Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

12 March 2019*

(EAGF – Expenditure excluded from financing – Expenditure incurred by Italy – Temporary scheme for the restructuring of the sugar industry – Regulation (EC) No 320/2006 – Regulation (EC) No 968/2006 – Regulation (EC) No 1290/2005 – Time limit of 24 months – Concept of 'multiannual measure' – Conditions for granting restructuring aid – Concept of 'production facility' – Classification of silos – Concept of 'full dismantling' – Annex 2 to Document VI/5330/97 – Problems in interpreting EU legislation – Sincere cooperation – Legitimate expectations – *Ne bis in idem* – Slaughter premiums – Information provision and promotion measures for agricultural products – Late payments – Evidence of the existence of exceptional management conditions – Equal treatment – Mistranslation in one of the language versions of an EU regulation – Whether the Member State is answerable for the financial correction)

In Case T-135/15,

Italian Republic, represented by G. Palmieri, acting as Agent, assisted by C. Colelli, avvocato dello Stato,

applicant,

supported by

French Republic, represented by D. Colas and S. Horrenberger, acting as Agents,

and by

Hungary, represented by M.Z. Fehér and G. Koós, acting as Agents,

interveners,

v

European Commission, represented by D. Bianchi, P. Ondrůšek and I. Galindo Martín, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for the partial annulment of Commission Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 16, p. 33), in so far as it relates to certain expenditure incurred by the Italian Republic,

* Language of the case: Italian.

THE GENERAL COURT (Fourth Chamber),

composed of H. Kanninen, President, J. Schwarcz and C. Iliopoulos (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 12 September 2017,

gives the following

Judgment

Legal framework

Regulation (EC) No 320/2006

1 The Council of the European Union adopted Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42). Regulation No 320/2006 was amended several times, on the last occasion by Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007 (OJ 2009 L 30, p. 1). Regulation No 320/2006, as amended by Regulation No 72/2009, is applicable to the facts at issue in this case.

2 Recitals 1 and 5 of Regulation No 320/2006 state:

‘(1) … To bring the Community system of sugar production and trading in line with international requirements and ensure its competitiveness in the future it is necessary to launch a profound restructuring process leading to a significant reduction of unprofitable production capacity in the Community. To this end, as a precondition for the implementation of a functioning new common market organisation for sugar a separate and autonomous temporary scheme for the restructuring of the sugar industry in the Community should be established. …

(5) An important economic incentive for sugar undertakings with the lowest productivity to give up their quota production in the form of an adequate restructuring aid should be introduced. To this effect, a restructuring aid should be set up that creates an incentive to abandon sugar quota production and renounce the quotas concerned, at the same time allowing to take into due account the respect of social and environmental commitments linked to the abandoning of production. The aid should be available during four marketing years with the aim to reduce production to the extent necessary to reach a balanced market situation in the Community.’

3 Article 1 of Regulation No 320/2006, entitled ‘Temporary restructuring fund’, provides:

‘1. The temporary fund for the restructuring of the sugar industry in the Community (hereinafter referred to as “restructuring fund”) is hereby established. …

The restructuring fund shall form part of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund. As from 1 January 2007 it shall form part of the European Agricultural Guarantee Fund (EAGF).

2. The restructuring fund shall finance the expenditure resulting from the measures provided for under Articles 3, 6, 7, 8 and 9.

…

4. This Regulation shall not apply to the outermost regions referred to in Article 299(2) of the Treaty.'

4 Article 3 of Regulation No 320/2006, headed 'Restructuring aid', provides:

'1. Any undertaking producing sugar, isoglucose or inulin syrup to which a quota has been allocated by 1 July 2006 … shall be entitled to a restructuring aid per tonne of quota renounced, provided that during one of the marketing years 2006/2007, 2007/2008, 2008/2009 and 2009/2010 it:

(a) renounces the quota assigned by it to one or more of its factories and fully dismantles the production facilities of the factories concerned;

or

(b) renounces the quota assigned by it to one or more of its factories, partially dismantles the production facilities of the factories concerned and does not use the remaining production facilities of the factories concerned for the production of products covered by the common market organisation for sugar,

…

3. Full dismantling of production facilities shall require:

(a) the definitive and total cessation of the production of sugar, isoglucose and inulin syrup by the production facilities concerned;

(b) the closure of the factory or the factories and the dismantling of the production facilities thereof within the period referred to in point (d) of Article 4(2),

and

(c) the restoring of the good environmental conditions of the factory site and the facilitation of redeployment of the workforce within the period referred to in point (f) of Article 4(2). …

4. Partial dismantling of production facilities shall require:

(a) the definitive and total cessation of the production of sugar, isoglucose and inulin syrup by the production facilities concerned;

(b) the dismantling of the production facilities that will not be used for the new production and were destined … for the production of the products mentioned under (a), …;

(c) the restoring of the good environmental conditions of the factory site and the facilitation of redeployment of the workforce within the period referred to in point (f) of Article 4(2), …

5. The amount of restructuring aid per tonne of renounced quota shall be:

(a) in the case referred to in point (a) of paragraph 1:

– EUR 730,00 for the marketing year 2006/2007,

– EUR 730,00 for the marketing year 2007/2008,

– EUR 625,00 for the marketing year 2008/2009,

– EUR 520,00 for the marketing year 2009/2010;

(b) in the case referred to in point (b) of paragraph 1:

– EUR 547,50 for the marketing year 2006/2007,

– EUR 547,50 for the marketing year 2007/2008,

– EUR 468,75 for the marketing year 2008/2009,

– EUR 390,00 for the marketing year 2009/2010;

…’

5 In addition, under Article 4 of Regulation No 320/2006, entitled ‘Application for restructuring aid’:

‘1. Applications for restructuring aid shall be submitted to the Member State concerned by 31 January preceding the marketing year during which the quota is to be renounced.

…

2. Applications for restructuring aid shall include:

(a) a restructuring plan;

…

(c) a commitment to renounce the relevant quota in the marketing year concerned;

(d) in the case referred to in Article 3(1)(a), a commitment to fully dismantle the production facilities within the period to be determined by the Member State concerned;

(e) in the case referred to in Article 3(1)(b), a commitment to partially dismantle the production facilities within the period to be determined by the Member State concerned and not to use the production site and the remaining production facilities for the production of products covered by the common market organisation for sugar;

…

3. The restructuring plan referred to in paragraph 2(a) shall include at least the following elements:

…

(c) a complete technical description of the production facilities concerned;

(d) a business plan detailing the modalities, timetable and costs for the closure of the factory or factories and the full or partial dismantling of the production facilities;

…

(h) a financial plan detailing all the costs in relation to the restructuring plan.'

6 Article 5 of Regulation No 320/2006, headed 'Decision on the restructuring aid and controls', provides:

'1. By the end of February preceding the marketing year referred to in Article 3(2), Member States shall decide on the granting of the restructuring aid. However, the decision for the marketing year 2006/2007 shall be adopted by 30 September 2006.

…

2. The restructuring aid shall be granted if the Member State has established after thorough verification that:

– the application contains the elements referred to in Article 4(2),

– the restructuring plan contains the elements referred to in Article 4(3),

– the measures and actions described in the restructuring plan are in conformity with the relevant Community and national legislation;

– …

3. If one or more of the conditions laid down in the first three indents of paragraph 2 are not respected, the application for the restructuring aid shall be returned to the applicant. The applicant shall be informed of the conditions that are not respected. The applicant may then either withdraw or complete his application.

…'

7 Under Article 10(4) of Regulation No 320/2006:

'The restructuring aid referred to in Article 3 shall be paid in two instalments:

– 40% in June of the marketing year referred to in Article 3(2),

– and

– 60% in February of the following marketing year.

However, the Commission may decide to split the instalment referred to in the second of the preceding indents into two payments, …'

8 Lastly, Article 14 of Regulation No 320/2006, entitled 'Amendments to Regulation (EC) No 1290/2005', provides:

'Regulation (EC) No 1290/2005 is hereby amended as follows:

1. The following point shall be added to Article 3(1):

"(e) restructuring aid, aid for diversification, additional aid for diversification and transitional aid provided for in Articles 3, 6, 7, 8 and 9 of … Regulation … No 320/2006 …"

…'

Regulation (EC) No 968/2006

9 The European Commission adopted Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Regulation No 320/2006 (OJ 2006 L 176, p. 32). Regulation No 968/2006 was amended several times, on the last occasion by Commission Implementing Regulation (EU) No 672/2011 of 13 July 2011 amending Regulation No 968/2006 (OJ 2011 L 184, p. 1). Regulation No 968/2006, as amended by Regulation No 672/2011, is applicable to the facts at issue in this case.

10 Recital 4 of Regulation No 968/2006 provides:

'In relation to the renunciation of quotas, Article 3 of Regulation … No 320/2006 sets out the options of full or partial dismantling of the production facilities, which give rise to different amounts of restructuring aid. While the conditions applicable to those two options should take into account that a higher amount of restructuring aid is granted to full dismantling, because of the higher costs involved, it is considered appropriate to allow for the possibility to keep parts of the factory which are not part of the production line, if they can be used for other purposes foreseen in the restructuring plan, especially when such use creates employment. On the other hand, installations not directly linked to sugar production should be dismantled if there is no alternative use for them within a reasonable period of time and maintaining them would be harmful to the environment.'

11 Article 4 of Regulation No 968/2006, entitled 'Dismantling of production facilities', provides:

'1. In the case of full dismantling referred to in Article 3(1)(a) of Regulation … No 320/2006, the requirement to dismantle the production facilities shall concern:

(a) all facilities which are necessary to produce sugar, isoglucose or inulin syrup, as for example: facilities to store, analyse, wash and cut sugar beet, cane, cereals or chicory; all facilities which are necessary to extract and process or concentrate sugar from sugar beet or cane, starch from cereals, glucose from starch or inulin from chicory;

(b) the part of the facilities other than those referred to in point (a) which are directly related to the production of sugar, isoglucose or inulin syrup and necessary to deal with production under the quota renounced, even if it could be used in relation with the production of other products, such as: facilities for heating or processing water, or for producing energy; facilities to deal with sugar beet pulp or molasses; facilities for internal transport;

(c) all other facilities, such as packaging facilities, left unused and to be dismantled and removed for environmental reasons.

2. In the case of partial dismantling referred to in Article 3(1)(b) of Regulation … No 320/2006, the requirement to dismantle the production facilities shall concern the facilities referred to in paragraph 1 of this Article that are not intended to be used for other production or other use of the factory site in accordance with the restructuring plan.'

12 Under Article 6 of Regulation No 968/2006, headed 'Member States obligations':

'1. 20 days after it has received a copy of the invitation to the consultation referred to in Article 2(3) at the latest, the Member State shall inform the parties involved in the restructuring plan of its decision on:

…

(b) the period, expiring on 30 September 2010 at the latest, for dismantling production facilities and for complying with the social and environmental commitments referred to in Articles 3(3)(c) and 3(4)(c) of Regulation … No 320/2006;

…

By way of derogation from point (b) of [paragraph 1], upon a motivated request of the undertaking concerned, the Member States can grant an extension of the deadline fixed in that point until 31 March 2012 at the latest. In such case, the undertaking shall submit an amended restructuring plan according to Article 11.

…'

13 Article 9 of Regulation No 968/2006, entitled 'Eligibility for the restructuring aid', provides:

'…

2. For the application to be considered eligible, the restructuring plan shall:

(a) include a summary of the main objectives, the measures and actions as well as the estimated costs of these measures and actions, the financial plan and the time schedules;

(b) specify for each factory concerned the amount of quota to be renounced, which shall be lower than or equal to the production capacity to be fully or partially dismantled;

(c) include an attestation that the production facilities will be fully or partially dismantled and removed from the production site;

…

(e) clearly determine all the actions and costs financed by the restructuring fund and, if appropriate, the other related elements intended to be financed by other Community funds.

3. If the conditions set out in paragraph 2 are not satisfied, the Member State shall inform the applicant of the reasons for this and fix a deadline within the time limit referred to in Article 4(1) of Regulation … No 320/2006, by which the restructuring plan may be adjusted accordingly.

The Member State shall decide on the eligibility of the adjusted application within 15 working days after the deadline referred to in the first subparagraph, but at least 10 working days before the deadline provided for in Article 5(1) of Regulation … No 320/2006.

