Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

8 October 2015 *

(EAFRD — Clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the EAFRD — Decision declaring a certain amount to be non-reusable in connection with the Basilicata Region Rural Development Plan — Article 30 of Regulation (EC) No 1290/2005 — Obligation to state reasons)

In Case T-358/13

Italian Republic, represented by G. Palmieri and B. Tidore, acting as Agents, assisted by M. Salvatorelli, avvocato dello Stato,

applicant,

v

European Commission, represented by J. Aquilina and P. Rossi, acting as Agents,

defendant,

APPLICATION for the partial annulment of Commission Implementing Decision 2013/209/EU of 26 April 2013 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) for the 2012 financial year (OJ 2013 L 118, p. 23), in so far as it classifies as a 'non-reusable amount' the amount of EUR 5 006 487.10 relating to the Basilicata Region (Italy) Rural Development Plan,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen, President, F. Dehousse and A. M. Collins (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 April 2015,

gives the following

* Language of the case: Italian.

Judgment

Legal context

1 At the material time, Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) constituted the basic regulation for the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), which were created under that regulation.

2 Article 4 of that regulation provided that the EAFRD was to finance, in a context of shared management between the Member States and the European Union, the European Union's financial contribution to rural development programmes implemented in accordance with the EU legislation on support for rural development by the EAFRD.

3 Article 22 of Regulation No 1290/2005 provided that the financial contribution from the EAFRD towards expenditure under rural development programmes was to be determined for each programme, within the ceilings established by EU legislation. According to the second paragraph of Article 23 of that regulation, the Commission decision adopting a rural development programme submitted by a Member State was to constitute a legal commitment, once notified to the Member State concerned. Article 24 of that regulation provided, inter alia, that the Commission was to make the appropriations needed to cover expenditure as indicated in Article 4 available to the Member States through prefinancing, intermediate payments and the payment of a balance.

4 Article 26 of Regulation No 1290/2005, entitled 'Intermediate payments', provided:

'1. Intermediate payments shall be made for each rural development programme. They shall be calculated by applying the part-financing rate for each priority to the certified public expenditure pertaining to it.

2. Subject to resource availability, the Commission shall make intermediate payments in order to reimburse the expenditure incurred by accredited paying agencies in implementing the programmes.

3. Each intermediate payment shall be made subject to compliance with the following requirements:

(a) transmission to the Commission of a declaration of expenditure signed by the accredited paying agency, in accordance with Article 8(1)(c) [including, in particular, the annual accounts of the accredited paying agencies];

(b) no overrun of the total EAFRD contribution to each priority for the entire period covered by the programme concerned;

(c) transmission to the Commission of the last annual execution report on the implementation of the rural development programme

4. If one of the requirements laid down in paragraph 3 is not met, the Commission shall forthwith inform the accredited paying agency and the coordinating body, where one has been appointed. If one of the requirements laid down in point (a) or (c) of paragraph 3 is not respected, the declaration of expenditure shall be inadmissible.

5. The Commission shall make intermediate payments within 45 days of registering a declaration of expenditure for which the requirements set out in paragraph 3 of this Article are met, without prejudice to the decisions referred to in Articles 30 and 31.

6. Accredited paying agencies shall establish and forward, via the intermediary of the coordinating body or directly, where one has not been appointed, intermediate declarations of expenditure relating to rural development programmes to the Commission, at intervals set by the Commission. Declarations of expenditure shall cover expenditure that the agency has incurred during each of the periods concerned.

Intermediate declarations of expenditure in respect of expenditure incurred from 16 October onwards shall be booked to the following year's budget.'

5 Article 27 of Regulation No 1290/2005, entitled 'Suspension and reduction of intermediate payments', provided:

'1. Intermediate payments shall be made on the basis of the declarations of expenditure and financial information provided by Member States. Article 81 of the Regulation (EC) No 1605/2002 shall apply.

2. If the declarations of expenditure or financial information communicated by a Member State do not make it possible to find that the declaration of expenditure satisfies the relevant Community rules, the Member State shall be asked to provide additional information within a period set according to the seriousness of the problem but which may not normally be less than 30 days.

3. If the Member State fails to respond to the request referred to in paragraph 2, or if the response is considered unsatisfactory or demonstrates that the rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce or temporarily suspend intermediate payments to the Member State. It shall inform the Member State accordingly.

4. The suspension or reduction of intermediate payments as indicated in Article 26 shall comply with the principle of proportionality and shall be without prejudice to the decisions referred to in Articles 30 and 31.'

6 Article 29 of Regulation No 1290/2005, entitled 'Automatic decommitment', provided:

'1. The Commission shall automatically decommit any portion of a budget commitment for a rural development programme that has not been used for the purpose of prefinancing or making intermediate payments or for which no declaration of expenditure meeting the conditions laid down in Article 26(3) has been presented to it in relation to expenditure incurred by 31 December of the second year following that of the budget commitment.

2. That part of budget commitments still open on 31 December 2015 for which a declaration of expenditure has not been made by 30 June 2016 shall be automatically decommitted. …

…

4. In the event of any legal proceedings or an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or paragraph 2 shall be interrupted, in respect of the amount relating to the operations concerned, for the duration of those proceedings or that administrative appeal, provided that the Commission receives substantiated notification from the Member State by 31 December of year N + 2.

5. The following shall be disregarded in calculating the automatic decommitment:

(a) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been reduced or suspended by the Commission at 31 December of year N + 2;

(b) that part of the budget commitments which a paying agency has been unable to disburse for reasons of force majeure seriously affecting implementation of the rural development programme. National authorities claiming force majeure must demonstrate the direct consequences on the implementation of all or part of the programme.

6. The Commission shall inform Member States and the authorities concerned in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The Member States shall have two months from receiving this information to agree to the amount in question or present observations. The Commission shall carry out the automatic decommitment not later than nine months after the time-limit laid down in paragraphs 1 to 4.

