Reports of Cases

ORDER OF THE VICE-PRESIDENT OF THE COURT

3 December 2014*

(Interim measures — Appeal — Application for suspension of operation of a judgment dismissing an action for annulment — Application essentially seeking suspension of operation of the decision which is the subject of that action — Prima facie case — State aid — Exceptional circumstances resulting from the financial crisis — Definition of 'aid' — Compatibility with the internal market — Statement of reasons)

In Case C-431/14 P-R,

APPLICATION for interim measures under Articles 278 TFEU and 279 TFEU, made on 30 September 2014,

Hellenic Republic, represented by I. Chalkias and A. Vasilopoulou, acting as Agents,

appellant,

the other party to the proceedings being:

European Commission, represented by A. Bouchagiar, R. Sauer and D. Triantafyllou, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, E. Sharpston,

makes the following

Order

1 By its appeal, lodged at the Registry of the Court of Justice on 19 September 2014, the Hellenic Republic asked the Court to annul the judgment of the General Court in *Greece* v *Commission*, T-52/12, EU:T:2014:677 ('the judgment under appeal'), by which the General Court rejected its action for annulment of Commission Decision 2012/157/EU of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009 (OJ 2012 L 78, p. 21) ('the decision at issue').

2 By application lodged at the Court Registry on 30 September 2014, the Hellenic Republic applied for interim measures under Articles 278 TFEU and 279 TFEU seeking, inter alia, suspension of operation of the judgment under appeal until judgment in the appeal proceedings is given.

* Language of the case: Greek.

Background to the dispute and the judgment under appeal

3 The Greek Agricultural Insurance Organisation ('ELGA') is a public service body which was created by Law 1790/1988 (FEK A' 134/20.6.1988). ELGA is a legal person governed by private law wholly owned by the State. Its main task is that of insuring crop and animal production and assets of agricultural holdings against damage due to natural risks.

4 Under Article 3a of Law 1790/1988, inserted by Law 2945/2001 (FEK A' 223/8.10.2001), the ELGA insurance scheme is compulsory and covers natural risks. According to Article 5a of Law 1790/1988, inserted by Law 2040/1992 (FEK A' 70/23.4.1992), a special insurance contribution to ELGA is imposed on agricultural producers who are beneficiaries of that insurance scheme.

5 By Inter-ministerial Decree 262037 of the Ministry of Finance and the Ministry for Rural Development and Food of 30 January 2009 on compensation for damage to agricultural production (FEK B' 155/2.2.2009), the Hellenic Republic provided that compensation of EUR 425 million would be paid on an exceptional basis by ELGA because of the decrease in production of certain vegetable crops, which occurred in the 2008 growing season owing to adverse weather conditions. It is clear from that inter-ministerial decree that the expenditure incurred as a result of its application and chargeable to ELGA's budget would be financed by means of a loan contracted by that body from banks guaranteed by the State.

6 By letter of 20 March 2009, sent in response to a request for information from the European Commission, the Hellenic Republic informed the Commission that ELGA had paid compensation to farmers in 2008 for the damage covered by insurance amounting to EUR 386 986 648. That amount came partly from insurance contributions paid by producers of EUR 88 353 000, and partly from funds obtained as a result of a loan of EUR 444 million contracted by ELGA, repayable over 10 years from a bank guaranteed by the State.

7 By decision of 27 January 2010 (OJ 2010 C 72, p. 12), the Commission opened the formal investigation procedure provided for by Article 108(2) TFEU in Case C 3/10 (ex NN 39/09), concerning compensation payments made by ELGA in 2008 and 2009 ('the aid at issue'). On 7 December 2011 the Commission adopted the decision at issue.

8 Articles 1 to 3 of the operative part of the decision at issue are worded as follows:

'*Article 1*

1. The compensation paid by [ELGA] to producers of agricultural products in 2008 and 2009 constitutes State aid.

2. The compensation aid granted in 2008 under the special compulsory insurance scheme is compatible with the internal market as regards the aid amounting to EUR 349 493 652.03 which ELGA granted to producers to make good their crop losses and as regards the aid relating to crop losses caused by bears amounting to EUR 91 500 and the corrective action taken within the framework of the abovementioned aid. The compensation aid represented by the remaining amount paid in 2008 under the special insurance scheme is incompatible with the internal market.