If the adjusted application is not presented in due time or is considered ineligible, the application for restructuring aid shall be rejected and the Member State shall inform the applicant and the Commission thereof within five working days. The lodging of a new application from the same applicant shall be subject to the chronological order referred to in Article 8.

…'

14 Under Article 10(4) of Regulation No 968/2006:

'The Member States shall notify to the applicants the grant of the restructuring aid for their respective eligible restructuring plan by the deadline provided for in Article 5(1) of Regulation … No 320/2006. A full copy of the approved restructuring plan shall be sent by the competent authority of the Member State to the Commission.'

15 Article 11 of Regulation No 968/2006, headed ‘Amendments to the restructuring plan’, provides:

‘1. As soon as the restructuring aid is granted, the beneficiary shall carry out all measures detailed in the approved restructuring plan and respect the commitments included in its application for restructuring aid.

2. Any amendment to an approved restructuring plan shall be agreed by the Member State on the basis of a request from the undertaking concerned:

(a) explaining the reasons and implementing problems encountered;

(b) presenting the adjustments or new measures proposed and the expected effects;

(c) detailing the financial and the timing implications.

The amendments may not modify the total amount of the restructuring aid to be granted or the temporary restructuring amounts to be paid in accordance with Article 11 of Regulation … No 320/2006.

The Member State shall notify the amended restructuring plan to the Commission.’

16 Article 16 of Regulation No 968/2006, entitled ‘Payment of the restructuring aid’, states:

‘1. The payment of … each instalment of the restructuring aid, as referred to in Article 10(4) of Regulation … No 320/2006, shall be subject to the lodging of a security of an amount equal to 120% of the amount of the instalment concerned.

…’

17 Under Article 22 of Regulation No 968/2006, headed ‘Release of securities’:

‘1. The securities referred to in Articles 16(1), … and 18(2) shall be released provided that:

(a) all of the measures and actions foreseen in the restructuring plan, the national restructuring programmes and the business plan, as appropriate, have been implemented;

(b) the final report referred to in Article 23(2) has been submitted;

(c) the Member States have carried out the controls referred to [in] Article 25;

…

3. Except in the case of force majeure, the security shall be forfeited if the conditions set out in paragraph 1 have not been fulfilled on 30 September 2012 at the latest.’

18 Article 25 of Regulation No 968/2006, entitled ‘Controls’, provides as follows:

‘1. Each undertaking and production site in respect of which an aid is received under the restructuring fund shall be inspected by the competent authority of the Member State within three months after the deadline referred to in Article 23(2).

The inspection shall check that the restructuring plan or business plan is being complied with and shall verify the accuracy and completeness of the information given by the undertaking in the progress report. The first inspection under a restructuring plan shall also verify any additional information given by the undertaking in its application for restructuring aid, in particular the confirmation referred to in Article 4(2)(b) of Regulation … No 320/2006.

2. The inspection shall in all cases cover the elements of the restructuring plan referred to in Article 4(3) of Regulation … No 320/2006 …'

19 In addition, Article 26 of Regulation No 968/2006, entitled 'Recovery', provides:

'1. Without prejudice to paragraph 3, if a beneficiary does not comply with one or more of his commitments under the restructuring plan, the business plan or a national restructuring programme, as appropriate, the part of the aid granted in respect of the commitment(s) concerned shall be recovered except in the case of force majeure.

…'

20 Finally, under Article 27 of Regulation No 968/2006, entitled 'Penalties':

'1. If a beneficiary does not comply with one or more of his commitments under the restructuring plan, the business plan or the national restructuring programme, as appropriate, it shall be required to pay an amount equal to 10% of the amount to be recovered under Article 26.

…'

Background to the dispute

Contested decision

21 By Implementing Decision (EU) 2015/103 of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 16, p. 33; 'the contested decision'), the Commission, in particular, imposed the following corrections on the Italian Republic:

– a correction of EUR 90 498 735.16 concerning expenditure incurred by the Italian Republic in connection with the temporary scheme for the restructuring of the sugar industry, owing to the non-demolition of all sugar production facilities by the beneficiaries of restructuring aid (financial years 2007, 2008 and 2009);

– a correction of EUR 1 607 257.90 for late payment of the balance of slaughter premiums relating to claim year 2004 (financial year 2010);

– a flat-rate correction of EUR 1 198 831.03 for late payment of certain expenditure relating to information provision and promotion measures for agricultural products (financial years 2009 and 2010).

22 The three corrections referred to in paragraph 21 above are disputed by the Italian Republic in the present action.

The financial correction relating to expenditure incurred under the temporary scheme for the restructuring of the sugar industry

23 In September 2010, the Commission services conducted an audit in Italy concerning aid for the restructuring of the sugar industry granted to a number of Italian undertakings producing sugar during the financial years 2007, 2008 and 2009 ('audit EX/2010/010/IT').

24 By letter of 9 December 2010, sent pursuant to the first subparagraph of Article 11(1) of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90), the Commission notified the Italian authorities of the outcome of audit EX/2010/010/IT, which was annexed to the letter in question ('the first communication of 9 December 2010').

25 It is apparent from the first communication of 9 December 2010 that, in the Commission's view, the Italian authorities had not complied in all respects with the requirements laid down in the EU rules governing the conditions for granting restructuring aid for the full dismantling of production facilities, in so far as it had found that silos had been kept at several sugar production sites belonging to the Italian undertakings which had applied for that aid ('the silos at issue'). The Commission stated that those undertakings did not satisfy the conditions for the grant of restructuring aid for full dismantling if they failed to implement the restructuring plan in its entirety and if the buildings related to the production business, including the silos at issue, were not demolished. Lastly, the Commission asked the Italian authorities to indicate whether silos still existed at the sugar production sites which its officials had not visited.

26 The Italian authorities replied to the Commission's objections contained in the first communication of 9 December 2010 by letter of 9 February 2011.

27 On 18 April 2011, the Commission invited the Italian authorities to a bilateral meeting, which was held in Brussels (Belgium) on 4 May 2011.

28 The Commission sent the minutes of that meeting to the Italian authorities by letter of 26 July 2011. They submitted their observations on the minutes on 2 November 2011.

29 By letter of 16 August 2012, sent on the basis of the third subparagraph of Article 11(2) of Regulation No 885/2006 ('the formal communication of 16 August 2012'), the Commission informed the Italian authorities that it intended to exclude EUR 90 498 735.15 from EU financing due to non-compliance with the conditions for the grant of restructuring aid for full dismantling, laid down in Article 3(3) of Regulation No 320/2006 and Article 4(2) of Regulation No 968/2006.

30 On 11 October 2012, the Italian authorities referred the matter to the conciliation body under Article 16 of Regulation No 885/2006, which issued its report on 10 February 2013.

31 By judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Court held, in essence, that the concept of 'production facilities' within the meaning of Articles 3 and 4 of Regulation No 320/2006 and Article 4(1)(b) of Regulation No 968/2006 covered silos intended to store the restructuring aid beneficiary's sugar. However, the Court held that this was not the case in two situations: first, where it was shown that the silos were used only to store sugar, produced under quota, from other producers or bought from those producers, and, secondly, where those silos were used only for packaging or packing sugar produced elsewhere for the purposes of marketing it.

32 By letter of 28 March 2014, the Commission gave the Italian authorities a period of two months to submit additional observations, in particular, following the judgment of the Court mentioned in paragraph 31 above, and to submit evidence demonstrating that, before the applications for restructuring aid were made, the silos at issue were used solely for storing and packaging sugar produced under quota by other producers.

33 By letter of 30 May 2014, the Italian authorities challenged the Commission's view that, in order to assess whether silos were covered by the concept of 'production facilities', it was necessary to consider how they were used at the time of the application for restructuring aid.

34 In the summary report adopted by the Commission on 12 December 2014, the Commission confirmed its proposal to exclude EUR 90 498 735.16 from EU financing.

The financial correction for late payment of the balance of slaughter premiums relating to claim year 2004

35 The Commission services conducted an audit in Italy on slaughter premiums concerning the failure to comply with payment deadlines and the exceeding of financial ceilings during the financial year 2010.

36 By letter of 14 February 2011, sent pursuant to the first subparagraph of Article 11(1) of Regulation No 885/2006, the Commission notified the Italian authorities of the outcome of its enquiries. The Italian authorities replied to that notification by letter of 8 March 2011.

37 On 15 June 2011, a bilateral meeting was held between the Commission services and the Italian authorities in Brussels. The minutes of that meeting were sent to the Italian authorities on 3 August 2011. They submitted their observations on 5 October 2011.

38 The Commission restated its position in a letter of 18 January 2012, sent pursuant to the second subparagraph of Article 11(1) of Regulation No 885/2006, to which the Italian authorities replied by letter of 27 March 2012.

39 By letter of 30 October 2013, sent on the basis of the third subparagraph of Article 11(2) of Regulation No 885/2006, the Commission formally notified the Italian authorities of the estimated amount of the proposed correction, namely EUR 7 643 605.11, due to, inter alia, failure to comply with the payment deadlines for the slaughter premiums relating to claim year 2004, the balance of which had been paid to the beneficiaries on 30 October and 3 November 2009.

40 On 10 December 2013, the Italian authorities referred the matter to the conciliation body. The conciliation body issued its report on 6 May 2014.

41 By letter of 2 July 2014, the Commission notified its final position to the Italian authorities: it maintained a flat-rate correction of EUR 7 643 605.11, of which EUR 1 607 275.90 corresponded to late payment of the balance of the slaughter premiums relating to claim year 2004, effected during the financial year 2010.

The financial correction for late payment of certain expenditure relating to information provision and promotion measures for agricultural products

42 Between 30 November and 4 December 2009, the Commission services conducted an audit in Italy concerning information provision and promotion measures for agricultural products on the internal market and in third countries, covering the financial years 2008 to 2010.

43 By letter of 27 April 2010, sent pursuant to the first subparagraph of Article 11(1) of Regulation No 885/2006, the Commission notified the Italian authorities of the outcome of its enquiries. The Italian authorities replied to that notification by letter of 5 July 2010.

44 On 18 November 2010, a bilateral meeting was held between the Italian authorities and the Commission in Brussels. The minutes of that meeting were sent to the Italian authorities on 31 January 2011. They submitted their observations on 30 March 2011.

45 By letter of 17 April 2013, sent pursuant to the third subparagraph of Article 11(2) of Regulation No 885/2006, the Commission formally notified the Italian authorities of the estimated amount of the proposed correction, namely EUR 2 844 470.65, for the financial years 2008 (only as from 30 May 2008), 2009 and 2010.

46 On 3 June 2013, the Italian authorities referred the matter to the conciliation body. The conciliation body issued its report on 29 November 2013.

47 By letter of 27 May 2014, the Commission notified its final position to the Italian authorities, in which, among other things, it applied a flat-rate correction of EUR 1 198 831.03 due to the belated nature of the payments relating to information provision and promotion measures for agricultural products on the internal market and in third countries during the financial years 2009 and 2010.

Procedure and forms of order sought by the parties

48 By application lodged at the Court Registry on 26 March 2015, the Italian Republic brought the present action.

49 By documents lodged at the Court Registry on 22 and 25 June 2015, respectively, the French Republic and Hungary sought leave to intervene in support of the form of order sought by the Italian Republic. By decisions of 22 July 2015, the President of the Second Chamber of the General Court granted leave to intervene.

50 The Italian Republic claims that the Court should:

– annul the contested decision in so far as it relates to certain expenditure incurred by the Italian Republic;

– order the Commission to pay the costs.

51 The Commission contends that the Court should:

– dismiss the action;

– order the Italian Republic to pay the costs.

52 The French Republic claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

53 Hungary claims that the Court should annul the contested decision in part.

54 By letter from the Court Registry of 14 June 2016, the parties were informed of the change in the composition of the Court and of the decision of the President of the General Court to reallocate the case to another Judge-Rapporteur, who was assigned to the Third Chamber.

55 By letter from the Court Registry of 3 October 2016, the parties were informed of the change in the composition of the Chambers of the Court, pursuant to Article 27(5) of the Rules of Procedure of the General Court, and of the assignment of the Judge-Rapporteur to the Fourth Chamber, to which the present case was accordingly allocated.

56 On a proposal from the Judge-Rapporteur, the General Court (Fourth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure, put questions in writing to the parties and invited them to lodge certain documents. The parties complied with the measures of organisation of procedure within the prescribed period.