7. In the event of automatic decommitment, the EAFRD contribution to the rural development programme concerned shall be reduced, for the year in question, by the amount automatically decommitted. …'

7 Article 30 of that regulation, entitled 'Clearance', provided:

'1. Prior to 30 April of the year following the budget year in question, the Commission shall take a decision concerning the clearance of the accounts of the accredited paying agencies under the procedure laid down in Article 41(3), on the basis of the information transmitted in accordance with Article 8(1)(c)(iii).

2. The clearance decision shall cover the completeness, accuracy and veracity of the annual accounts submitted. The decision shall be without prejudice to decisions taken subsequently under Article 31.'

8 Article 31 of that regulation, entitled 'Conformity clearance', provided:

'1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed Community rules, it shall decide what amounts are to be excluded from Community financing in accordance with the procedure referred to in Article 41(3).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature and gravity of the infringement and of the financial damage caused to the Community.

3. Before any decision to refuse financing is taken, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

If agreement is not reached, the Member State may request opening of a procedure aimed at reconciling each party's position within four months. A report of the outcome of the procedure shall be given to the Commission, which shall examine it before deciding on any refusal of financing. …'

9 Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1), which was in force at the material time, laid down the general rules governing Community support for rural development, financed by the EAFRD, established by Regulation (EC) No 1290/2005. Article 71 of that regulation, entitled 'Eligibility of expenditure', provided:

'1. … Expenditure shall be eligible for a EAFRD contribution if the relevant aid is actually paid by the paying agency between 1 January 2007 and 31 December 2015.

A new expenditure added at the moment of the modification of a programme … shall be eligible from the date of the reception by the Commission of the request for modification of the programme.

2. Expenditure shall be eligible for a EAFRD contribution only where incurred for operations decided on by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body. …'

10 Article 75(1)(a) of that regulation provided that the Managing Authority was to be responsible for managing and implementing each programme in an efficient, effective and correct way and, in particular, for ensuring that operations were being selected for funding in accordance with the criteria applicable to the rural development programme.

11 According to recital 6 of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 (OJ 2006 L 368, p. 15), only amendments involving significant changes in programmes, shifts of EAFRD funding among axes within a programme and changes to the EAFRD co-financing rates were to be adopted by a Commission decision, and a procedure was to be established for agreement on such notifications.

12 Article 10(1) of Regulation No 1974/2006 provided:

'For the purpose of the second subparagraph of Article 71(1) of Regulation … No 1698/2005, Member States shall bear the responsibility for expenditure between the date on which their request for programme revisions or changes as referred to in Article 6(1) of this Regulation is received by the Commission and the date of the Commission Decision … or that of the completion of the compliance assessment of the changes …'

13 Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of [Council] Regulation [(EC)] No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD (OJ 2006 L 171, p. 1) lays down certain specific requirements and rules on the shared management of expenditure and revenue under the EAFRD, the keeping of accounts and declarations of expenditure and revenue by the paying agencies, and the reimbursement of expenditure by the Commission under Regulation No 1290/2005. According to recital 7 of that regulation, for measures relating to operations financed by the EAFRD, declarations of expenditure, which also act as payment requests, must be sent to the Commission accompanied by the requisite information. According to recital 11, the Commission is to make payments at monthly or other regular intervals to the Member States on the basis of those declarations of expenditure, taking into account the revenue received by the paying agencies on behalf of the EU budget. In recital 23 it is stated that, in view of the specific characteristics of the accounting rules which apply to the EAFRD, the use of prefinancing and the financing of the measures by calendar year, provision should be made for this expenditure to be declared at intervals adapted to these specific conditions.

14 Article 16 of Regulation No 883/2006, in the version applicable at the material time, entitled 'Declarations of expenditure', provided:

'1. The paying agencies shall make declarations of expenditure for each rural development programme. These declarations shall cover, for each rural development measure, the amount of eligible public expenditure for which the paying agency has actually paid the corresponding EAFRD contribution during the reference period.

2. Once the programme has been approved, Member States shall send the Commission, in accordance with Article 8(1)(c)(i) of Regulation … No 1290/2005, their declarations of expenditure electronically in accordance with Article 18 of this Regulation by the following deadlines: …

…

(d) by 31 January at the latest in the case of expenditure in the period 16 October to 31 December.

Expenditure declared in respect of a period may contain corrections to data declared in respect of the preceding declaration periods of the same financial year.

…

4. Where there are disagreements, differences of interpretation or inconsistencies relating to declarations of expenditure for a reference period, resulting in particular from the failure to communicate the information required under Regulation … No 1698/2005 and its implementing rules, and these require further checks, the Member State concerned shall be required to provide additional information. …

The time limit for payment laid down in Article 26(5) of Regulation … No 1290/2005 may in such cases be interrupted for all or part of the amount for which payment is claimed, from the date on which the request for information is sent until receipt of the information requested but no later than the date on which the declaration of expenditure for the following period is submitted. Where no solution is found within that time limit, the Commission may suspend or reduce payments in accordance with Article 27(3) of Regulation … No 1290/2005.

…’

15 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) stated, inter alia, in recital 9, that detailed provisions should be laid down for both the procedure for the clearance of accounts provided for in Article 30 of Regulation No 1290/2005 and the conformity clearance procedure provided for in Article 31 of that regulation, including a mechanism whereby the resulting amounts are, as the case may be, deducted from or added to one of the subsequent payments made to the Member States.

16 Article 10 of Regulation No 885/2006, entitled ‘Financial clearance’, provides:

‘1. The clearance of accounts decision referred to in Article 30 of Regulation … No 1290/2005 shall determine the amounts of expenditure effected in each Member State during the financial year in question which shall be recognised as being chargeable to the EAGF and the EAFRD on the basis of the accounts referred to in Article 6 of this Regulation and any reductions and suspensions under Articles 17 and 27 of Regulation … No 1290/2005.

…

For the EAFRD, the amount determined by the clearance of accounts decision shall include the funds which may be re-used by the Member State concerned pursuant to Article 33(3)(c) of Regulation … No 1290/2005.