3. The compensation aid of EUR 27 614 905 granted in 2009 under Common Ministerial Decree No 262037 of the Ministers of Economic Affairs and of Rural Development of 30 January 2009 is compatible with the internal market.

The compensation aid of EUR 387 404 547 granted to producers on dates before 28 October 2009 is incompatible with the internal market. This conclusion shall be without prejudice to aid which, at the time it was granted, met all the conditions laid down in [Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles [107 and 108 TFEU] to *de minimis* aid in the sector of agricultural production (OJ 2007 L 337, p. 35)].

Article 2

1. [The Hellenic Republic] shall take all measures necessary to recover from its beneficiaries the incompatible aid referred to in Article 1, which was granted unlawfully.

2. The aid to be recovered shall include interest calculated from the date on which it was placed at the disposal of the beneficiaries until the date of its recovery.

…

4. Recovery shall be effected without delay in accordance with the procedures provided for in national law, provided that they allow the immediate and effective execution of this Decision.

Article 3

Recovery of the aid referred to in Article 1(2) and (3) shall be immediate and effective. [The Hellenic Republic] shall ensure that this Decision is implemented within 4 months of the date of its notification.'

9 By application lodged at the Registry of the General Court on 8 February 2012, the Hellenic Republic brought an action for annulment of the decision at issue. By a separate document received at the Registry of the General Court on the same date, the Hellenic Republic also applied for interim measures under Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of the decision at issue. By order of the President of the General Court in *Greece* v *Commission*, T-52/12 R, EU:T:2012:447, the operation of the decision at issue was suspended, in so far as that decision required the Hellenic Republic to recover the amounts paid from the recipients.

10 The Hellenic Republic raised seven pleas in support of the annulment of the decision at issue. The first plea was based on an incorrect interpretation and application by the Commission of Article 107(1) TFEU and Article 108 TFEU, in conjunction with the provisions of Law 1790/1988, and an incorrect assessment of the facts concerning the compensation payments made in 2009. The second plea was based on an incorrect assessment of the facts and an infringement of an essential procedural requirement by the Commission and failure to state sufficient reasons when it concluded that the compensation payments made in 2009 constituted unlawful State aid. The third plea was based on an incorrect interpretation and application of Articles 107 TFEU and 108 TFEU and failure to state sufficient reasons, in that the Commission included, in the amount of aid to be recovered, EUR 186 011 000.60 corresponding to contributions paid by farmers in 2008 and 2009 under the ELGA compulsory insurance scheme. The fourth plea, pleaded in the alternative, was based on an incorrect interpretation and application of Article 107(3)(b) TFEU and misuse by the Commission of its discretion in matters of State aid, on the ground that the payments made in 2009 should have been regarded as compatible with the internal market on the basis of that provision. The fifth plea, also raised in the alternative, was based on the infringement by the Commission of Article 39 TFEU, Article 107(3)(b) TFEU and Article 296 TFEU, and several general principles of law, by reason of the failure to apply the Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis published on 22 January 2009 (OJ 2009 C 16, p. 1) ('the Temporary Community Framework Communication'), from 17 December 2008, the date on which that framework was applicable to undertakings active in the primary agricultural production sector. The sixth plea, also pleaded in the alternative, was based

on errors of assessment and calculation made by the Commission in determining the amount of aid to be recovered. The seventh plea was based on an incorrect interpretation and application by the Commission of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (OJ 2006 C 319, p. 1) and the misuse of its discretion concerning the compensation paid in 2008 for the losses caused by bears to vegetable crops.

11 Having held that none of the seven pleas was well-founded, the General Court, by the judgment under appeal, rejected the action in its entirety.

Forms of order sought

12 The Hellenic Republic claims that the Court should:

— suspend the operation of the judgment under appeal, which confirmed the decision at issue by holding that the aid at issue was unlawful, pending the Court's ruling on its appeal; and

— in the alternative, suspend the operation of the judgment under appeal in so far as the decision at issue that it confirmed concerns amounts less than EUR 15 000 per beneficiary, which is the *de minimis* threshold authorised by Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ 2013 L 352, p. 9), or if that request is refused, in so far as the decision at issue concerns amounts less than EUR 7 500 per beneficiary which is the *de minimis* threshold authorised by Regulation No 1535/2007, or order any other measure that the Court deems appropriate.