57 At the hearing on 12 September 2017, the parties presented oral argument and replied to the oral questions put by the Court.

Law

58 In support of its action, the Italian Republic puts forward six pleas in law.

59 The first four pleas are raised in support of the application for annulment of the correction concerning the expenditure incurred by the Italian Republic in connection with the temporary scheme for the restructuring of the sugar industry. The first plea alleges, in essence, infringement of Article 31(4) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), breach of the rights of the defence and of the principle that the parties should be heard, and an inadequate statement of reasons. The second plea alleges, in essence, infringement of Article 11(1) of Regulation No 885/2006, Regulation No 320/2006 and Regulation No 968/2006, and failure to comply with the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737). The third plea alleges, in essence, breach of the principles of the protection of legitimate expectations, of sincere cooperation, *ne bis in idem* and of sound administration, and breach of the duty of care. The fourth plea alleges infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005, of the second subparagraph of Article 11(3) of Chapter 3 of Regulation No 885/2006 and of the guidelines set out in Document VI/5330/97 of the Commission of 23 December 1997, entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of the EAGGF Guarantee' ('Document VI/5330/97'), breach of the obligation to state reasons, and failure to consider the position of the conciliation body.

60 The fifth plea is put forward in support of the application for annulment of the correction applied for late payment of the balance of slaughter premiums relating to claim year 2004 and alleges infringement of Article 9(3) of Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of Regulation 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), breach of the principle of equal treatment and distortion of the facts.

61 The sixth plea is put forward in support of the application for annulment of the correction applied for late payment of certain expenditure relating to information provision and promotion measures for agricultural products and alleges infringement of Article 20 of Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for the application of Council Regulation (EC)

No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ 2008 L 147, p. 3), breach of the principle of legitimate expectations and breach of the principle that Member States are answerable for financial corrections.

First plea in law: infringement of Article 31(4) of Regulation No 1290/2005, breach of the rights of the defence and of the principle that the parties should be heard, and inadequate statement of reasons

62 The first plea can essentially be divided into three parts. The first part alleges infringement of Article 31(4) of Regulation No 1290/2005. The second part alleges breach of the rights of the defence and of the principle that the parties should be heard. The third part alleges, in essence, that the statement of reasons for the contested decision is inadequate.

First part of the first plea in law alleging infringement of Article 31(4) of Regulation No 1290/2005

63 The Italian Republic criticises the Commission, in essence, for finding that the restructuring aid concerned a multiannual measure within the meaning of Article 31(4)(b) of Regulation No 1290/2005 and that the financial correction could therefore, in the present case, apply to all expenditure incurred in connection with the temporary scheme for the restructuring of the sugar industry. In so doing, the Commission is alleged to have infringed Article 31(4) of Regulation No 1290/2005.

64 The Commission disputes the arguments of the Italian Republic.

65 In the instant case, it is necessary to determine whether the Commission was fully entitled to include in the basis for calculating the contested financial correction all expenditure incurred by the Italian Republic in connection with the temporary scheme for the restructuring of the sugar industry, in accordance with Article 31(4)(b) of Regulation No 1290/2005, or whether it should have excluded from that basis expenditure incurred more than 24 months before the notification to the Italian authorities of the first communication of 9 December 2010, in accordance with Article 31(4)(a) of Regulation No 1290/2005. For the purposes of that examination, the Court must determine whether aid for the restructuring of the sugar industry finances a multiannual measure within the meaning of Article 31(4)(b) of Regulation No 1290/2005.

66 Article 31(4) of Regulation No 1290/2005 provides:

‘Financing may not be refused for:

(a) expenditure as indicated in Article 3(1) [of this regulation] which is incurred more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

(b) expenditure on multiannual measures falling within the scope of Article 3(1) [of this regulation] or within the scope of the programmes as indicated in Article 4, where the final obligation on the recipient occurs more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

…’

67 The expenditure referred to in Article 3(1)(e) of Regulation No 1290/2005, as amended by Article 14 of Regulation No 320/2006, includes aid for the restructuring of the sugar industry.

68 Furthermore, under Article 3(1) of Regulation No 320/2006, the grant of restructuring aid is subject to the fulfilment of two conditions: renunciation of the production quota and the full or partial dismantling of the production facilities.

69 As regards renunciation of the production quota, the Italian Republic rightly argues that this is an immediate measure occurring in the course of a given marketing year.

70 However, contrary to what the Italian Republic maintains, renunciation of the production quota is not 'the very essence of the scheme at issue', since Article 3(1)(a) and (b) of Regulation No 320/2006 also requires the full or partial dismantling of the production facilities if restructuring aid for full or partial dismantling is to be granted (see paragraph 68 above).

71 The dismantling of production facilities entails the implementation over time of a number of complex operations and therefore cannot constitute a one-off measure.

72 Indeed, under Article 3(3) of Regulation No 320/2006, the full dismantling of production facilities requires (i) the definitive and total cessation of the production of sugar, isoglucose and inulin syrup by the production facilities concerned; (ii) the closure of the factory or factories and the dismantling of their production facilities; and (iii) the restoring of the good environmental conditions of the factory site and the facilitation of redeployment of the workforce.

73 As for partial dismantling, Article 3(4) of Regulation No 320/2006 lays down similar requirements to those described in paragraph 72 above.

74 Furthermore, the fact that restructuring operations are spread over several years is also evidenced by Article 6 of Regulation No 968/2006, which fixes a deadline for completing the dismantling of production facilities and for complying with the social and environmental commitments, the cut-off date for which, after several amendments, was ultimately set at 31 March 2012 by Implementing Regulation No 672/2011.

75 Lastly, in reply to a question put by the Court at the hearing, the Italian Republic stated that the operations to dismantle the production sites of two Italian undertakings which had applied for restructuring aid for full dismantling lasted approximately three or four years.

76 In the light of the foregoing, it must be held that aid for the restructuring of the sugar industry is designed not to finance a one-off measure, but rather a package of measures the actual implementation of which is spread over several years. Accordingly, the scheme for the restructuring of the sugar industry is a multiannual measure within the meaning of Article 31(4)(b) of Regulation No 1290/2005.

77 The arguments put forward by the Italian Republic cannot invalidate the foregoing conclusion.

78 First, the Italian Republic claims that the one-off nature of the measures financed by restructuring aid is evidenced by the fact that Article 10 of Regulation No 320/2006 provides for payment of a single amount of restructuring aid, albeit in the form of two instalments over a period not exceeding 12 months.

79 It is apparent from a combined reading of Article 10(4) of Regulation No 320/2006 and Articles 16, 22 and 25(1) of Regulation No 968/2006 that the payment of restructuring aid for full dismantling, in various instalments, entails the lodging of securities which will be released only if, after completion of the restructuring process, the inspections referred to in Article 25(1) of Regulation No 968/2006 confirm, among other things, that all the measures and actions set out in the restructuring plan have indeed been implemented.

80 It follows that the final amount of restructuring aid cannot be known before the release of the last securities held by the Member States and thus after the checks carried out once all restructuring operations have been completed.

81 Accordingly, even if all the restructuring aid had been paid to the Italian undertakings 24 months prior to the first communication of 9 December 2010 – as the Italian Republic argued, but did not prove, at the hearing – the amount of that aid was not final and could still be subject to change.

82 In addition, as the Commission pointed out at the hearing, even if the Italian undertakings received the restructuring aid in a single payment, that fact would not prevent the scheme for the restructuring of the sugar industry from being classified as a multiannual measure. The decisive factor is that the implementation of that scheme entails several obligations, the performance of which may not be immediate but is spread over a number of years.

83 Secondly, the Italian Republic essentially submits that, by applying Article 31(4)(b) of Regulation No 1290/2005, the Commission can legitimately challenge any expenditure incurred under the temporary scheme for the restructuring of the sugar industry provided that the communication under the first subparagraph of Article 11(1) of Regulation No 885/2006 is made within 24 months of the performance of the beneficiary's final obligation. In this instance, it contends that the Commission could therefore have initiated a clearance of accounts procedure until March 2015, that is, during a period of 24 months from the deadline for dismantling the production facilities, namely 31 March 2012. In those circumstances, a communication from the Commission under the first subparagraph of Article 11(1) of Regulation No 885/2006, after expiry of the deadline for full dismantling, would prevent the Member State from correcting the irregularity identified by the Commission. According to the Italian Republic, this is at odds with the spirit of the clearance of accounts procedure, a key aspect of which is to permit the Member State to correct the irregularities identified by the Commission.

84 In reply to a question put by the Court at the hearing, the Italian Republic confirmed that by its line of argument, considered in paragraph 83 above, it did not seek to plead the unlawfulness of Article 31(4)(b) of Regulation No 1290/2005, but rather, in essence, to challenge the application of that provision in the present case.

85 It is sufficient to note that the communication under the first subparagraph of Article 11(1) of Regulation No 885/2006, in this instance the first communication of 9 December 2010 (see paragraph 24 above), was sent to the Italian Republic before the final obligation imposed on the beneficiaries of restructuring aid fell due, namely 31 March 2012 (see paragraph 74 above). Therefore, the Italian Republic could have corrected the irregularities identified in the first communication of 9 December 2010 or, at the very least, have taken measures to attempt to correct them.

86 In the light of the foregoing, the Commission did not err in considering that aid for the restructuring of the sugar industry was intended to finance a multiannual measure, nor, therefore, did it err in including in the disputed correction the full amount of restructuring aid granted to the Italian undertakings.

87 The first part of the first plea must therefore be rejected.

Second part of the first plea in law alleging breach of the rights of the defence and of the principle that both parties should be heard

88 The Italian Republic claims, in essence, that due to the lateness of the change in the Commission's position on the legal basis for calculating the period of 24 months referred to in Article 31(4) of Regulation No 1290/2005, to which effect was given in its formal communication of 16 August 2012, it was unable to exercise its rights of the defence and the *inter partes* nature of the clearance of accounts procedure was undermined.

89 The Commission disputes the arguments of the Italian Republic.

90 It is settled case-law that the final and conclusive decision on the clearance of accounts must be taken at the conclusion of a specific procedure giving effect to the *audi alteram partem* rule, during which the Member States concerned are be provided with all the guarantees necessary for them to present their point of view (see judgment of 14 December 2000, *Germany* v *Commission*, C-245/97, EU:C:2000:687, paragraph 47 and the case-law cited).

91 That procedure is governed by Article 11 of Regulation No 885/2006, headed 'Conformity clearance', which provides as follows:

'1. When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Community rules, it shall communicate its findings to the Member State concerned and indicate the corrective measures needed to ensure future compliance with those rules.

The communication shall make reference to this Article. The Member State shall reply within two months of receipt of the communication and the Commission may modify its position in consequence. In justified cases, the Commission may agree to extend the period for reply.

After expiry of the period for reply, the Commission shall convene a bilateral meeting and both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Community budget.

2. Within two months from the date of the reception of the minutes of the bilateral meeting referred to in the third subparagraph of paragraph 1, the Member State shall communicate any information requested during that meeting or any other information which it considers useful for the ongoing examination.

…

After the expiry of the period referred to in the first subparagraph, the Commission shall formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. The communication shall evaluate the expenditure which the Commission envisages to exclude from Community financing under Article 31 of Regulation … No 1290/2005 and shall make reference to Article 16(1) of this Regulation.

3. …

The Commission, after having examined any report drawn up by the Conciliation Body in accordance with Chapter 3 of this Regulation, shall adopt, if necessary, one or more decisions under Article 31 of Regulation … No 1290/2005 in order to exclude from Community financing expenditure affected by the non-compliance with Community rules until the Member State has effectively implemented the corrective measures.

…'

92 In accordance with settled case-law, the written communication provided for in the first subparagraph of Article 11(1) of Regulation No 885/2006must inform the Government concerned fully about the Commission's reservations, so that it can fulfil the warning function given to it by that provision (see judgment of 3 May 2012, *Spain* v *Commission*, C-24/11 P, EU:C:2012:266, paragraph 27 and the case-law cited).