2. … As regards the EAFRD, the amount which, as a result of the clearance of accounts decision, is recoverable from or payable to each Member State shall be established by deducting the intermediate payments in respect of the financial year concerned from the expenditure recognised for the same year in accordance with paragraph 1. The Commission shall deduct that amount from or add it to the first payment for which the declaration of expenditure is submitted by the Member State after the decision pursuant to Article 30 of Regulation … No 1290/2005 has been adopted.

3. The Commission shall communicate to the Member State concerned the results of its verification of the information supplied, together with any amendments it proposes, by 31 March following the end of the financial year at the latest.

4. If, for reasons attributable to the Member State concerned, the Commission is unable to clear the accounts of a Member State before 30 April of the following year, the Commission shall notify the Member State of those additional inquiries it proposes to undertake pursuant to Article 37 of Regulation … No 1290/2005.

…'

17 Article 11 of that regulation, entitled 'Conformity clearance', laid down the rules of the procedure provided for in Article 31 of Regulation No 1290/2005.

Background to the dispute

18 By a communication of 15 November 2011, the Italian authorities sent to the Commission, in accordance with Article 6 of Regulation No 1974/2006, a substantiated proposal for changes in the Basilicata Region Rural Development Programme for the 2007-2013 period. That request concerned, in particular, the detailed rules for implementing Measure 125 of that programme both through the organisation of regional tendering processes and in accordance with a national mobilisation procedure.

19 By letter of 1 December 2011, the Commission acknowledged receipt of that communication and stated that there would be a six-month time-limit for the approval of the requested changes, in accordance with Article 7 of Regulation No 1974/2006.

20 By a communication of 26 January 2012, the Italian paying agency, the Agenzia per le erogazioni in agricoltura (AGEA) (Agricultural payments agency) provided a declaration of the expenditure incurred by the Managing Authority of the Basilicata Region Rural Development Programme in the final quarter of 2011, in accordance with Article 26(3)(a) of Regulation No 1290/2005.

21 Following bilateral meetings between the Italian authorities and the Commission, by e-mail of 8 February 2012, the Commission requested clarification on the expenditure declared as chargeable to the EAFRD by the Basilicata region for the final quarter of 2011. It asked, in particular, whether that expenditure included the expenditure incurred after the proposals for changes in the programme for that region, which were at that time being examined by the Commission. Furthermore, it requested a detailed justification for the expenditure associated with Measure 125, also being examined by the Commission.

22 The Italian authorities replied by e-mail of 9 February 2012, stating that the declared expenditure included the expenditure for five projects relating to Measure 125 which had been implemented in accordance with the national mobilisation procedure. A table attached to that e-mail showed the total amount incurred for those five projects and the sum of EUR 5 006 487.10 charged to the EAFRD.

23 By letter of 21 March 2012, the Commission submitted its comments and asked the Basilicata regional authorities to provide clarification on the proposals for changes in the regional development programme. It observed, in particular, that the proposal to introduce a national mobilisation procedure was contrary to Article 71(2) and Article 75(1)(a) of Regulation No 1698/2005. Consequently, it suspended the six-month period for the approval of all the measures and asked the Italian authorities to review their proposals.

24 By letter of 28 March 2012, the Commission asked the AEGA to submit another declaration of expenditure for the Basilicata region for the final quarter of 2011, deducting the expenditure incurred for the five projects relating to Measure 125, namely EUR 8 703 906.64 of public expenditure and EUR 5 006 487.10 of expenditure charged to the EAFRD. It referred to its letter of 21 March 2012 and observed that the proposed change to the detailed rules for implementing Measure No 125 did not comply with Article 71(2) and Article 75(1) of Regulation No 1698/2005 and, therefore, that the five projects were not eligible for a contribution from the EAFRD. Finally, it drew attention to Article 10(1) of Regulation No 1974/2006.

25 The AGEA replied by letter of 3 April 2012, refusing to send another declaration. It maintained that, since the declaration of expenditure already submitted complied with the requirements under Article 26(3) of Regulation No 1290/2005, it had to be considered to be admissible, particularly in view of the fact that the Commission had not raised objections under Article 26(4). Therefore, the Commission should have made the intermediate payment within 45 days of receiving the declaration of expenditure, as provided for in Article 16(4) of Regulation No 883/2006 read in conjunction with Article 26(5) of Regulation No 1290/2005. Thus the Commission would still have been able to exercise the option to suspend or reduce the payments in accordance with Article 27 of Regulation No 1290/2005. Finally, the AGEA submitted that, if necessary, the Commission should have made any corrections to the declaration of expenditure relating to the following quarter in accordance with Article 16(2) of Regulation No 883/2006.

26 By letter of 15 May 2012, the Commission took formal note of the Italian authorities' refusal. It reiterated the reasons why the expenditure relating to the five projects in question should have been deducted from the expenditure declared, and asked the authorities to provide it with additional information within 30 days. The Commission stated that in the absence of a response, or if the response given was unsatisfactory, it could reduce the declared expenditure, in accordance with Article 27 of Regulation No 1290/2005, by the amount of EUR 5 006 487.10 which was charged to the EAFRD.

27 By letter of 25 May 2012, the Commission submitted its comments on a new revised version of the proposal for changes in the Basilicata regional development programme, also notified on 9 May 2012. In that version, the Italian Republic proposed to implement Measure 125 by means of tendering processes for which the Managing Authority would be able to verify the conditions of implementation provided for by the rural development programme. The Commission also rejected that proposal. In particular, it stated that the request for changes to the detailed rules for implementing that measure created some legal uncertainty by comparison with the provisions in force. Finally, it suspended the six-month period for the approval of the proposal for changes in the programme and asked the Italian authorities to submit a new version of that proposal.

28 By note of 20 June 2012, the Italian authorities submitted their comments on the Commission's finding, set out in its letter of 15 May 2012, that the expenditure was ineligible.