13 The Commission contends that the Court should:

— reject the application for suspension of operation, and

— order the appellant to pay the costs.

The application for interim measures

14 Under Article 60, first paragraph, of the Statute of the Court of Justice of the European Union, an appeal against a judgment of the General Court does not, in principle, have suspensory effect. However, pursuant to Article 278 TFEU, the Court of Justice may, if it considers that the circumstances so require, order that application of the contested act be suspended (order of the President of the Court in *Front national and Martinez* v *Parliament*, C-486/01 P-R and C-488/01 P-R, EU:C:2002:116, paragraph 71).

15 In the present case, as the Commission rightly observed, the application for interim measures seeks, implicitly but clearly, not only suspension of operation of the judgment under appeal, but also, and more particularly, an order for suspension of operation of the decision at issue.

16 In that connection, the fact that the application for interim measures seeks suspension of the decision at issue, which thus goes beyond suspension of operation of the judgment under appeal, does not render the present application inadmissible.

17 It is true that, in the context of Article 278 TFEU, the measures applied for cannot, in principle, overstep the procedural framework of the appeal to which they are attached. However, it should also be remembered that, according to settled case-law, an application for suspension of operation cannot, save in exceptional circumstances, be envisaged against a negative decision, since the grant of

suspension could not have the effect of changing the applicant's position (see order of the President of the Court in *Front National and Martinez* v *Parliament*, EU:C:2002:116, paragraph 73 and the case-law cited). Since the judgment under appeal may be deemed to be a negative decision in so far as, by that judgment, the General Court rejected the action brought by the Hellenic Republic in its entirety, and taking account of the fact that the obligation to reimburse the aid at issue follows from the decision at issue, reasons relating to effective judicial protection require that it is admissible for the appellant to request, in the present case, the suspension of operation of the decision at issue (see by analogy, order of the President of the Court in *Le Pen* v *Parliament*, C-208/03 P-R, EU:C:2003:424, paragraphs 78 to 88).

18 It should be added that the present application for interim measures is also based on Article 279 TFEU, pursuant to which the Court may, in any cases before it, prescribe any necessary interim measures.

19 Article 160(3) of the Rules of Procedure of the Court of Justice requires applications for interim measures to state 'the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for'. Accordingly, the judge hearing an application for interim relief may order suspension of operation of an act, or other interim measures, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, so that an application for interim measures must be dismissed if any one of them is absent. The judge hearing the application for interim relief must also, if necessary, balance the interests at stake (order of the President of the Court in *Technische Glaswerke Ilmenau* v *Commission*, C-404/04 P-R, EU:C:2005:267, paragraphs 10 and 11 and case-law cited, and order of the Vice-President of the Court in *Commission* v *ANKO*, C-78/14 P-R, EU:C:2014:239, paragraph 14).

20 As regards the requirement of a prima facie case, it is satisfied if, at the stage of the proceedings for interim relief, there is a major legal or factual disagreement whose resolution is not immediately obvious, so that the action is not prima facie without reasonable substance (see, to that effect, orders of the President of the Court in *Publishers Association* v *Commission*, 56/89 R, EU:C:1989:238, paragraph 31, and *Commission* v *Artegodan and Others*, C-39/03 P-R, EU:C:2003:269, paragraph 40). Since the purpose of the interim proceedings is to guarantee that the final decision to be taken is fully effective, in order to avoid a lacuna in the legal protection ensured by the Court, the judge hearing the application for interim relief must restrict himself to assessing 'prima facie' the merits of the grounds put forward in the main proceedings in order to ascertain whether the action has a sufficiently probable chance of success (order of the Vice-President of the Court in *Commission* v *Germany*, C-426/13 P(R), EU:C:2013:848, paragraph 41).

21 In the present context, the fact that the application for interim measures is for the grant of suspension of operation of the decision at issue, and not of the judgment under appeal, nevertheless entails consequences for the assessment as to whether there is a prima facie case (order of the President of the Court in *Technische Glaswerke Ilmenau* v *Commission*, EU:C:2005:267, paragraph 16).