93 It is also apparent from the case-law that the first subparagraph of Article 11(1) of Regulation No 885/2006 must be read in conjunction with Article 31(4) of Regulation No 1290/2005, pursuant to which the Commission may not exclude expenditure effected outside one of the periods referred to in the latter provision. It follows that the written communication provided for in the first subparagraph of Article 11(1) of Regulation No 885/2006 serves as a warning that expenditure effected during a given period preceding notification of that communication may be excluded from financing by the European Agricultural Guidance and Guarantee Fund (EAGGF) and, accordingly, that that communication constitutes the reference point from which that period is to be calculated (see, by analogy, judgment of 3 May 2012, *Spain* v *Commission*, C-24/11 P, EU:C:2012:266, paragraph 30).

94 Lastly, the first subparagraph of Article 11(1) of Regulation No 885/2006 does not require that the written communication mention the expenditure to be excluded (see, to that effect and by analogy, judgment of 7 October 2004, *Sweden* v *Commission*, C-312/02, EU:C:2004:594, paragraph 14). Nor is it required that the written communication expressly mention the period referred to in Article 31(4) of Regulation No 1290/2005 (see, to that effect and by analogy, judgment of 24 January 2002, *Finland* v *Commission*, C-170/00, EU:C:2002:51, paragraph 32). As regards the formal requirements, Article 11(1) of Regulation No 885/2006 draws a distinction between the communication of findings, referred to in the first subparagraph of paragraph 1, which is at issue here, and the formal communication of conclusions, referred to in the third subparagraph of paragraph 2, which happens at a later stage. It follows that the first communication does not have to meet such strict formal conditions as the second (see, to that effect and by analogy, judgment of 24 January 2002, *Finland* v *Commission*, C-170/00, EU:C:2002:51, paragraph 29).

95 As a preliminary point, it is apparent from paragraphs 68 to 76 above that aid for the restructuring of the sugar industry finances multiannual measures and, therefore, that the legal basis for calculating the period of 24 months is Article 31(4)(b) of Regulation No 1290/2005.

96 In the present case, in the letter accompanying the findings of audit EX/2010/010/IT, communicated to the Italian Republic by the first communication of 9 December 2010, it is stated that any 'exclusion will apply only to expenditure incurred during the period of 24 months preceding the issue of th[at] communication'. The Commission therefore referred, implicitly but necessarily, to Article 31(4)(a) of Regulation No 1290/2005 as the legal basis for calculating the period of 24 months, not to Article 31(4)(b) of Regulation No 1290/2005.

97 However, it must be pointed out, as the Commission did, that despite the reference in the letter contained in the first communication of 9 December 2010, it was clear from the annex to that letter that the Commission disputed the eligibility of the Italian undertakings in question for the full amount of the restructuring aid they had received. It was stated, in particular, that 'the services of [the Directorate-General for Agriculture and Rural Development of the Commission] consider … that none of the undertakings in question satisfies the conditions necessary in order to receive [restructuring aid for full dismantling]' and that, 'since most of the restructuring aid has already been paid and most of the securities have already been released to the undertakings in question, it is made clear that the authorities might ultimately bear the financial consequences of any failure to comply with the requirements laid down in the regulations'.

98 In the light of the foregoing, the first communication of 9 December 2010 endowed the Italian authorities with sufficient knowledge of the Commission's reservations and the corrections that would in all likelihood be made in relation to the expenditure at issue, so that it fulfilled the warning function conferred on the written communication provided for in the first subparagraph of Article 11(1) of Regulation No 885/2006.

99 Even though, during the bilateral meeting of 4 May 2011, the Commission stated that audit EX/2010/010/IT covered the 24-month period preceding the issue of the communication referred to in the first subparagraph of Article 11(1) of Regulation No 885/2006 and, therefore, that only expenditure incurred between 10 December 2008 and 9 December 2010 was concerned by that audit, the fact remains that, in Annex 1 to the formal communication of 16 August 2012, the Commission confirmed the position taken in the first communication of 9 December 2010. It maintained, in essence, that the financial correction could be established on the basis of all expenditure incurred by the Italian Republic under the temporary scheme for the restructuring of the sugar industry, including before the period of 24 months preceding the issue of the first communication of 9 December 2010, and, therefore, that in the present case, the period of 24 months had to be calculated pursuant to Article 31(4)(b) of Regulation No 1290/2005.

100 In any event, it should be noted that following receipt of the formal communication of 16 August 2012, the Italian Republic referred the matter to the conciliation body under Article 16 of Regulation No 885/2006 and thus had the opportunity to challenge the applicability of Article 31(4)(b) of Regulation No 1290/2005 before that body (see, to that effect and by analogy, judgment of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 35 and the case-law cited).

101 At the hearing, the Italian Republic admitted that it had not expressed any objections to the conciliation body regarding the applicability of Article 31(4)(b) of Regulation No 1290/2005 and that it had focused solely on the substantive question of whether it was possible to keep the silos at issue and qualify for restructuring aid for full dismantling.

102 Finally, it should be recalled that following the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Commission, by letter of 28 March 2014, gave the Italian Republic the opportunity to submit additional observations (see paragraph 32 above). However, in their reply of 30 May 2014, the Italian authorities also failed to challenge the application of Article 31(4)(b) of Regulation No 1290/2005 in the present case (see paragraph 33 above).

103 Against that background, the Italian Republic cannot rely before the Court on a procedural safeguard which it itself waived during the clearance of accounts procedure (see, to that effect and by analogy, judgment of 9 September 1999, *Petrides* v *Commission*, C-64/98 P, EU:C:1999:399, paragraph 32).

104 The second part of the first plea must therefore be rejected.

Third part of the first plea in law alleging, in essence, that the statement of reasons was inadequate

105 The Italian Republic essentially pleads that the statement of reasons for the contested decision was inadequate because the reasons for the sudden and unjustified change in the legal basis for calculating the 24-month period, which the Commission gave effect to in its formal communication of 16 August 2012, were mentioned only in passing in that communication.

106 The Commission expresses no view in that regard.

107 The Court has consistently held that, in the particular context of the preparation of decisions relating to the clearance of accounts, 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 sum in dispute to the EAGGF (judgments of 1 October 1998, *Netherlands* v *Commission*, C-27/94, EU:C:1998:446, paragraph 36, and of 10 September 2008, *Italy* v *Commission*, T-181/06, not published, EU:T:2008:331, paragraph 32).

108 In the present case, in Annex 1 to the formal communication of 16 August 2012, specifically point 12 of the 'Arguments' section, the Commission recalled that the temporary scheme for the restructuring of the sugar industry covered the period from 1 July 2006 to 31 March 2012, in other words a period of 69 months. In addition, in point 13 of the 'Arguments' section, the Commission explained that that scheme was a multiannual measure for the purpose of Article 3 of Regulation No 1290/2005, under which phased payments of the different instalments of restructuring aid for full dismantling had been made. Furthermore, the Commission stated that the payment of each instalment of restructuring aid for full dismantling was subject to the lodging of a security of an amount equal to 120% of the amount of the instalment concerned. The Commission also made clear that, under Article 31(4)(b) of Regulation No 1290/2005, the conformity of that expenditure with the objectives of the sugar industry restructuring fund and its related regulations could be assessed only at the date of the final obligation imposed on the recipient, namely 31 March 2012. In point 15 of the 'Arguments' section in Annex 1 to the formal communication of 16 August 2012, the Commission concluded, in essence, that since the silos at issue had not been dismantled as of 31 March 2012, the clearance of accounts procedure covered all expenditure relating to restructuring aid granted to the Italian undertakings.

109 It is therefore established that, in its formal communication of 16 August 2012, the Commission set out in sufficient detail the reasons why the financial correction had to include all expenditure incurred during the period calculated pursuant to Article 31(4)(b) of Regulation No 1290/2005. In addition, the reasons recalled in paragraph 108 above enabled the Italian Republic to understand the reasons why the Commission had changed its position regarding the legal basis for calculating the 24-month period referred to in Article 31(4) of Regulation No 1290/2005.

110 Accordingly, the third part of the first plea must be rejected, as must, in consequence, the first plea in its entirety.

Second plea in law: infringement of Article 11(1) of Regulation No 885/2006, breach of the rights of the defence, infringement of Regulations No 320/2006 and No 968/2006, and failure to comply with the judgment of 14 November 2013, SFIR and Others (C-187/12 to C-189/12)

111 This plea consists of two parts. The first part alleges, in essence, infringement of Article 11 of Regulation No 885/2006 and breach of the rights of the defence. The second part alleges infringement of Regulations No 320/2006 and No 968/2006 and failure to comply with the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737).

First part of the second plea in law alleging, in essence, infringement of Article 11 of Regulation No 885/2006 and breach of the rights of the defence

112 The Italian Republic essentially argues that the first communication of 9 December 2010 infringes the first subparagraph of Article 11(1) of Regulation No 885/2006 in so far as it did not inform the Italian Republic fully about the Commission's reservations and impeded its enjoyment of the rights of the defence enshrined in that provision. It submits that in the first communication of 9 December 2010, the Commission claimed that silos were, in all circumstances, production facilities, while, in the letter of 28 March 2014, sent after the judgment of 14 November 2013, *SFIR and Others* (C-187/12

to C-189/12, EU:C:2013:737), it acknowledged that silos should not necessarily be considered to be production facilities. It also observes that the first communication of 9 December 2010 contained no reference to the fact that the use of the silos had to be assessed at the time of the application for restructuring aid for full dismantling ('the criterion laid down by the Commission'). According to the Italian Republic, it was only by means of the Commission's letter of 28 March 2014 that it was informed fully about the Commission's reservations on the question of dismantling silos in the case of restructuring aid for full dismantling. However, on that date, it was no longer covered by all of the procedural safeguards enshrined in Article 11 of Regulation No 885/2006 or able to exercise its rights of the defence.

113 The Commission disputes the arguments of the Italian Republic.

114 It should be recalled that, according to settled case-law, the final and conclusive decision on the clearance of accounts must be taken at the conclusion of a specific procedure giving effect to the *audi alteram partem* rule, during which the Member States concerned are to be provided with all the guarantees necessary for them to present their point of view (judgments of 29 January 1998, *Greece* v *Commission*, C-61/95, EU:C:1998:27, paragraph 39; of 14 December 2000, *Germany* v *Commission*, C-245/97, EU:C:2000:687, paragraph 47; and of 3 July 2014, *Netherlands* v *Commission*, T-16/11, not published, EU:T:2014:603, paragraph 69).

115 Furthermore, it is clear from the wording of the first subparagraph of Article 11(1) of Regulation No 885/2006 that the first communication must inform the Member State concerned of the outcome of the Commission's enquiries and indicate the corrective measures to be taken to ensure future compliance with the EU rules at issue (see paragraph 91 above).

116 In the present case, as stated in paragraph 25 above, it follows from the first communication of 9 December 2010 that, from the Commission's perspective, the conditions for granting restructuring aid for full dismantling were not met, as a number of production facilities, including the silos at issue, had been retained at the former sugar production sites visited by the Commission's investigators. In that communication, the Commission also stated that the Italian undertakings were not eligible for restructuring aid for full dismantling if they failed to implement the restructuring plans in their entirety and if the other buildings related to the production business, including the silos at issue, were not demolished.

117 In its letter of 9 February 2011, the Italian Republic took issue with the Commission's view that silos were, on any view, production facilities subject to the dismantling obligation, claiming, in essence, that the silos at issue were not production facilities inasmuch as they were exclusively intended to store the end product and that the Commission's interpretation was contrary to Regulations No 320/2006 and No 968/2006. The Italian Republic restated its position at the bilateral meeting of 4 May 2011, in its observations of 2 November 2011 on the minutes of that meeting and during the conciliation procedure.

118 During the bilateral meeting of 4 May 2011, the Commission maintained its position that the silos at issue had to be regarded as forming an integral part of the production facilities and, as such, had to be dismantled.

119 By judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Court held, in essence, that the concept of 'production facilities' covered silos intended to store the restructuring aid beneficiary's sugar. However, the Court held that this was not the case in two situations ('the exceptions laid down by the Court'): first, where it was shown that the silos were used only to store sugar, produced under quota, from other producers or bought from those producers, and, secondly, where those silos were used only for packaging or packing sugar produced elsewhere for the purposes of marketing it (judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraphs 32, 33 and 35).

120 In the light of the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Commission shifted its position in relation to the classification of silos and, as pointed out in paragraphs 32 and 102 above, by letter of 28 March 2014, gave the Italian authorities a period of two months to put forward convincing evidence that, in the present case, the silos at issue were used, before the applications for the disputed aid were made, solely for the storage and packaging of sugar produced under quota by other producers.