29 The Commission responded, by letter of 11 September 2012, that the information provided by the Italian authorities did not address the issues raised in terms of the compliance of the proposal for changes in question with Article 71(2) and Article 75(1) of Regulation No 1698/2005. It concluded, again, that the sum of EUR 5 006 487.10 could not be financed by the EAFRD. Moreover, it stated that if there was no response within 30 days, or if the response given was unsatisfactory, it would reduce the intermediate payments accordingly, pursuant to Article 27(3) of Regulation No 1290/2005.

30 By letter of 19 October 2012, the Italian authorities confirmed that they had no further arguments regarding the conformity of that amount of declared expenditure and that they had recovered the amounts paid to beneficiaries under Measure 125.

31 By letter of 26 March 2013, the Commission informed the Italian authorities that the exchange of information, for the purpose of Article 27(3) of Regulation No 1290/2005, was closed and that it maintained its finding that the detailed rules for implementing the five projects under Measure 125 did not comply with EU law. It added that it was arranging the suspension of the amount of EUR 5 006 487.10 and that the matter would also be taken into consideration in the subsequent clearance of accounts procedure.

32 By letter of 17 April 2013, the Italian authorities took formal note of that letter from the Commission, stating that they would consider the amount at issue as having already been suspended.

33 On 26 April 2013, the Commission adopted Implementing Decision 2013/209/EU on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the EAFRD for the 2012 financial year (OJ 2013 L 118, p. 23, 'the contested decision'), which was notified to the Italian Republic on 29 April 2013. As regards the Basilicata region, the Commission classified the amount of EUR 5 006 487.10 as a 'non-reusable amount', thus excluding it from European Union financing.

34 By a communication of 16 May 2013, the Commission, inter alia, opened the conformity clearance procedure in accordance with Article 11(1) of Regulation No 885/2006. In the context of the corrective measures, it proposed a correction to the amount of EUR 5 006 487.10 charged to the AGEA.

Procedure and forms of order sought by the parties

35 By application lodged at the Registry of the General Court on 9 July 2013, the Italian Republic brought the present action.

36 Since no reply was lodged within the prescribed period, namely by 26 November 2013, the written procedure was closed on that date.

37 Acting on a report of the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral procedure and, in accordance with the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of the General Court of 2 May 1991, put written questions to the parties, to which they replied within the period prescribed.

38 The parties presented oral argument and answered the oral questions put to them by the Court at the hearing on 16 April 2015.

39 The Italian Republic submits that the Court should:

— annul the contested decision in so far as it excludes the amount of EUR 5 006 487.10 relating to the Basilicata region from the EAFRD spending limit for the regional development programme in that region;

— order the Commission to pay the costs.

40 The Commission contends that the Court should:

— dismiss the action;

— order the Italian Republic to pay the costs.

Law

41 In support of its action, the Italian Republic raises a single plea alleging infringement of Articles 26, 27 and 29 of Regulation No 1290/2005, Article 10 of Regulation No 1974/2006, Article 16(4) of Regulation No 883/2006 and Article 11 of Regulation No 885/2006, as well as a breach of essential procedural requirements, including the obligation to state reasons, and an infringement of EU law principles including, in particular, the principles of legality, legal certainty and the protection of legitimate expectations.

42 According to the Italian Republic, the classification of the amount of EUR 5 006 487.10 as a 'non-reusable amount' in the contested decision means that the ceiling on expenditure for the Basilicata Region Rural Development Programme under the EAFRD has to be lowered by that amount, with the result that it is, therefore, impossible for that amount to be used within that ceiling. Such a classification is tantamount to the decommitment of that amount within the meaning of Article 29 of Regulation No 1290/2005. Such a decommitment would infringe all the provisions and rules of law set out in paragraph 41 above, in particular because the declaration of expenditure for the Basilicata Region Rural Development Programme for the final quarter of 2011 was submitted within the prescribed period and in accordance with Article 26(3) of Regulation No 1290/2005.

43 The Commission disputes the arguments put forward by the Italian Republic and considers that the action is based on an incorrect premise in that the contested decision does not order the automatic decommitment of the amount at issue. Furthermore, since the Italian Republic was closely involved in the decision-making process, and taking into account recitals 1 to 7 of the decision, the statement of reasons for the contested decision should be regarded as sufficient.

44 At the outset, it should be noted, as confirmed by the Italian Republic at the hearing, that the present action concerns the fact that the amount of EUR 5 006 487.10 was, in essence, automatically decommitted in the contested decision, in breach of Article 29(5) of Regulation No 1290/2005 and without adequate explanation.

45 First, it must be observed that, in its written submissions, the Italian Republic, without providing any explanation, claimed merely that there had been an infringement of Articles 26 and 27 of Regulation No 1290/2005, Article 10 of Regulation No 1974/2006, Article 16(4) of Regulation No 883/2006 and Article 11 of Regulation No 885/2006, as well as a breach of essential procedural requirements, in general, and an infringement of EU law principles including, in particular, the principles of legality, legal certainty and the protection of legitimate expectations.

46 It should be noted that, under Article 44(1)(c) of the Rules of Procedure of 2 May 1991, the application must contain, inter alia, a summary of the pleas in law on which it is based. Moreover, in accordance with settled case-law, irrespective of any question of terminology, that summary must be sufficiently clear and precise as to enable the defendant to prepare its defence and the Court to rule on the action, even without having to request further information. It is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself, so as to guarantee legal certainty and sound administration of justice (see judgment of 27 September 2006, *Roquette Frères* v *Commission*, T-322/01, ECR, EU:T:2006:267, paragraph 208 and the case-law cited). It is also settled case-law that any plea which is not adequately articulated in the application initiating the proceedings must be held inadmissible. Similar requirements apply where a submission is made in support of a plea in law. In the case of an absolute bar to proceeding, such inadmissibility may be raised by the Court of its own motion if need be (see judgment of 14 December 2005, *Honeywell* v *Commission*, T-209/01, ECR, EU:T:2005:455, paragraphs 54 and 55 and the case-law cited).

