performing the controls represented, according to the Commission, a certain source of risk to the funds. As is clear from the Commission's reply to the Court's written question, the quantities actually present at storage sites during the 2005/2006 marketing year, for which storage costs were attributed to the funds for financial year 2006, could have been different from the quantities present in February 2007, as found as a result of the controls carried out at that time by Agecontrol.

192 In the light of the foregoing, the sixth plea must be rejected.

e) The seventh plea, alleging infringement of essential procedural requirements, on account of the failure to state reasons and the absence of evidence as to the alleged risk of harm to the funds, and infringement of the principle of effectiveness

193 The Italian Republic submits that there was no statement of reasons for the Commission's assessment that the qualitative and quantitative controls on sugar on entry and exit, which were not criticised by the Commission, could not be as effective as inventories.

194 Nor did the Commission provide, in response to the assertions that the interests of the funds had been amply protected, evidence of the actual risk posed to the funds and the Commission distorted facts established by documents submitted by the Italian authorities in support of those assertions.

195 As stated in paragraph 158 above, the Commission did not err in concluding that the late performance of the annual inventory controls of sugar stocks was likely to expose the funds to a significant risk and that the other checks carried out by the Italian authorities concerning the sugar in storage were not likely to offset that risk.

196 In those circumstances, the Italian Republic argues in vain that, with regard to expenditure for the storage of sugar during financial year 2006, the Commission has not established the existence of a risk to the funds. It should be recalled that the EU legislature considered that annual inventory controls, in particular by the physical inspection of stocks, were necessary to establish that the entire quantities listed in the stock accounts are actually present and that it imposed obligations on the Member States in that regard, including the obligations to carry out, at least once a year, controls of stocks by means of physical inspections of storage sites and to establish an annual inventory during each accounting year. By imposing such obligations, the legislature has implicitly, but clearly, considered that failure to fulfil those obligations automatically entailed a risk to the funds (see, to that effect and by analogy, judgment of 17 May 2013 in *Greece* v *Commission*, T-294/11, EU:T:2013:261, paragraph 131).

197 Thus, contrary to what the applicant maintains, it was in order to ensure the effectiveness of the provisions laying down the obligation to carry out annual inventory controls of stocks that the Commission found, in this case, that the obligation to complete the inventory controls by 30 September 2006 at the latest had not been fulfilled by the Italian authorities and that it applied a correction in that regard. In so doing, the Commission rightly considered that there was a risk to the funds and it correctly defined the scope of that risk.

198 Moreover, according to the settled case-law, although it is for the Commission to prove that the rules of the common organisation of the agricultural markets have been infringed, once that infringement has been established, the Member State concerned must then, if appropriate, demonstrate that the Commission made an error as to the financial consequences to be inferred from the infringement of the EU rules (see judgments of 12 September 2007 in *Finland* v *Commission*, T-230/04, EU:T:2007:259, paragraph 159 and the case-law cited, and *Greece* v *Commission*, cited in paragraph 77 above, EU:T:2013:32, paragraph 330 and the case-law cited). In this case, it must be noted that the arguments put forward by the Italian Republic are not capable of demonstrating such an error.

199 It follows, finally, that the contested decision is not vitiated by a failure to state reasons inasmuch as the Commission explained to the requisite legal standard the facts and points of law on which it had based the correction of 5%, so that the Italian Republic was in a position to prepare its defence effectively and the Court was in a position to exercise its power of review. Therefore, in accordance with the case-law recalled in paragraphs 91 to 93 above, the Commission was not obliged to state more fully the reasons for its finding that the other checks carried out by the Italian authorities on sugar stocks were not capable of ensuring that there was no risk to the funds linked to meeting the storage costs for the product missing from the warehouses.

200 Having regard to the foregoing considerations, it is also necessary to reject the seventh plea and, therefore, the application must be dismissed in its entirety.

Costs

201 Under Article 87(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.

202 Since the Italian Republic has been unsuccessful in all of its heads of claim and the Commission has applied for costs, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action;

2. Orders the Italian Republic to bear its own costs and those incurred by the Commission.

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 19 June 2015.

[Signatures]

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