121 The Italian Republic did not respond to that request. Indeed, in its letter of 30 May 2014, it simply questioned the criterion laid down by the Commission. It stated, in particular, that the Court had expressly acknowledged in its judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), that storage silos did not have to be dismantled if it could be shown that they were used to store sugar from other producers or bought from those producers, or that they were designed for packing sugar produced elsewhere. According to the Italian Republic, there was therefore no need to determine what the silos were used for before the application for restructuring aid. Finally, it stated that the Italian authorities had sent the Commission all the documents relating to the procedure governing eligibility for restructuring aid for full dismantling, including the approved restructuring plans and the annual reports of on-the-spot inspections identifying which facilities and equipment had been demolished and which retained, as well as the actual use made of each of them.

122 It follows from the foregoing that the Italian Republic waived the opportunity to adduce evidence proving that the silos at issue were not production facilities at the time of the aid application and thus waived its defence rights in connection with that issue.

123 In view of the above and having regard to the case-law cited in paragraph 103, the complaint alleging breach of the rights of the defence is unfounded and must be rejected.

124 The first part of the second plea must therefore be rejected.

Second part of the second plea in law alleging infringement of Regulations No 320/2006 and No 968/2006 and failure to comply with the judgment of 14 November 2013, SFIR and Others (C-187/12 to C-189/12)

125 The Italian Republic, supported by the French Republic and Hungary, essentially claims that by finding that the retention of the silos at issue prevented the grant of restructuring aid for full dismantling, the Commission infringed Regulations No 320/2006 and No 968/2006 and failed to comply with the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737).

126 The Commission disputes the arguments of the Italian Republic, the French Republic and Hungary.

127 As a preliminary point, it should be recalled that in its judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), after finding that the concept of 'production facilities' was not defined by Regulations No 320/2006 and No 968/2006, the Court, first of all, pointed out that the concept of 'production' could also encompass other steps in the production of a product upstream or downstream of the chemical or physical transformation process and could therefore include the storage of sugar which is not packed immediately after its extraction from the raw material. It thus concluded that storage could be 'directly related to the production of sugar' within the meaning of Article 4(1)(b) of Regulation No 968/2006 (judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 26). Secondly, the Court found that silos were capable of having a direct impact on the quantities of sugar which may be produced and on the production process, which were dependent on the proximity of a storage facility, in so far as they enabled, in particular, the sale of what is produced in a given sugar marketing year to be partially or totally deferred and, accordingly, influenced the market situation within the meaning of recital 5 of Regulation No 320/2006 (judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12,

EU:C:2013:737, paragraphs 27 to 29). Thirdly, the Court took the view, in essence, that it followed from Article 3(3)(a) and (b) of Regulation No 320/2006 that, in principle, in order to be eligible for restructuring aid for full dismantling, the industrial complex concerned had to be put out of operation in its entirety and that the option to refrain from dismantling or to continue using in the future the facilities other than production facilities, while retaining the right to the full amount of aid, constituted an exception which had to be interpreted narrowly (judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 30).

128 In the light of the above, in paragraph 31 of the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Court ruled that silos intended to store the aid beneficiary's sugar had to be classified as production facilities, irrespective of whether they were also used for other purposes. However, the Court laid down two exceptions to that principle (see paragraph 119 above).

129 In the instant case, the Italian Republic does not deny that, after completion of the restructuring process, the silos at issue were retained at several sugar production sites belonging to the Italian undertakings which had received restructuring aid for full dismantling. Nor does it deny having failed to adduce evidence showing that, when the applications for full restructuring aid were made, the silos at issue were covered by the exceptions laid down by the Court.

130 The Italian Republic, supported by the French Republic and Hungary, nonetheless argues that the circumstances mentioned in paragraph 129 above cannot justify the financial correction to which it was subject.

131 It is apparent from recitals 1 and 5 of Regulation No 320/2006 that the objective of the relevant legislation is to reduce unprofitable sugar production capacity in the European Union by encouraging undertakings with the lowest productivity to abandon sugar quota production and renounce the quotas concerned.

132 It is also apparent from recital 5 of Regulation No 320/2006 that the restructuring scheme is dependent on the voluntary participation of the sugar undertakings since it seeks to introduce an important economic incentive in the form of an adequate restructuring aid (see, to that effect, judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 44).

133 In order to achieve the objective of reducing unprofitable sugar production capacity in the European Union, pursued by the relevant legislation, the EU legislature established two different restructuring schemes depending on the type of dismantling carried out, namely full dismantling or partial dismantling, giving rise to different amounts of restructuring aid, as is apparent from Article 3(5)(a) and (b) of Regulation No 320/2006, read in conjunction with recital 4 of Regulation No 968/2006.

134 First, as regards the conditions to be met for the grant of restructuring aid for full dismantling, Article 3(1)(a) and (3)(b) of Regulation No 320/2006 requires the applicant sugar undertaking to renounce the quota assigned by it to one or more of its factories, to close the factory and to dismantle in full the production facilities. However, for the grant of restructuring aid for partial dismantling, Article 3(1)(b) and (4)(b) of Regulation No 320/2006 requires the applicant sugar undertaking to renounce the quota assigned by it to one or more of its factories, to dismantle in part the production facilities of the factories concerned and to stop using the remaining production facilities for the production of products covered by the common market organisation for sugar ('the CMO for sugar').

135 Secondly, the scope of the obligation to dismantle production facilities was clarified by Article 4 of Regulation No 968/2006.

136 Under Article 4(1) of Regulation No 968/2006, the obligation of full dismantling, referred to in Article 3(1)(a) of Regulation No 320/2006, applies to facilities which are necessary for the production of sugar, isoglucose or inulin syrup (Article 4(1)(a) of Regulation No 968/2006), facilities which are directly related to the production of sugar, isoglucose or inulin syrup and necessary for production under the quota renounced, even if they could be used for the production of other products (Article 4(1)(b) of Regulation No 968/2006), and all other facilities, such as packaging facilities, left unused and to be dismantled and removed for environmental reasons (Article 4(1)(c) of Regulation No 968/2006).

137 In accordance with Article 4(1)(c) of Regulation No 968/2006, read in conjunction with Article 3(1)(a) of Regulation No 320/2006 and recital 4 of Regulation No 968/2006, all facilities other than those which are necessary for the production of sugar, isoglucose or inulin syrup or which are directly related to their production, such as packaging facilities, may therefore be exceptionally retained in the case of full dismantling provided that they are used and are not intended to be dismantled and removed for environmental reasons.

138 Furthermore, Article 4(2) of Regulation No 968/2006 provides that, in the case of partial dismantling, the dismantling obligation applies to the facilities referred to in paragraph 1 of that article (see paragraph 136 above) which are not intended to be used for other production or other use of the factory site in accordance with the restructuring plan. In addition, it is apparent from Article 3(1)(b) of Regulation No 320/2006 that the production facilities which may be retained must no longer be used for the production of products covered by the CMO for sugar. Accordingly, under Article 4(2) of Regulation No 968/2006, read in conjunction with Article 3(1)(b) of Regulation No 320/2006, facilities which are necessary for the production of sugar, isoglucose or inulin syrup or which are directly related to their production may be retained, provided that they are no longer used for the production of products covered by the CMO for sugar and are intended to be used for other production or other use of the factory site in accordance with the restructuring plan.

139 Thirdly, the choice between full and partial dismantling must be made by the sugar undertakings when applying for restructuring aid.

140 It follows from a combined reading of Article 4(2)(a), (c), (d) and (e) and Article 4(3)(c) and (h) of Regulation No 320/2006, and of Article 9(2)(a) and (c) of Regulation No 968/2006, that an application for restructuring aid must include, in particular, a commitment on the part of the aid applicant to renounce the relevant quota and to dismantle the production facilities in full or in part within a period to be determined by the Member State concerned, together with a restructuring plan containing, among other things, a complete technical description of the production facilities concerned, a summary of the measures and actions and their estimated cost, the financial plan, and the time schedules for carrying out the different measures planned.

141 Pursuant to the provisions mentioned in paragraph 140 above, the beneficiary of the aid must thus have identified all the production facilities that it undertakes to dismantle in accordance with the restructuring plan no later than the date of the application for restructuring aid for full or partial dismantling. As regards the silos at issue, this therefore requires a determination to be made, when the aid application is submitted, as to whether those silos constitute production facilities the dismantling of which must necessarily be prescribed by the restructuring plan where restructuring aid for full dismantling is applied for, or whether they fall within the exceptions laid down by the Court.

142 Any other interpretation would deprive the requirements laid down in Article 4 of Regulation No 320/2006 and Article 9 of Regulation No 968/2006 of their substance and, furthermore, would disregard the distinction drawn in the relevant legislation between partial and full dismantling (see paragraph 133 above).

143 In that connection, if, at the time of applying for restructuring aid, the sugar undertakings did not know whether or not the silos at their production sites constituted production facilities, those silos would not be mentioned in the restructuring plan as production facilities that required to be dismantled, in breach of Article 4(3)(c) of Regulation No 320/2006 (see paragraph 140 above).

144 In addition, the commitment to dismantle the production facilities in their entirety, which must be attached to the application for restructuring aid for full dismantling (see paragraph 140 above), would be invalidated because, by definition, it would not cover all production facilities existing on the date on which that commitment was made.

145 Moreover, if the classification of silos as production facilities was assessed at the end of the restructuring process, it would be possible, in the case of full and partial dismantling alike, to retain silos which, at the time the aid application was made, constituted production facilities because, after the restructuring, they would no longer be used as sugar production facilities. Therefore, the possibility of retaining part of the production facilities would no longer be characteristic of partial dismantling, but would also extend to full dismantling, even though, due to the high costs associated with full dismantling, operators receive 25% more restructuring aid than that granted in the case of partial dismantling, as is clear from Article 3(5)(a) and (b) of Regulation No 320/2006 and recital 4 of Regulation No 968/2006.

146 Therefore, contrary to the assertions made by the Italian Republic, the French Republic and Hungary, the Commission did not err in taking the view that the classification of the silos at issue was to be assessed at the time of the application for restructuring aid.

147 That conclusion cannot be called into question by the arguments put forward by the Italian Republic, the French Republic and Hungary.

148 In the first place, the Italian Republic claims that in the case of silos intended for packing and packaging, the criterion laid down by the Commission is not consistent with the objective pursued by the relevant legislation to preserve employment and the business of undertakings affected by the restructuring. It recalls that the relevant legislation expressly permits the continuance of packaging activities and the facilities necessary for that purpose. It is common ground, according to the Italian Republic, that silos are still necessary in order to ensure that packaging activities can continue. Therefore, the demolition of a silo used for packaging would result in the closure of the undertaking concerned and the loss of jobs, which would be at odds with the objective referred to above.

149 It should be noted that several provisions of Regulations No 320/2006 and No 968/2006 demonstrate the importance that the EU legislature has attached to the employment situation in the regions affected by the restructuring of the sugar industry. For example, it follows from Article 3(3)(c) and (4)(c) of Regulation No 320/2006 that the full and partial dismantling of production facilities requires the adoption of measures to facilitate the redeployment of the workforce. Furthermore, in cases of partial dismantling, Article 4(2) of Regulation No 968/2006, read in conjunction with Article 3(1)(b) of Regulation No 320/2006, allows production facilities to be retained for the purpose of reallocating them to the manufacture of products other than those covered by the CMO for sugar (see paragraph 138 above), thereby saving jobs at former sugar production sites. Similarly, Article 4(1)(c) of Regulation No 968/2006, read in the light of recital 4 of that regulation, permits the maintenance, in the case of full dismantling, of facilities other than those which are necessary for the production of sugar, isoglucose or inulin syrup or which are directly related to their production, such as packaging facilities, provided that they are used and are not intended to be dismantled and removed for environmental reasons (see paragraph 137 above).

150 That being so, the objective of protecting employment and the business of undertakings affected by the restructuring must be assessed alongside the main objective of the relevant legislation, namely to reduce unprofitable sugar production capacity in the European Union, in accordance with recitals 1 and 5 of Regulation No 320/2006 (see paragraph 131 above).

151 In addition, the considerations of a social nature invoked by the Italian Republic cannot justify its proposed interpretation of the relevant legislation, which undermines the fundamental distinction that the EU legislature sought to draw between full and partial dismantling (see paragraphs 133, 134 and 145 above) and, consequently, is contrary to that legislation.