47 In the light of the settled case-law referred to in paragraph 46 above, the Court would observe of its own motion that the complaints set out in paragraph 45 above are not supported, even in summary form, as is required by Article 44(1)(c) of the Rules of Procedure of 2 May 1991. They must therefore be rejected as inadmissible.

48 Secondly, the Italian Republic submits, in paragraphs 40 and 41 of the application, that the disputed amount given in the contested decision is incorrect. It argues that, in view of the fact that 'payments were made in excess of what was strictly necessary to avoid decommitment', that amount should be EUR 4475963.58. It provides a table showing the total amount of financial commitments for the region between 2007 and 2009 and the difference between the payments made as at 31 December 2011, on the one hand taking into account the five projects under Measure 125 and, on the other excluding those projects.

49 It should be noted that that table, which appears in paragraph 41 of the application, does not give any indication of the source of the data it contains, nor any proper explanation as to the method used to produce it, and that it is impossible to verify the information it contains. Therefore, it does not have sufficient probative value and thus does not require the Court to examine how the disputed amount was calculated. In that regard, it should be recalled that, in order to assess the probative value of a document, regard should be had first and foremost to the credibility of the account it contains and, in particular, to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears sound and reliable (see judgment of 27 September 2006, *Dresdner Bank and Others* v *Commission*, T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP, ECR, EU:T:2006:271, paragraph 121 and the case-law cited).

50 It follows that the complaint relating to the calculation of the disputed amount is not supported and must be rejected.

51 The same applies to the table in paragraph 37 of the application, showing the amounts which the Italian authorities recovered from beneficiaries of Measure 125 and which correspond to shares of the EAFRD. That table does not give any indication of the source of the data it contains, nor any proper explanation as to the method used to produce it. Therefore, that table must also be rejected as having no probative value.

52 For the sake of completeness, it should be noted that, according to settled case-law, although it is for the Commission to prove that the rules of EU law have been infringed, once it has established such an infringement it is for the Member State to demonstrate, if appropriate, that the Commission made an error as to the financial consequences to be attached to that infringement (judgments of 7 October 2004, *Spain* v *Commission*, C-153/01, ECR, EU:C:2004:589, paragraph 67, and 7 July 2005, *Greece* v *Commission*, C-5/03, ECR, EU:C:2005:426, paragraph 38). Assuming that the infringement is established in the present case, it must be held that the Italian Republic did not put forward any arguments capable of showing that the Commission made an error as to the financial consequences to be attached to that infringement.

53 As to the remainder, the Court makes the following observations on the complaints alleging, in essence, infringement of Article 29(5) of Regulation No 1290/2005 and of the obligation to state reasons.

54 First, the Italian Republic claims that the contested decision is vitiated by a failure to state reasons as regards the classification of the disputed amount in the decision on the clearance of the EAFRD accounts for 2012, which does not mention the acts preparatory to its adoption.

55 Secondly, the Italian Republic submits that, in so far as the disputed amount was reduced or suspended under Article 27(3) of Regulation No 1290/2005, it is necessarily disregarded in calculating the decommitment under Article 29(5) of that regulation. Likewise, the clearance of accounts relates only to the reported accounts presented by each paying agency. According to the Italian Republic, including the disputed amount in the contested decision on the clearance of the accounts of the EAFRD for the 2012 financial year is contrary to the subsequent opening of the conformity clearance procedure provided for in Article 11 of Regulation No 885/2006.

The complaint alleging an inadequate statement of reasons for the contested decision

56 According to settled case-law, the statement of reasons required by Article 296 TFEU must disclose clearly and unambiguously the reasoning followed by the institution which adopted the measure, so as to enable the persons concerned to acquaint themselves with the reasons for the measure and the judicature to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law. The question whether the statement of reasons meets those requirements 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 (see, to that effect, judgment of 18 January 2000, *Mehibas Dordtselaan* v *Commission*, T-290/97, ECR, EU:T:2000:8, paragraph 92 and the case-law cited).

57 In the particular context of the preparation of decisions relating to the clearance of accounts, the Court has consistently held that the statement of reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was closely involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sums in dispute to the EAFRD (see, by analogy, in the context of the EAGGF, judgments of 6 March 2001, *Netherlands* v *Commission*, C-278/98, ECR, EU:C:2001:124, paragraph 119; 20 September 2001, *Belgium* v *Commission*, C-263/98, ECR, EU:C:2001:455, paragraph 98, and 9 September 2004, *Greece* v *Commission*, C-332/01, ECR, EU:C:2004:496, paragraph 67).

58 First, in this case, it is apparent from the course of events and from the documents before the Court that the Commission adequately and clearly specified the reasons for which it took the view that the disputed amount was not eligible for contribution from the EAFRD, and did so throughout the administrative procedure which led to the adoption of the contested decision. On several occasions, it drew the attention of the Italian Republic to the irregular nature of the inclusion of the disputed amount in the declared expenditure charged to the EAFRD for the final quarter of 2011. Furthermore, the Commission repeatedly asked the Italian Republic to deduct the expenditure incurred for the five projects relating to Measure 125, and informed it that it would reduce the intermediate payments accordingly due to the non-compliance of that measure with Article 71(2) and Article 75(1) of Regulation No 1698/2005.

59 Thus, in the letter of 21 March 2012 (see paragraph 23 above), the Commission noted that the change to Measure 125 was not compatible with the requirements under Article 71(2) and Article 75(1)(a) of Regulation No 1698/2005. It pointed out that only the expenditure decided on by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body, was eligible for contribution from the EAFRD. However, that was not so in this case. Subsequently, in the letter of 28 March 2012 (see paragraph 24 above), the Commission asked the AGEA to deduct the expenditure relating to Measure 125 from the declaration of expenditure for the Basilicata region for the final quarter of 2011, since it was not chargeable to the EAFRD. First, it referred to the previous letter of 21 March 2012 and reiterated the reasons for that exclusion as well as the actual legal provisions applicable and secondly, it drew attention to Article 10(1) of Regulation No 1974/2006 to request that deduction. The letter of 15 May 2012 (see paragraph 26 above) restated the reasons set out in the previous letters and stated that, in the absence

of relevant additional information, the Commission would clear the accounts, deducting the expenditure relating to Measure 125, namely, the amount of EUR 5 006 487.10. Likewise, by letter of 11 September 2012 (see paragraph 29 above), the Commission disregarded the information submitted by the Italian authorities and, once more, concluded, on the same grounds and based on the same provisions, that the disputed amount was ineligible.