22 However serious the pleas and arguments put forward by the appellant against the judgment under appeal may be, they cannot suffice to justify, prima facie, in law suspension of operation of the act in question. In order to establish that the condition relating to a prima facie case is satisfied, the Hellenic Republic would have to succeed in showing, in addition, that the pleas and arguments relied on against the legality of that act in the action for annulment are such as to justify, prima facie, the grant of the suspension of operation sought (see, by analogy, order of the President of the Court in *Le Pen* v *Parliament*, EU:C:2003:424, paragraph 90).

23 Furthermore, it must be observed that, although the judge hearing the application for interim relief at first instance held that there was a prima facie case at the stage of the application for interim measures brought in the context of the annulment action (order of the President of the General Court in *Greece* v *Commission*, EU:T:2012:447), the General Court none the less rejected on the merits all the pleas in law put forward by the appellant in the judgment under appeal.

24 Therefore, as regards the present application for interim measures, in assessing the condition relating to the existence of a prima facie case, account must be taken of the fact that the decision at issue has already been considered by a European Union court, both as to the facts and the law, and that that court held the action against that decision to be unfounded (order of the President of the Court in *Technische Glaswerke Ilmenau* v *Commission*, EU:C:2005:267, paragraph 19). The need to put forward pleas in law which appear, prima facie, to be particularly substantial follows also from the fact that those pleas must be capable of casting doubt on the assessment made by the General Court in giving judgment on the merits of the arguments relied on by the Hellenic Republic at first instance (see, to that effect, order of the President of the Court in *Technische Glaswerke Ilmenau* v *Commission*, EU:C:2005:267, paragraph 20).

25 The Hellenic Republic puts forward three grounds in support of its application for interim measures.

26 By its first ground of appeal, which consists of two parts, as set out in its application for interim measures, the Hellenic Republic criticises the General Court essentially for having disregarded the legal consequences of the fact that a significant part of the aid at issue, that is approximately EUR 186 000 000, corresponded to compulsory insurance contributions paid to ELGA by the farmers themselves.

27 In the first place, it submits that the General Court has infringed Article 107(1) TFEU in so far as that part of the aid cannot be regarded as having been granted through State resources because it was never available to the State. However, in paragraphs 117 to 120 of the judgment under appeal, the General Court set out the settled case-law of the Court of Justice and the General Court, according to which facts such as those relied on by the Hellenic Republic concerning the origin of the resources used to finance aid and, in particular, their initially private nature as contributions paid by operators in the context of a subsidy scheme benefiting certain economic operators in a given sector do not preclude their being regarded as having been financed from State resources (see to that effect, judgments in *Steinike & Weinlig*, 78/76, EU:C:1977:52, paragraph 22; *PruessenElektra*, C-379/98, EU:C:2001:160, paragraph 58; *France* v *Commission*, C-482/99, EU:C:2002:294, paragraphs 23, 24 and 37; and *Doux Élevage and Coopérative agricole UKL-ARREE*, C-677/11, EU:C:2013:348, paragraph 35 and the case-law cited).

28 In paragraphs 121 to 129 of the judgment under appeal, the General Court applied that case-law to the facts of the present case. Noting, in particular, in paragraph 122 of the judgment under appeal, that the Court had already held that the benefits provided by ELGA are granted through State resources and are imputable to the State (judgment in *Freskot*, C-355/00, EU:C:2003:298, paragraph 81), it analysed the nature and the source of the compensation payments made by ELGA in 2008 on the basis of the facts before it, concluding that they came partly from insurance contributions and partly from funds obtained as a result of a loan. Therefore, it inferred that they were financed by State resources, including the part which was attributable to the insurance contributions since national legislation provides that those contributions must be accounted for as State revenue. It ruled to the same effect in paragraphs 130 to 133 of the judgment under appeal as regards the payments made in 2009 which were financed by a loan taken with a State guarantee.

29 In the second place, the Hellenic Republic argues that the General Court infringed Article 107(1) TFEU in that it did not state the reasons why the aid at issue was to be regarded as conferring an unfair advantage on its beneficiaries, capable of distorting competition in the EU, even though that aid was made up in part of contributions paid to ELGA by those same beneficiaries. However, the General

Court set out in detail, in paragraphs 59 to 64 of the judgment under appeal, the reasons why that aid did indeed constitute an advantage for the beneficiaries despite the payment of those contributions. It also stated, in particular in paragraphs 66 to 68 of that judgment, that, according to the settled case-law of the Court of Justice, Article 107(1) TFEU does not distinguish between the causes for or the objectives of State aid, so that the compensatory or social nature of the aid at issue cannot exclude it from being classified as 'aid' within the meaning of that provision (judgments in *France* v *Commission*, C-251/97, EU:C:1999:480, paragraph 37; *Spain* v *Commission*, C-409/00, EU:C:2003:92, paragraph 48; and *France Télécom* v *Commission*, C-81/10 P, EU:C:2011:811, paragraph 17 and the case-law cited).