152 Accordingly, the Italian Republic's argument must be rejected.

153 In the second place, the Italian Republic, the French Republic and Hungary essentially argue that the obligation of full dismantling of the production facilities may be complied with even if silos intended for packaging or packing are not demolished, provided that there has been a renunciation of the production quota and, therefore, definitive termination of the production of sugar.

154 It is apparent from paragraphs 133, 134 and 145 above that, in order to achieve the objective of reducing unprofitable sugar production capacity in the European Union pursued by the relevant legislation, the EU legislature established two different restructuring schemes depending on the type of dismantling carried out, giving rise to different amounts of restructuring aid. Furthermore, as stated in paragraphs 139 to 141 above, the choice between partial and full dismantling requires the undertaking seeking restructuring aid to identify, when making the aid application, all of the production facilities at the site concerned which it undertakes to demolish in full or in part at the end of the restructuring process.

155 Accordingly, the logic of the system established by the EU legislature requires that the production facilities to be dismantled be identified when the application for restructuring aid is made. Therefore, contrary to Hungary's claims, the criterion laid down by the Commission is not inconsistent with the overall structure of the scheme for the restructuring of the sugar industry.

156 In the light of the foregoing, the arguments put forward by the Italian Republic, the French Republic and Hungary must be rejected.

157 In the third place, the Italian Republic takes issue with the Commission for having required it, in the letter of 28 March 2014, to show that the packing silos at issue were used only to pack sugar produced by other producers. It claims that the retention of silos intended for packing was permitted by Article 4(1)(c) of Regulation No 968/2006 and, therefore, it made no difference whether the sugar to be packed came from other producers or the operator of the facility. Furthermore, the Italian Republic, like the French Republic, argues that it follows from paragraph 33 of the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), that packing or packaging silos are not classified as production facilities if the sugar stored there is 'produced elsewhere under quota', whereas for storage silos, it is necessary, in accordance with paragraph 32 of the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), that the sugar was bought from other producers.

158 First, as already stated in paragraphs 136 and 137 above, Article 4(1)(c) of Regulation No 968/2006 permits only the retention of facilities other than production facilities. Therefore, the Commission was fully entitled to ask the Italian Republic to demonstrate, in essence, that the packaging silos at issue, the existence of which at the dismantled production sites had been identified in audit EX/2010/010/IT, were covered by one of the exceptions laid down by the Court at the time of the application for restructuring aid and thus could not be classified as production facilities.

159 Secondly, in the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737, paragraphs 26 and 31), the Court held that a silo used to store the aid beneficiary's sugar was a facility directly related to the production of sugar within the meaning of Article 4(1)(b) of Regulation No 968/2006. It thus did not come under the other facilities, such as packaging facilities, referred to in Article 4(1)(c) of Regulation No 968/2006, the retention of which may be permitted in the case of full dismantling provided that they are used and are not intended to be dismantled and removed for environmental reasons.

160 Accordingly, Article 4(1)(c) of Regulation No 968/2006 cannot permit the retention of silos that were used to store the aid beneficiary's production, since such retention may occur only in the case of partial dismantling and provided that, after completion of the restructuring, those silos are no longer used for the production of products covered by the CMO for sugar.

161 In view of the above, it is also necessary to reject the argument invoked by Hungary in its reply to the written question put by the Court to the effect that recital 4 of Regulation No 968/2006 identifies, within production facilities as a whole, a subgroup of facilities 'which are not part of the production line', including sugar storage silos, the retention of which is permitted irrespective of whether full or partial dismantling takes place.

162 Thirdly, during the clearance procedure in question, the Italian Republic did not demonstrate or even claim that, at the time the application for restructuring aid was made, the silos at issue were used for packing and packaging sugar produced elsewhere by the aid beneficiary under another production quota. There is therefore no need to address the Italian Republic's argument that, in essence, silos for the packing or packaging of sugar 'produced elsewhere under quota' fall under one of the exceptions laid down by the Court, since that argument does not cast doubt on the Commission's finding that the silos at issue did not fall under one of the exceptions laid down by the Court at the time of the application for restructuring aid.

163 Accordingly, the Italian Republic's argument must be rejected.

164 In the fourth place, the Italian Republic claims, in essence, that the consequences of the financial correction applied by the Commission and of dismantling the silos at issue are disproportionate to the aims pursued by the relevant legislation, aims which it considers to be fully achieved by renunciation of the quota and the subsequent definitive termination of sugar production.

165 First of all, it should be noted that the relevant legislation requires demolition of the production facilities, including silos used to store sugar produced by the aid beneficiary, only in the case of full dismantling. Such an obligation does not seem to be disproportionate in the light of the objective pursued by the relevant legislation to reduce unprofitable sugar production capacity in the European Union.

166 Next, the retention of silos, even if classified as production facilities at the time of the aid application, is permitted in the case of partial dismantling. In that case, the beneficiary of the aid will not have to dismantle the silos and may continue to conduct business at the partially dismantled production site. For those reasons, it will receive 25% less restructuring aid than it would have received in the case of full dismantling.

167 Moreover, it must be stated that the contested decision does not require the Italian Republic to demolish the silos at issue, but imposes a financial correction of 25% corresponding to the difference between the amount of restructuring aid for full dismantling and that for partial dismantling.

168 Finally, it should be recalled that as regards the proportionality of the relevant legislation, the Court held in its judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), that that legislation allowed the producer to decide freely whether it wanted to take advantage of the

aid, choose the factory in relation to which it renounced the corresponding quota and, as the case may be, opt for either the full or partial dismantling of the production facilities. It also found that the advantage potentially accruing to that producer depended accordingly, for the most part, on the choices made by that producer. The Court therefore concluded that the relevant legislation was not disproportionate (judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraphs 44 to 46).

169 The Italian Republic's argument must therefore be rejected.

170 In the fifth place, the French Republic and Hungary contend that the criterion laid down by the Commission ignores the seasonal nature of sugar production and calls into question the practical applicability of the exceptions laid down by the Court. They recall that applications for restructuring aid had to be submitted to the Member State by 31 January preceding the marketing year during which the quota was to be renounced, in accordance with Article 4(1) of Regulation No 320/2006. Since that date fell within the seasonal cycle for the production of sugar, it was very likely that the silos were still being used to produce the sugar quota of the applicant for restructuring aid, given their operating and usage characteristics. Hungary argues that it is therefore not realistic that, at that time, the undertakings exclusively stored sugar produced by others in the silos. The French Republic adds that it is uncommon for an undertaking to have, in one place, a facility for the production of sugar under its quota and silos used to store, package or pack sugar produced under quota by other producers.

171 The fact that it may be difficult to satisfy the conditions set forth in the exceptions laid down by the Court at the time of the application for restructuring aid does not mean that those conditions cannot be satisfied. The Commission referred to judgment No 2966 of 15 June 2015 of the Consiglio di Stato (Council of State, Italy), which shows that, of the three silos in existence on the date of the application for restructuring aid for full dismantling in question, one was used to store sugar produced at the production site of the undertaking in receipt of the aid while the other two silos were used to store and pack sugar produced by other producers.

172 Furthermore, the retention of silos that do not constitute production facilities is an exception to the rule mentioned by the Court in paragraph 30 of its judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), under which the industrial complex concerned must be put out of service in its entirety if restructuring aid for full dismantling is to be granted. Thus, the fact that the assessment of the use of the silos when the application for restructuring aid is made rarely precludes them from being classified as production facilities is merely the consequence of the fact that the option not to dismantle or even to continue using in the future facilities other than production facilities, while retaining the right to restructuring aid for full dismantling, constitutes an exception to the rule referred to by the Court which must be interpreted narrowly (see, to that effect, judgment of 14 November 2013, *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 30).

173 It is therefore necessary to reject the arguments of the French Republic and Hungary.

174 In the sixth place, the French Republic claims that the possibility of amending the restructuring plan provided for in Article 11 of Regulation No 968/2006 implies that the precise use made of the silos which are retained may change during the dismantling process. Thus, in its view, the changing nature of the dismantling process precludes an assessment of the use of the silos at the time of the aid application. Hungary claims, in essence, that the criterion laid down by the Commission is at variance with the leeway in the drawing up and implementation of restructuring plans enjoyed by sugar undertakings under the applicable legislation, in particular Article 4(1)(c) of Regulation No 968/2006.

175 First, the leeway in drawing up restructuring plans enjoyed by aid beneficiaries and the power to amend those plans in accordance with Article 11 of Regulation No 968/2006 cannot undermine the provisions of Regulations No 320/2006 and No 968/2006 and, in particular, the central obligation to

dismantle production facilities laid down in Article 3(1)(a) and (b) of Regulation No 320/2006, which, in the case of full dismantling, entails the demolition of all production facilities existing on the date of the aid application.

176 Secondly, the arguments of the French Republic and Hungary do not take account of the distinction between full and partial dismantling, which is, however, an integral part of the relevant legislation (see paragraphs 133, 134 and 145 above). The possibility of retaining the production facilities, including silos, arises only in the case of partial dismantling and entails a lower amount of aid than that granted where all production facilities are dismantled.

177 The arguments of the French Republic and Hungary must therefore be rejected.

178 In the seventh and last place, the French Republic contends, in essence, that it follows from the use of the future indicative in the French version of the expression 'production facilities that will not be used' ('installations de production qui ne seront pas utilisées') in Article 3(4)(b) of Regulation No 320/2006 that the condition relating to the use of facilities retained at a production site cannot be assessed when the application for restructuring aid is made.

179 It should be recalled that, under Article 3(4)(b) of Regulation No 320/2006, in the case of partial dismantling, it is permissible to retain part of the production facilities and to dismantle those which, by definition, will no longer be used by the aid beneficiary after completion of the restructuring. In addition, Article 4(2) of Regulation No 968/2006 states that all facilities 'that are not intended to be used for other production or other use of the factory site in accordance with the restructuring plan' must be dismantled.

180 Thus, it follows from a combined reading of the provisions mentioned in paragraph 179 above that the beneficiary of restructuring aid for partial dismantling must know, when the application for restructuring aid is made, which production facilities it no longer intends to use after completion of the restructuring and must refer to them in the restructuring plan.

181 Against that background, the use of the future indicative in the French version of Article 3(4)(b) of Regulation No 320/2006 does not prevent the criterion laid down by the Commission from being applied.

182 Accordingly, the French Republic's argument must be rejected.

183 Since none of the arguments put forward by the Italian Republic, the French Republic and Hungary is well founded, the second part of the second plea and, accordingly, the second plea in its entirety must be rejected.

Third plea in law: breach of the principles of the protection of legitimate expectations, of sincere cooperation,* ne bis in idem *and of sound administration, and breach of the duty of care

184 The third plea is essentially broken down into two parts. The first part alleges breach of the principles of the protection of legitimate expectations, of sincere cooperation and of sound administration, and breach of the duty of care. The second part alleges breach of the principle *ne bis in idem*.

185 The second part of the third plea should be considered first, followed by the first part.

Second part of the third plea in law alleging breach of the principle ne bis in idem

186 The Italian Republic pleads breach of the principle *ne bis in idem* on the ground, in essence, that the Commission's previous audit EX/2008/008/IT dealt with issues identical to those covered by audit EX/2010/010/IT.

187 The Commission disputes the arguments of the Italian Republic.

188 Without there being any need to rule on whether the principle *ne bis in idem* applies in the context of the clearance of accounts procedure of the EAGGF, first, it must be pointed out, as the Commission did, that audits EX/2008/008/IT and EX/2010/10/IT served different purposes. It is apparent from the mission letter concerning audit EX/2008/008/IT, sent by the Commission to the Italian authorities by fax on 10 October 2008, that the Commission essentially wished to examine and discuss inspections relating to production and sugar movements from the marketing year 2006/2007 onwards as well as existing inspection reports. By contrast, the mission letter concerning audit EX/2010/10/IT, sent by the Commission to the Italian authorities by fax on 30 August 2010, shows that the Commission intended to visit the production sites of the Italian undertakings in receipt of restructuring aid, discuss inspections of measures relating to the restructuring of the sugar industry and examine selected payments.