60 That procedure culminated in the letter of 26 March 2013 (see paragraph 31 above). In that letter, the Commission set out, once again, its reasons for taking the view that the disputed amount was ineligible for contribution from the EAFRD. It stated that the Italian authorities had not addressed its concerns as to the legality of the expenditure for Measure 125 which had been expressed in the letter of 11 September 2012. Therefore, it maintained its conclusion and stated that it would suspend the amount of EUR 5 006 487.10 and that the matter would be taken into consideration in the clearance of accounts procedure.

61 The inevitable conclusion is that such a course of events, which is not disputed by the Italian Republic, shows that the Commission expressed itself clearly and unambiguously as regards the treatment of the disputed amount.

62 Secondly, it is clear from the documents before the Court that the Italian authorities had understood that the disputed amount had been excluded from the eligible expenditure for the final quarter of 2011 and on what grounds it had been excluded. It should be noted, in particular, that at the end of 2012, the Italian authorities, anticipating the suspension of the disputed amount from the expenditure eligible for contribution from the EAFRD, recovered the whole sum from the beneficiaries, as can be seen from their letter of 19 October 2012. Moreover, on two occasions, the Italian authorities revised their proposal for changes to the detailed rules for implementing Measure 125 in order to address the issues raised by the Commission, as demonstrated by their answers to the written questions put to them by the Court.

63 It should also be noted that the Italian authorities repeatedly referred to the classification of the disputed amount and the Commission's position in that regard in their letters of 3 April, 20 June and 19 October 2012 and 17 April 2013 during the administrative procedure.

64 Furthermore, it should be noted that, since the Italian Republic, by its communication of 15 November 2011 (see paragraph 18 above), expressly opened the procedure for the review of the changes proposed in this case on the basis of Article 6 of Regulation No 1974/2006, it cannot claim to have been unaware of the consequences of those changes not being approved which are set out in Article 10 of that regulation.

65 Thirdly, the argument that the contested decision does not contain a statement of reasons cannot succeed. It is clear from its recitals that the Commission decision was based, inter alia, on Articles 27, 30 and 33 of Regulation No 1290/2005. In particular, in recital 7 of the contested decision, the Commission stated that 'in order to avoid any premature, or temporary, reimbursement of the [intermediate payments reduced or suspended in accordance with Article 27(3)], they should not be recognised in this Decision and they should be further examined under the conformity clearance procedure'. Therefore, by Article 1 of the contested decision, the Commission cleared the accounts of the paying agencies of the Member States concerning expenditure financed by the EAFRD in respect of the 2012 financial year specifying, in Annex I, the amounts recoverable from or payable to each Member State under each rural development programme. In Annex I, for the Basilicata region, the disputed amount was deducted from the declared expenditure. Therefore, the amount accepted and cleared in respect of the 2012 financial year was reduced proportionally.

66 Contrary to the Italian Republic's claim, it is of no importance that the contested decision does not refer to the acts preparatory to its adoption. After all, the Italian Republic was closely involved in the process by which the decision came about, within the meaning of the case-law cited in paragraph 57

above, and was aware of the reasons for which the Commission took the view that it must not charge the disputed amount to the EAFRD. Moreover, the Italian Republic does not identify any inaccuracies which might have caused it not to understand the contested decision. In so far as it claims not to understand the inclusion of the disputed amount 'in a column which has never been used before [in the contested decision] referred to as "non-reusable amount"', it should be noted that that classification is taken directly from Article 33 of Regulation No 1290/2005. That article, entitled 'Provisions specific to the EAFRD' provides, under paragraph 3(c), that amounts of EU financing which are cancelled and amounts recovered, as well as the interest thereon, are to be reallocated to the programme concerned. However, those funds may be 'reused' by Member States only for an operation under the same rural development programme and provided the funds are reallocated to operations which have been the subject of a financial adjustment. As stated in paragraph 65 above, it is expressly stated in the contested decision that Article 33 is a legal basis of that decision. Moreover, the Italian Republic not only recovered the disputed amount in anticipation of the contested decision being adopted, but also submitted in the present action that it was not able to reuse that amount in the programme concerned. The foregoing shows that the Italian Republic was well aware of the reasons for the contested decision and was able to assert its rights before the Court.

67 Therefore, the present complaint should be rejected as unfounded.

The complaint alleging infringement of Article 29(5) of Regulation No 1290/2005

68 It should be noted at the outset that the Commission is not entitled, when managing the common agricultural policy, to commit funds which fail to comply with the rules governing the common organisation of the markets in question and that the rule is of general application (see judgment of 9 June 2005, *Spain* v *Commission*, C-287/02, ECR, EU:C:2005:368, paragraph 34 and the case-law cited). Therefore, when the Commission finds that the accounts of paying agencies include expenditure effected in breach of the EU rules governing the common organisation of the market in question, it has the power to draw all the necessary consequences and thus to make financial corrections to the annual accounts of the paying agencies at the stage of its decision on clearance of the accounts pursuant to Article 7(3) of Regulation No 1290/2005 (see, as regards the clearance of accounts under Article 7(3) of Regulation No 1258/1999, judgment in *Spain* v *Commission*, EU:C:2005:368, paragraph 35).

69 According to settled case-law, where the Commission refuses to charge certain expenditure to the funds on the ground that it was incurred as a result of breaches of provisions of EU law for which a Member State can be held responsible, it is for the Commission to prove the infringements in question (see, to that effect, judgment of 28 October 1999, *Italy* v *Commission*, C-253/97, ECR, EU:C:1999:527, paragraph 6 and the case-law cited).