30 Furthermore, the General Court observed, in paragraph 102 *et seq* of the judgment under appeal that, according to settled case-law, competition is distorted where a measure mitigates the burden imposed on a beneficiary undertaking and thereby strengthens its position as regards competing undertakings. It stated that, in that regard, the Commission is not required to establish that such aid has a real effect on trade between Member States or to show that competition is actually being distorted (see judgments in *Italy* v *Commission*, C-372/97, EU:C:2004:234, paragraph 44, and *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 131 and the case-law cited). It also added that there is such an effect on competition and an impact on intra-Community trade even where the amount of aid is relatively small, if the sector at issue is particularly exposed to competition, which is the case in the agricultural sector and, in particular, in the present case (see to that effect judgments in *Spain* v *Commission*, C-114/00, EU:C:2002:508, paragraph 47, and *Greece* v *Commission*, C-278/00, EU:C:2004:239, paragraphs 69 and 70).

31 It follows that the arguments put forward by the Hellenic Republic in the first ground of appeal, as set out in the application for interim measures, in fact challenge the application by the General Court of settled case-law to the facts found by the latter in the judgment under appeal. Further, the Hellenic Republic fails to explain how the General Court distorted those facts. Thus, those arguments do not support the conclusion that the first part of the first ground of appeal has a sufficient probability of success to justify the grant of the suspension of operation of the decision at issue.

32 By its second ground of appeal, as set out in its application for interim measures, the Hellenic Republic essentially submits that the General Court committed an error of law in holding that the compensation payments made in 2009 constituted a selective financial advantage for their recipients such as to distort competition and liable to affect trade between Member States, without regard for the exceptional circumstances prevailing in the Greek economy and in particular its agricultural sector. It argues that, by limiting itself to applying the case-law of the Court summarised in paragraphs 29 and 30 of the present order, the General Court misinterpreted it, having regard to the fact that the judgments in question concern financial advantages granted in normal conditions for the functioning of the economy and it ignored the fact that other judgments in State aid matters, in particular the judgments in *Belgium* v *Commission*, C-75/97, EU:C:1999:311, paragraphs 66 and 67; *Italy* v *Commission*, C-310/99, EU:C:2002:143, paragraphs 98 and 99; and *Italy* v *Commission*, EU:C:2004:234, paragraph 104, refer to the possibility of exceptions in order to take exceptional circumstances into account.

33 In that connection, the Commission rightly observes that the case-law concerning the classification of 'aid granted by a Member State or through State resources' within the meaning of Article 107 TFEU, in particular that summarised in paragraphs 29 and 30 of the present order, must be applied in the present case, since that classification is independent of the circumstances, in particular the economic circumstances, in which those financial advantages are granted and the reasons for which they are agreed. The conditions which aid must satisfy in order to be declared compatible with the internal market are defined in Article 107(2) and (3) TFEU. It is Article 107(3)(b) TFEU which, although it has no bearing on the classification of an advantage as State aid, enables the Commission, where appropriate, to declare compatible with the common market aid which is intended to remedy a serious disturbance in the economy of a Member State. As to the case-law relied on by the Hellenic

Republic and cited in the preceding paragraph of the present order, it suffices to observe that it applies not to the classification as aid of a State measure, but to the recovery of aid, where it has already been declared incompatible with the internal market.

34 Thus, in the second ground of appeal, as set out in the application for interim measures, the Hellenic Republic attempts to challenge the application by the General Court of the settled case-law of the Court of Justice to the facts found by the General Court in the judgment under appeal. The Hellenic Republic also fails to explain how the General Court distorted those facts. Therefore, the second ground of appeal does not, any more than the first, have a sufficient probability of success to justify the grant of the suspension of operation of the decision at issue sought in the present proceedings.