189 Furthermore, as regards audit EX/2008/008/IT, it should be noted that on 8 April 2009, the Commission sent the Italian authorities a communication as provided for in the first subparagraph of Article 11(1) of Regulation No 885/2006, consisting of a letter and an annex, by which, pursuant to that provision, it informed the Italian authorities about the outcome of the audit, described in the relevant annex. The annex stated, among other things, that 'overall, the Eridania [Sadam] production sites in question [had] already been demolished[, that] there were still some storage silos and packaging machines in operation on site' and that 'according to the inspectors, there had been no problems so far'. However, that extract from the communication of 8 April 2009, taken from the annex thereto, refers to the statements of the technical inspectors of the Agenzia per le Erogazioni in Agricoltura (AGEA) (Agricultural payments agency, Italy) made during the Commission's visit to the administrative headquarters of the undertaking Eridania Sadam, statements that the Commission simply mentioned in its account of the outcome of audit EX/2008/008/IT, without drawing any inferences from them.

190 Moreover, the fact that, in the course of audit EX/2008/008/IT, the Commission requested inspection reports and information on the restructuring plans of two Italian undertakings involved in the restructuring programme does not lead to the conclusion that the Commission considered the question of the actual dismantling of all production facilities, including the silos at issue.

191 Secondly, within the framework of audit EX/2010/010/IT, in its observations of 2 November 2011 on the minutes of the bilateral meeting of 4 May 2011 (see paragraph 28 above), the Italian Republic expressly maintained that that audit and audit EX/2008/008/IT were separate and, in particular, that the first communication of 9 December 2010 contained no reference to audit EX/2008/008/IT or to the inspections carried out in that context and referred only to facts or circumstances determined exclusively during audit EX/2010/010/IT.

192 In the light of the foregoing, the complaint alleging breach of the principle *ne bis in idem* must be rejected.

First part of the third plea in law alleging breach of the principles of the protection of legitimate expectations, of sincere cooperation and of sound administration, and breach of the duty of care

193 The Italian Republic submits, in essence, that the Commission infringed the principles of the protection of legitimate expectations, of sincere cooperation and of sound administration and also infringed the duty of care, inasmuch as it was aware of the Italian authorities' position in relation to keeping the silos at issue in the case of full dismantling but did not raise any objections in that regard until audit EX/2010/010/IT. It claims that the inclusion for a second time of the question of the silos at issue in audit EX/2010/010/IT also constitutes a breach of the principles of sincere cooperation and of sound administration and a breach of the duty of care.

194 The French Republic argues that the Commission infringed the principle of sincere cooperation since, even though its interpretation of the concept of 'production facilities' changed over time, it failed to inform all Member States of that fact which allegedly resulted in unequal treatment between them.

195 The Commission disputes the arguments of the Italian Republic. Moreover, it contends that the arguments put forward by the French Republic in support of the complaint alleging breach of the principle of sincere cooperation amount to a plea which was not raised by the Italian Republic and which is therefore inadmissible.

196 In the first place, for the reasons set out in paragraphs 188 to 191 above, the Court must reject the Italian Republic's claim that the Commission included for a second time the question of the silos at issue in audit EX/2010/010/IT in breach of the principles of sincere cooperation and of sound administration and in breach of the duty of care.

197 In the second place, it must be recalled that under Article 4(3) TEU, pursuant to the principle of sincere cooperation, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.

198 The principle of sincere cooperation is reciprocal in nature. It obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of EU law and imposes on the EU institutions reciprocal duties of sincere cooperation with the Member States (judgments of 16 October 2003, *Ireland* v *Commission*, C-339/00, EU:C:2003:545, paragraphs 71 and 72, and of 6 November 2014, *Greece* v *Commission*, T-632/11, not published, EU:T:2014:934, paragraph 34).

199 It follows from the case-law cited in paragraph 198 above that, in the present case, it was for the Member States to ensure that any doubt as to the correct application of the relevant legislation was removed, where appropriate by asking the Commission whether restructuring aid for full dismantling could be granted to undertakings that intended to keep the silos, all the more so since, under Article 5 of Regulation No 320/2006, the decision on whether to grant restructuring aid lies with the Member State to which such an aid application has been submitted.

200 If there were doubts as to the correct application of the relevant legislation, the onus was therefore on the Italian Republic to make enquiries with the Commission.

201 However, it is not apparent from the documents in the case that the Italian Republic expressly asked the Commission whether it was possible to keep the silos at issue and qualify for restructuring aid for full dismantling. In particular, it must be observed that the Italian authorities did not raise that question in the fax they sent to the Commission on 22 March 2006 seeking clarification on the interpretation of draft Regulation No 968/2006 as regards, inter alia, full dismantling. The conciliation body's report of 10 February 2013 (see paragraph 30 above) also confirms that the Italian Republic was not one of the six Member States which submitted specific questions concerning the inclusion of silos in dismantling operations.

202 Therefore, contrary to the Italian Republic's assertions, the Commission was not required to inform it of its position on the dismantling of the silos at issue before audit EX/2010/010/IT.

203 In view of the above, the Court must also reject the French Republic's line of argument, mentioned in paragraph 194 above, since, in accordance with the principle of sincere cooperation, the Commission could not be required to inform all Member States of its position on the dismantling of silos.

204 Finally, the fifth paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of Article 53 thereof, provides that an application to intervene must be limited to supporting the form of order sought by one of the parties. Furthermore, Article 145(2) of the Rules of Procedure provides that the statement in intervention is to contain, in particular, a statement of the form of order sought by the intervener in support of, in whole or in part, the form of order sought by one of the parties, as well as the pleas in law and arguments relied on by the intervener.

205 According to the case-law, those provisions give the intervener the right to set out arguments as well as pleas independently, in so far as they support the form of order sought by one of the main parties and are not entirely unconnected with the issues underlying the dispute, as established by the applicant and defendant, which would result in a change in the subject matter of the dispute (see judgments of 20 September 2011, *Regione autonoma della Sardegna and Others* v *Commission*, T-394/08, T-408/08, T-453/08 and T-454/08, EU:T:2011:493, paragraphs 41 and 42 and the case-law cited, and of 14 January 2016, *Doux* v *Commission*, T-434/13, not published, EU:T:2016:7, paragraph 74 and the case-law cited).

206 In the instant case, by essentially contending that the failure to inform all Member States of the Commission's position as regards the obligation to dismantle silos in order to receive restructuring aid for full dismantling led to unequal treatment between those Member States, the French Republic puts forward an independent plea which has no basis in either the application or the defence.

207 It follows that the plea raised by the French Republic is not connected with the subject matter of the dispute as defined by the main parties and thus alters the context of the present dispute. It must therefore be rejected as inadmissible in accordance with the case-law recalled in paragraph 205 above.

208 In the third place, concerning the principle of the protection of legitimate expectations, settled case-law shows that the right to rely on that principle extends to any operator who is in a situation in which it is clear that the EU institutions have, by giving it precise assurances, led it to entertain justified expectations. Consequently, regardless of the form in which it is communicated, information that is precise, unconditional and consistent which comes from an authorised and reliable source constitutes such assurances. However, a person may not plead breach of that principle unless he has been given precise assurances by the authorities (see judgments of 12 September 2012, *Greece* v *Commission*, T-356/08, not published, EU:T:2012:418, paragraph 108 and the case-law cited, and of 12 November 2015, *Italy* v *Commission*, T-255/13, not published, EU:T:2015:838, paragraph 143 and the case-law cited).

209 In the present case, it is clear that the Italian Republic failed to demonstrate that it received specific assurances from the Commission concerning the possibility of keeping the silos at issue in the case of full dismantling.

210 Firstly, the fact that the Commission did not object to the retention of the silos at issue during audit EX/2008/008/IT cannot be treated in the same way as a position taken by the institution approving the Italian authorities' interpretation of the relevant legislation. Only an explicit and clear statement by the Commission would have enabled them to conclude that that institution had approved the retention of the silos at issue (see, to that effect and by analogy, judgment of 14 December 2011, *Spain* v *Commission*, T-106/10, not published, EU:T:2011:740, paragraph 69 and the case-law cited).

211 Secondly, contrary to the Italian Republic's assertions, it is apparent from paragraph 189 above that, during audit EX/2008/008/IT, the Commission did not find that there were silos at the production sites of some Italian undertakings and simply took note of the information provided in that regard by AGEA's technical inspectors. Moreover, it should be recalled that the implementation of the restructuring scheme was still ongoing at that time and, therefore, the retention of silos was not unlawful (see paragraph 74 above).

212 Thirdly, no precise assurances within the meaning of the case-law referred to in paragraph 208 above were generated by the fact, on which the Italian Republic relies, that the Commission did not express any objections when it received a copy of the restructuring plans adopted by the aid beneficiaries, as approved by the Italian authorities, from which it was apparent that the intention was to keep the silos at issue.

213 The absence of objections by the Commission is not, within the meaning of the case-law recalled in paragraph 210 above, an explicit and clear statement that it approved the retention of the silos at issue. It should also be recalled that, under Article 5 of Regulation No 320/2006, the decision on whether to grant restructuring aid is for the Member States, not the Commission. Furthermore, it is clear from Article 9 of Regulation No 968/2006 that the Member States alone are responsible for assessing the admissibility of applications for restructuring aid and for checking that the restructuring plans satisfy all the conditions listed in paragraph 2 of that article. Finally, it should be noted, as the Commission does, that pursuant to Article 10(4) and the third subparagraph of Article 11(2) of Regulation No 968/2006, the Commission must receive a copy of the restructuring plans approved by the Member States but it is not required to comment on those plans.

214 At the hearing, the Commission explained that when it received restructuring plans, it would carry out a check for 'statistical' purposes, understood in the economic sense, which essentially sought to determine the impact of the concerned undertaking's restructuring on the reduction of quotas and the budgets to be implemented. By contrast, the question of whether the restructuring was implemented in accordance with the relevant legislation was assessed at a second stage, namely after implementation of the measures set out in the restructuring plan.

215 Consequently, the complaint alleging breach of the principle of the protection of legitimate expectations must be rejected.

216 In the fourth and last place, the Italian Republic pleads breach of the principle of sound administration and the duty of care on the ground, in essence, that prior to audit EX/2010/010/IT, the Commission was aware that the Italian undertakings in receipt of restructuring aid for full dismantling intended to keep the silos at issue, but raised no objections before the first communication of 9 December 2010.

217 It should be noted that the guarantees afforded by the European Union legal order in administrative proceedings include, in particular, the principle of sound administration, enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1), which entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 76 and the case-law cited).

218 The principle of sound administration also entails the duty of care of the administration (Opinion of Advocate General Van Gerven in *Nölle*, C-16/90, EU:C:1991:233, point 28). Specifically, it has been held that the duty of care implies, in particular, that when the administration takes a decision concerning the situation of an official or other staff member, it should take into consideration all the factors which may affect its decision, and, when doing so, it must take into account not only the interests of the service but also those of the official concerned (see judgment of 5 December 2006, *Angelidis* v *Parliament*, T-416/03, EU:T:2006:375, paragraph 117 and the case-law cited).

219 In the present case, first, it is not apparent from the documents before the Court that, prior to audit EX/2010/010/IT, the Commission examined the question of the actual dismantling of all production facilities by the Italian undertakings participating in the restructuring scheme (see paragraphs 188 to 190 above). In that respect, it should be noted that prior to audit EX/2010/010/IT, the retention of silos was not unlawful because the implementation of the restructuring scheme was still ongoing (see paragraph 211 above). Secondly, contrary to the Italian Republic's assertions, it has not been established that, prior to audit EX/2010/010/IT, the Commission knew that the Italian undertakings in receipt of restructuring aid for full dismantling intended to keep the silos after completion of the dismantling operations. Thirdly, if there were doubts as to the correct application of the relevant legislation, the onus was on the Italian Republic to make enquiries with the Commission, which it did not do (see paragraphs 199 to 201 above). Accordingly, the Commission cannot be criticised for having informed the Italian authorities of its position on the dismantling of the silos at issue for the first time in the first communication of 9 December 2010. The Italian Republic has thus not established the existence of a breach of the principle of sound administration and the duty of care.

220 In the light of all the foregoing, the first part of the third plea and, therefore, the third plea in its entirety must be rejected.