70 The Commission, in order to prove an infringement of the rules on the common organisation of the agricultural markets, is not required to demonstrate exhaustively that the checks carried out by the national authorities are inadequate or that the data submitted by them are incorrect, but rather to adduce evidence of serious and reasonable doubt on its part regarding the checks or data. 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 EAFRD accounts and consequently it is for that State to adduce the most detailed and comprehensive evidence that its checks or data are accurate and, if appropriate, that the Commission's statements are incorrect (see, in the context of the EAGGF, judgments in *Spain* v *Commission*, paragraph 68 above, EU:C:2005:368, paragraph 53, and of 6 November 2014, in *Netherlands* v *Commission*, C-610/13 P, EU:C:2014:2349, paragraph 60).

71 It is then, subsequently, for that Member State to show that the conditions for obtaining the financing refused by the Commission are fulfilled. The Member State concerned 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 the Commission's findings are inaccurate, those findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures (see judgment of 17 May 2013, *Bulgaria* v *Commission*, T-335/11, EU:T:2013:262, paragraph 22 and the case-law cited).

72 It is in the light of those principles that the present complaint should be examined.

73 By that complaint, the applicant submits that the Commission decommitted the disputed amount in the contested decision, as provided for in Article 29 of Regulation No 1290/2005. According to the Italian Republic, an amount which has been suspended under Article 27(3) of the same regulation cannot be decommitted, in accordance with Article 29(5)(a) of that regulation.

74 First, it should be noted that Article 29 of Regulation No 1290/2005 does not constitute one of the legal bases of the contested decision. That provision is not invoked in the recitals or in the operative part of that decision, as is clear from consideration of the complaint alleging an inadequate statement of reasons. It is apparent from the title of the contested decision that it concerns the clearance of the accounts of the paying agencies for the 2012 financial year. Secondly, it is apparent from reading recital 7 in conjunction with Article 1 and Annex I of the contested decision that the disputed amount had been deducted from the amount cleared for the Basilicata Region Rural Development Programme for that financial year and that the Italian Republic had been ordered not to reuse that amount within that programme until the Commission adopted a position in the context of a subsequent clearance of accounts procedure. Finally, and as is clear from paragraph 68 above, the Commission has powers to make such corrections as part of a clearance decision.

75 At the hearing and in its answers to the written questions raised by the Court, the Italian Republic admitted that Article 29 of Regulation No 1290/2005 had not been applied in this case. However, it claims that the classification of the disputed amount as a 'non-reusable amount' is 'closely comparable to decommitment' under the EAFRD.

76 That argument cannot be accepted.

77 It is clear from recital 22 of Regulation No 1290/2005 that the automatic decommitment rule was established to help speed up the implementation of programmes and contribute to sound financial management. Accordingly, the Commission is empowered, under Article 29 of that regulation, to automatically decommit any portion of a budget commitment for a rural development programme that has not been used for the purpose of prefinancing or making intermediate payments or for which no correct declaration of expenditure has been presented by 31 December of the second year following that of the budget commitment.

78 In this case, the contested decision does not order that the disputed amount be excluded definitively. It follows that the Commission has not yet adopted a final position on the classification of that amount. In recital 5 of the contested decision, the Commission states that, for the annual accounts and the accompanying documents which permitted it to take a decision on the completeness, accuracy and veracity of the accounts submitted, the amounts cleared, broken down by Member State, and the amounts to be recovered from or paid to the Member States were listed in Annex I. However, in recital 7 of the contested decision, the Commission noted that, in order to avoid any premature, or temporary, reimbursement of the intermediate payments suspended or reduced, they should not be recognised by that decision and they should be further examined under the conformity clearance procedure pursuant to Article 31 of Regulation No 1290/2005. As is clear from its communication of 16 May 2013 (see paragraph 34 above), the Commission opened that conformity clearance procedure. Annex 4 of that communication, entitled 'Corrective measures', concerned, in particular, the treatment

of the disputed amount. Moreover, it is common ground between the parties that that procedure was still ongoing at the date of the hearing. Therefore, the contested decision does not amount in law or in fact to a decommitment of the disputed amount. Accordingly, the Italian Republic is not justified in relying on the exception to automatic decommitment provided for in Article 29(5) of Regulation No 1290/2005. The fact that it is prevented, as a result of the contested decision, from using the disputed amount in connection with the Basilicata Region Rural Development Programme has no bearing on the legal classification of that decision.

79 The other arguments put forward by the applicant, which are based predominantly on the incorrect premise that the disputed amount was actually decommitted, are not capable of calling that conclusion into question.

80 First, the Italian Republic is wrong to claim that 'the formal presentation of a quarterly declaration of expenditure within the prescribed period … cannot lead to the decommitment of the corresponding sums, but may result only in the suspension or reduction of a reimbursed amount; however, any reduced or suspended amount may not be decommitted … [and] may be reused in that [rural development programme]'.

81 Therefore, as has been established above, there was no decommitment in this case.

82 However, it should be noted that, according to the logic of the line of argument put forward by the Italian Republic, the Commission would be obliged to accept a false declaration of intermediate expenditure for a rural development programme merely because it complies with formal requirements relating to the presentation of declarations laid down in Article 26(3) of Regulation No 1290/2005. It would thus be obliged to clear the expenditure and, subsequently, to bear the administrative burden of rectifying that declaration in accordance with the procedure provided for in Article 16 of Regulation No 883/2006. The logic of that argument is contrary to the integrity of the clearance of accounts procedure provided for in Article 30 of Regulation No 1290/2005 which, as is clear from the wording thereof, is to cover the completeness, accuracy and veracity of the annual accounts submitted by the national authorities.