35 By the first part of its third ground of appeal, as set out in its application for interim measures, the Hellenic Republic criticises the General Court for having infringed Article 107(3)(b) TFEU in so far as it did not declare invalid the incorrect assessment of that provision made by the Commission. According to the Hellenic Republic, the General Court should have held that Article 107(3)(b) TFEU was directly applicable in the present case, taking account of the exceptional circumstances affecting the Greek economy in 2009 or, at least declare invalid the error made by the Commission on account of the fact that it did not apply that provision. It argues that the General Court, like the Commission, committed an error of law in holding that that provision did not have to be applied outside the specific cases envisaged by the Communication concerning the Temporary Community Framework.

36 In that connection, the General Court recalled, in paragraphs 159 and 160 of the judgment under appeal, that the Court has consistently held that all derogations from the general principle, laid down in Article 107(1) TFEU, that State aid is incompatible with the common market must be construed narrowly (judgment in *Germany* v *Commission*, C-277/00, EU:C:2004:238, paragraph 20 and the case-law cited). Furthermore, according to settled case-law, also set out by the General Court in paragraph 161 of the judgment under appeal, in the application of Article 107(3) TFEU, the Commission enjoys wide discretion, the exercise of which involves complex economic and social assessments (judgment in *Germany and Others* v *Kronofrance*, C-75/05 P and C-80/05 P, EU:C:2008:482, paragraph 59 and the case-law cited). Furthermore, the finding that aid may be incompatible with the common market is to be made, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion (judgment in *DM Transport*, C-256/97, EU:C:1999:332, paragraph 16 and the case-law cited).

37 In addition, according to settled case-law, in particular the judgments in *Germany and Others* v *Kronofrance*, EU:C:2008:482, paragraphs 60 and 61 and the case-law cited, and *Holland Malt* v *Commission*, C-464/09 P, EU:C:2010:733, paragraphs 46 and 47, set out by the General Court in paragraphs 186 and 187 of the judgment under appeal and by the Commission in recital 92 in the preamble to the decision at issue, and more specifically the judgment in *Germany* v *Commission*, C-288/96, EU:C:2000:537, paragraph 62, in adopting rules of conduct and announcing, by publishing them, that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and cannot depart from those rules under pain of being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations. Thus, in the specific area of State aid, the Court has had occasion to stress that the Commission is bound by the guidelines and notices that it issues, inasmuch as they do not depart from the rules of the Treaty in that area.

38 In paragraphs 146 to 189 of the judgment under appeal, the General Court dealt jointly with the complaints raised by the Hellenic Republic in the context of the fourth and fifth grounds of appeal concerning the application of Article 107(3)(b) TFEU. It examined in detail and rejected, in paragraphs 148 to 166 of the judgment under appeal, the arguments relating to the fifth ground of appeal on the exclusion from the Temporary Community Framework of aid to undertakings active in the primary agricultural sector and, in paragraphs 168 to 184 of that judgment, arguments relating to the non-retroactive nature of the Communication from the Commission amending the Temporary

Community Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ 2009 C 261, p. 2) which extended the possibility of granting a limited amount of compatible aid to undertakings active in the primary agricultural production sector from 28 October 2009. In paragraphs 185 to 189 of the judgment under appeal it also rejected the arguments relating to the fourth ground of appeal concerning the Commission's failure to apply directly Article 107(3)(b) TFEU except in the cases specifically referred to by the version of the Communication on the Community Framework in force at the time the aid at issue was granted.

39 Thus, as regards the argument set out in the application for interim measures according to which the General Court should have directly applied Article 107(3) TFEU itself, it must be observed that it is, primarily, for the Commission to apply that provision and that it enjoys broad discretion in that respect. In addition, it must be held that, by the first part of the third ground of appeal, as set out in the application for interim measures, the Hellenic Republic attempts to challenge the application by the General Court of the settled case-law to the facts that it found in the judgment under appeal. The Hellenic Republic also fails to explain how the General Court has distorted those facts. Therefore, the first part of the third ground of appeal does not present a sufficient probability of success to justify the grant of the suspension of operation of the decision at issue.

40 Finally, the second part of the third ground of appeal, as set out in the application for interim measures, is based on a failure to state reasons in the judgment under appeal, in that the General Court did not respond to the complaint allegedly raised before it that the Commission infringed the principle of proportionality by reason of the fact that it ordered the recovery of the aid at issue although, at the time the decision at issue was adopted, the situation of the Greek agricultural sector, which was already very difficult, had deteriorated further since the payment of the aid.