83 The clearance of accounts decision gives the amounts that are recoverable from each Member State which are determined by deducting advances paid during the course of the financial year in question from the expenditure recognised for that year. Where the Commission finds that irregularities have occurred in the annual declaration of expenditure for any programme, it cannot recognise them as being chargeable to the EAFRD as part of the clearance of accounts and must therefore refuse financing of that expenditure pending any subsequent non-compliance decision (see, by analogy, judgment in *Spain* v *Commission*, paragraph 68 above, EU:C:2005:368, paragraph 32, and Opinion of Advocate General Jacobs in that case, ECR, EU:C:2005:35, points 47 and 48).

84 In the present case, the Italian Republic expressly included, in its declaration of expenditure for the final quarter of 2011, expenditure which was not eligible for financing from the EAFRD under Article 10(1) of Regulation No 1974/2006. It cannot claim that presenting a declaration of intermediate expenditure which complies with the applicable formal requirements makes expenditure which would never be chargeable to the EAFRD eligible for an EAFRD contribution. If this were the case, that provision would be deprived of all practical effect.

85 The same applies to the Italian Republic's argument that 'the clearance of accounts relates to the reported accounts presented by each paying agency … and … in the supporting documents submitted [in this case] there are no specific remarks on the issue of disputed payments (relating to the Basilicata region)'. That argument must be rejected on the basis of the foregoing considerations. In any event, the refusal to finance expenditure incurred in breach of EU rules cannot depend on a position adopted at

national level, since the approval of expenditure for the accounts clearance exercise is the responsibility of Commission departments, not the national authorities or the undertaking engaged to prepare the supporting documents.

86 The assertion that it was impossible for the Italian Republic to amend the quarterly declaration in this case because the formal requirements under Article 26(3) and (4) of Regulation No 1290/2005 had been fulfilled and the time-limit had expired is not very plausible since the Commission had, on three occasions, namely in its communications of 28 March, 15 May and 25 May, asked the Italian Republic to deduct the disputed amount from its declaration during the administrative procedure.

87 Secondly, it is true that the relevant legislation 'does not prohibit [Member States] from incurring expenditure while awaiting the approval of changes to the [rural development programme submitted to the Commission]', as the Italian Republic submits. However, contrary to the latter's argument, it does not follow that the declaration of expenditure for the final quarter of 2011 was valid. As is apparent from Article 10(1) of Regulation No 1974/2006, Member States may incur expenditure during that period, but they are to bear the responsibility for expenditure incurred between the date on which their request for programme changes is received by the Commission and the date of the Commission decision on the compliance of those changes.

88 Article 16(4) of Regulation No 883/2006 cannot support the argument of the Italian Republic either. Contrary to the argument put forward by the latter, if the Commission finds that irregularities have occurred, it is not required to make intermediate payments within 45 days of the declaration of expenditure merely being presented. Moreover, in this case, the Commission had asked the Italian authorities for additional information (see paragraphs 21 and 23 above). According to the second subparagraph of that provision, where no solution is found after such an exchange of information, the Commission may suspend or reduce payments in accordance with Article 27(3) of Regulation No 1290/2005.

89 Thirdly, in so far as the Italian Republic asserts that there was a 'disjunction of the accounts' in this case in that the disputed amount was considered, in the Commission's communication of 16 May 2013, both as one of the 'issues examined in the clearance of accounts procedure for 2012' and as a suspended amount. In accordance with Article 27(4) of Regulation No 1290/2005, decisions to suspend or reduce payments under paragraph 3 are to be made without prejudice to the decisions referred to in Articles 30 and 31 of that regulation. According to Article 30(2) of that regulation, a decision adopted under Article 30 is to be without prejudice to decisions taken subsequently under Article 31 and concerning the expenditure to be excluded from EU financing where that expenditure was incurred in a way that infringed EU rules. It follows that, on adoption of the account clearance decision, the Commission may draw consequences from the deficiencies found in the quality of the accounts submitted, independently of the decision on conformity clearance. In the present case, recital 10 of the contested decision states that, in accordance with Article 30(2) of Regulation No 1290/2005, that decision 'does not prejudice decisions taken subsequently by the Commission excluding from European Union financing expenditure not effected in accordance with EU rules'.

90 Therefore, the Italian Republic has not shown that the disputed amount was treated incorrectly in the contested decision. Despite repeated requests by the Commission, it refused to deduct that amount, which had been wrongly included in its declaration of intermediate expenditure, in anticipation of the adoption of the clearance decision for the 2012 financial year. It was impossible for the Commission to clear that amount. If it had done so, that amount would have been wrongly calculated as being within the approved expenditure ceiling for the development programme in question. The Commission thus excluded it from eligibility for contribution from the EAFRD pending its examination under the conformity clearance procedure. Moreover, it is clear from the examination of the complaint alleging an inadequate statement of reasons that that treatment was anticipated and had been identified by the Commission during the administrative period which preceded the adoption of the contested decision.

91 Fourthly, it must be found that, the Italian Republic is, in essence, reiterating the argument which has already been rejected in paragraph 89 above when it argues that there is a contradiction between 'checking the action taken by the paying agency AGEA with a view to considering a possible correction, the amount of which should reflect the damage … to the [EAFRD] (although no damage or risk existed as there was no reimbursement and the amounts were recovered in full from the beneficiaries), and including the [disputed] amount in the clearance of accounts decision, which classified it as a "non-reusable amount"'. In any event, that argument is unfounded, since the classification of that amount as non-reusable in the contested decision (and the resulting exclusion of that amount from eligibility for an EAFRD contribution) does not prejudice the final result of the conformity clearance procedure (see paragraph 78 above).

92 It follows from all the foregoing that the Commission did not infringe Article 29(5) of Regulation No 1290/2005 by treating the disputed amount as non-reusable in the contested decision.

93 It follows that the present complaint must be rejected and, accordingly, the action must be dismissed in its entirety.

Costs

94 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

95 Since the Italian Republic has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber),

hereby:

1. Dismisses the action;

2. Orders the Italian Republic to pay the costs.

Frimodt Nielsen Dehousse Collins

[Signatures]

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