41 In the context of the fifth plea in law put forward at first instance, the Hellenic Republic relied on a specific argument based on an alleged breach of the principle of proportionality. It submitted that, by not making the Communication from the Commission amending the Temporary Community Framework retroactive, so that the aid at issue could be declared compatible on that basis, like similar aid paid subsequently to farmers in other Member States, the Commission had, in particular, breached the principle of proportionality. It argues that the recovery of the aid at issue was a measure having serious consequences for Greek farmers and would create 'disproportionate situations and relationships'. The General Court responded to those arguments, in paragraphs 175 to 179 of the judgment under appeal, essentially stating that the Hellenic Republic had not established that the failure to apply the amendment to the Temporary Community Framework had exceeded the limits necessary for the attainment of the legitimate objectives pursued by the relevant legislation and that, in any event, the situation of that Member State was different from that of the Member States which had granted similar aid after the entry into force of that amendment.

42 Similarly, in so far as the Hellenic Republic criticises the Commission, in the sixth plea in law advanced at first instance, for having committed errors of assessment and of calculation in the determination of the amount of aid to be recovered by failing to conclude that the aid should be regarded as being *de minimis* in the light of the legislation in force, it suffices to note that the General Court examined in detail the arguments submitted in support of that plea and rejected them in their entirety in paragraphs 190 to 203 of the judgment under appeal. In particular, having stated, in paragraph 194 thereof, that the decision at issue explicitly excluded from the classification of aid incompatible with the internal market aid which, since it fulfilled the conditions laid down by Regulation No 1535/2007, was to be regarded as *de minimis*, the General Court held, in particular, in paragraph 198 of the judgment under appeal that, according to settled case-law, the Commission could legitimately confine itself to declaring that there is an obligation to repay the aid in question and leave it to the national authorities to calculate the exact amounts to be repaid.

43 It follows from the foregoing that the General Court explicitly responded to the arguments submitted in the context of the fifth and sixth pleas at first instance by which the Hellenic Republic complained of the disproportionate nature of the recovery of the aid at issue, ordered by the Commission in the decision at issue. However, in so far as the Hellenic Republic seeks to make reference, in the present interim proceedings, to other arguments raised at first instance concerning the disproportionate nature of the recovery decision given the difficult situation of the Greek agricultural sector, it suffices to hold that it did not identify them adequately in its application for interim measures.

44 Therefore, the judge hearing the application for interim relief is not in a position to identify, on the basis of the application for interim measures, the specific pleas, duly submitted before the General Court, concerning the breach of the principle of proportionality by reason of the decision to recover the aid at issue and having regard to the difficult situation of the Greek agricultural sector, to which the General Court allegedly did not respond in the judgment under appeal.

45 In any event, as the Commission observed, it is clear from the case-law of the Court that the withdrawal of unlawful aid by means of its recovery is the consequence of the finding that it is unlawful and that such recovery for the purpose of re-establishing the situation which previously existed cannot, in principle, be regarded as disproportionate to the objectives of the Treaty provisions on State aid (judgment in *Belgium* v *Commission*, C-142/87, EU:C:1990:125, paragraph 66 and the case-law cited). Furthermore, Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1) provides that '[w]here negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary … The Commission shall not require recovery of the aid if this would be contrary to a general principle of [European Union] law'.

46 It must be held that, in its application for interim measures, by merely mentioning the difficult situation in the Greek agricultural sector, the Hellenic Republic failed to explain the reasons why the judge hearing the application for interim relief should conclude that the recovery of the aid at issue is a disproportionate measure in relation to the legitimate objective of restoring the situation prior to its payment. Therefore, the second part of the third ground of appeal, as set out in the application for interim relief, does not have a sufficient probability of success to justify the suspension of operation of the decision at issue.

47 It follows from all of the foregoing that the condition relating to a prima facie case is not satisfied. Therefore, the application for interim measures must be rejected without there being any need in the present case to examine the condition relating to urgency, or to balance the interests at stake.

On those grounds, the Vice-President of the Court hereby orders:

1. The application for interim measures is dismissed.

2. Costs are reserved.

[Signatures]