Fourth plea in law: infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005, of the second subparagraph of Article 11(3), of Chapter 3 of Regulation No 885/2006 and of the guidelines of the Commission set out in Document VI/5330/97, and breach of the obligation to state reasons

221 The fourth plea can essentially be divided into two parts alleging, first, breach of the obligation to state reasons, infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005 and of the second subparagraph of Article 11(3), and of Chapter 3 of Regulation No 885/2006, and failure to consider the position of the conciliation body, and, secondly, infringement of the guidelines of the Commission set out in Document VI/5330/97.

First part of the fourth plea in law alleging, in essence, breach of the obligation to state reasons, infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005 and of the second subparagraph of Article 11(3), and of Chapter 3 of Regulation No 885/2006, and failure to consider the position of the conciliation body

222 The Italian Republic essentially submits that the contested decision infringes the second subparagraph of Article 31(3) of Regulation No 1290/2005, the second subparagraph of Article 11(3), and Chapter 3 of Regulation No 885/2006. It also pleads, in essence, failure to consider the position of the conciliation body and failure to state reasons in the contested decision in that regard.

223 The Commission disputes the arguments of the Italian Republic.

224 In the first place, concerning the alleged infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005, of the second subparagraph of Article 11(3), and of Chapter 3 of Regulation No 885/2006, it should be pointed out, as the Commission does, that the Italian Republic merely asserts that such infringements were committed without substantiating its assertions.

225 However, under Article 76(d) of the Rules of Procedure, the application must state, in addition to the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas, which is lacking in this case.

226 Consequently, the Italian Republic's complaint alleging infringement of the second subparagraph of Article 31(3) of Regulation No 1290/2005, of the second subparagraph of Article 11(3), and of Chapter 3 of Regulation No 885/2006 must be dismissed as inadmissible.

227 In the second place, as regards the complaint alleging that the Commission failed to consider the position of the conciliation body set out in its report, it should be recalled that, under Article 31(3) of Regulation No 1290/2005:

'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.'

228 It follows from that provision that, before taking a decision to refuse financing, the Commission is required only to 'examine' the conciliation body's report and, therefore, is not bound by it.

229 Moreover, in the instant case, it is apparent from the conciliation body's report of 10 February 2013 that, given the problems in interpreting the relevant legislation which the Commission itself had experienced, the conciliation body invited the Commission to consider reducing or not applying any financial correction, in accordance with Document VI/5330/97.

230 However, in its letter of 28 March 2014 sent to the Italian authorities following the judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Commission essentially ruled out the possibility of reducing or not applying any correction on account of problems in interpreting the relevant legislation, arguing, in particular, that most of the 23 Member States which participated in the scheme for the restructuring of the sugar industry had clearly interpreted that legislation as requiring the dismantling of silos and, therefore, the relevant legislation did not raise any problems of interpretation.

231 In so doing, the Commission therefore implicitly but necessarily took a position on the opinion expressed by the conciliation body in its report.

232 Lastly, contrary to the Italian Republic's claims, an adequate statement of reasons may consist in the verbatim reproduction of comments already made by the Commission.

233 Therefore, the Italian Republic is not justified in pleading either a failure to consider the position of the conciliation body or that the statement of reasons in the contested decision concerning that position was inadequate.

234 In the light of the foregoing, the first part of the fourth plea must be rejected.

Second part of the fourth plea alleging infringement of the guidelines set out in Document VI/5330/97

235 The Italian Republic, supported by the French Republic and Hungary, complains that the Commission infringed the guidelines set out in Document VI/5330/97 on the ground, in essence, that in the light of, first, the objective difficulties in interpreting the relevant legislation as regards the retention of silos in the case of full dismantling and, secondly, the immediate adoption by the Italian authorities of measures to correct the irregularities found by the Commission, the Commission should have reduced the amount of the financial correction relating to the restructuring of the sugar industry or should not

have made any correction at all, in accordance with the guidelines set out in Document VI/5330/97. The Italian Republic states that that approach would also have been in line with the principles of equity and sound administration.

236 The Commission disputes the arguments of the Italian Republic.

237 According to Annex 2 to Document VI/5330/97, entitled 'Financial consequences, within the framework of the clearance of accounts of the Guarantee Section of the EAGGF, of deficiencies in controls carried out by the Member States', financial corrections must be applied when the Commission finds that Member States have not carried out the controls specifically required by the applicable regulations or, in any event, the controls that are essential to ensure the regularity of expenditure under the Guarantee Section of the EAGGF.

238 The second paragraph under the heading 'Borderline cases' in Annex 2 to Document VI/5330/97 ('the borderline case provided for in Annex 2 to Document VI/5330/97') provides:

'Where the deficiencies arose from difficulties in the interpretation of Community texts, except in cases where it should reasonably be expected that the Member State raise such difficulties with the Commission, and when the national authorities took effective steps to remedy the deficiencies as soon as they were brought to light, this mitigating factor may be taken into account and a lower rate or no correction may be proposed.'

239 As a preliminary point, it should be recalled that by adopting rules of administrative conduct designed to produce external effects, such as the guidelines forming the subject matter of Document VI/5330/97, and announcing by publishing them or by notifying them to the Member States, as here, that it will henceforth apply them to the cases to which they relate, the institution in question, in this case the Commission, imposes a limit on the exercise of its own discretion and cannot depart from those rules if it is not to be found, in some circumstances, to be in breach of general principles of law, such as the principles of equal treatment, of legal certainty or of the protection of legitimate expectations. It cannot therefore be ruled out that, on certain conditions and depending on their content, such rules of conduct of general application may produce legal effects and that, in particular, the administration may not depart from them in an individual case without giving reasons that are compatible with the general principles of law, such as the principles of equal treatment or of the protection of legitimate expectations, provided that such an approach is not contrary to other superior rules of Union law (see, to that effect, judgments of 9 September 2011, *Greece* v *Commission*, T-344/05, not published, EU:T:2011:440, paragraph 192; of 16 September 2013, *Spain* v *Commission*, T-3/07, not published, EU:T:2013:473, paragraph 84 and the case-law cited; and of 10 July 2014, *Greece* v *Commission*, T-376/12, EU:T:2014:623, paragraph 106, not published).

240 In addition, it must be pointed out that the borderline case provided for in Annex 2 to Document VI/5330/97 is a weighting factor which does not automatically give rise to an entitlement that it be applied. Indeed, as evidenced by the wording of Document VI/5330/97 providing for the borderline case, its application is subject to two conditions: first, the deficiency identified by the Commission during the clearance of accounts procedure must be the result of difficulties in interpreting EU legislation, and, secondly, the national authorities must have taken the necessary steps to remedy the deficiency as soon as it was brought to light by the Commission.

241 As regards the first condition for the application of the borderline case provided for in Annex 2 to Document VI/5330/97, it should be noted, first of all, that the Italian Republic, the French Republic and Hungary argued that several Member States had experienced difficulties in interpreting Regulations No 320/2006 and No 968/2006, particularly as regards the concept of 'production facilities' and the possibility of keeping storage silos in the context of the full dismantling of a sugar production site. Moreover, the French Republic and Hungary claimed that the Commission itself had had interpretation difficulties and that its position had changed over time. Furthermore, the

conciliation body stated that the Commission had encountered interpretation difficulties since it had requested an opinion from its legal service in 2006. Finally, it must be stated that in its judgment of 14 November 2013, *SFIR and Others* (C-187/12 to C-189/12, EU:C:2013:737), the Court dealt only with the circumstances in which a silo could not be classified as a production facility subject to the dismantling obligation. It did not rule on when the use of the silos had to be assessed or on whether the dismantling obligation necessarily entailed demolition of the production facilities.

242 In the light of the circumstances referred to in paragraph 241 above, and contrary to the Commission's claims, it is clear that the relevant legislation raised problems of interpretation as regards the retention of silos in the case of full dismantling.

243 That finding is not invalidated by the Commission's argument that it has always provided completely consistent information on the silo dismantling obligation to the Member States that so requested, an argument which is unsubstantiated and, in any event, has no bearing on the finding that there were objective difficulties in interpreting the relevant legislation as regards the retention of silos in the case of full dismantling.

244 In the instant case, the first condition for the application of the borderline case provided for in Annex 2 to Document VI/5330/97 is therefore satisfied.

245 Concerning the second condition for applying the borderline case provided for in Annex 2 to Document VI/5330/97, according to which the Member State must have taken measures to correct the deficiency as soon as it was discovered, it should be noted that the Italian Republic immediately took measures to comply with the Commission's position set out in the first communication of 9 December 2010 by asking AGEA to suspend the release of securities lodged by the beneficiaries of restructuring aid pursuant to Article 16 of Regulation No 968/2006. In addition, the Italian Republic produced letters sent by AGEA to the Italian undertakings in receipt of restructuring aid stating that AGEA could not release the securities and giving them formal notice to demolish the silos by 30 September 2011.

246 The second condition for the application of the borderline case provided for in Annex 2 to Document VI/5330/97 is therefore also satisfied.

247 However, it follows from the use of the verb 'may' in the wording of the borderline case provided for in Annex 2 to Document VI/5330/97 that the Commission has discretion in its application and is therefore under no obligation to reduce or not to make any financial correction even when the conditions mentioned in paragraph 240 above are satisfied.

248 In particular, the Commission may refuse to apply the borderline case provided for in Annex 2 to Document VI/5330/97 if such application might result in a breach of the general principles of EU law, such as the principles of proportionality and equal treatment.

249 It should be pointed out that the annex to the minutes of the bilateral meeting of 4 May 2011 recalls the position upheld by the Commission at that meeting according to which, by not carrying out the dismantling, Italian sugar producers received restructuring aid for full dismantling, did not incur any expenditure in connection with the dismantling of the silos at issue and derived financial benefit from the use of those silos, whereas producers in other Member States which dismantled their storage silos had to bear all the related expenses without deriving any benefit whatsoever. The Commission thus concluded that, in accordance with the principle of equal treatment, it could not countenance the retention of the silos at issue in Italy when it had denied that right to other Member States.

250 The Commission reiterated that position in the defence, stating that the retention of the silos at issue conferred an important advantage on Italian producers compared with competitors from other Member States who had dismantled them.

251 In the light of the foregoing, the Commission was fully entitled to take the view, in essence, that absent the demolition of the silos at issue, the application of the borderline case provided for in Annex 2 to Document VI/5330/97 would have resulted in unequal treatment between Italian sugar producers and sugar producers from other Member States which had been required to demolish their silos in order to receive restructuring aid for full dismantling.

252 Accordingly, the Commission cannot be criticised for not applying the borderline case provided for in Annex 2 to Document VI/5330/97.

253 In view of the above, the second part of the fourth plea and, therefore, the fourth plea in its entirety must be rejected.

Fifth plea in law: infringement of Article 9(3) of Regulation No 883/2006, breach of the principle of equal treatment and distortion of the facts

254 The fifth plea is put forward in support of the application for annulment of the correction applied for late payment of the balance of slaughter premiums relating to claim year 2004 and can essentially be divided into three parts alleging, first, infringement of Article 9(3) of Regulation No 883/2006, secondly, breach of the principle of equal treatment and, thirdly, distortion of the facts.

First part of the fifth plea in law alleging infringement of Article 9(3) of Regulation No 883/2006

255 The Italian Republic takes issue with the Commission, in essence, for not accepting that the failure to meet the payment deadlines for the balance of slaughter premiums relating to claim year 2004 ('the disputed payments') was the result of the existence of exceptional management conditions, within the meaning of Article 9(3) of Regulation No 883/2006, which justified there being no correction in this case.

256 The Commission disputes the Italian Republic's complaint.

257 Under recital 15 of Regulation No 883/2006:

'Community agricultural legislation includes, for the EAGF, deadlines for payment of aids to beneficiaries which must be complied with by Member States. All payments effected after those deadlines, and for which the delay in payment is unjustified, must be regarded as irregular expenditure, and therefore cannot be the subject of reimbursement by the Commission. However, in order to modulate the financial impact in proportion to the delay incurred in payment, provision should be made for the Commission to graduate the reduction in the payments according to the length of delay recorded. A fixed margin must be laid down, moreover, so that reductions are not applied where the delays in payment result from legal disputes.'

258 Article 9 of Regulation No 883/2006, as amended by Commission Regulation No 451/2009 of 29 May 2009 amending Regulation No 883/2006 (OJ 2009 L 135, p. 12), provides:

'1. Expenditure effected after the payment deadlines shall be eligible for Community financing and monthly payments shall be reduced as follows:

(a) where expenditure effected after the deadlines is equal to 4% or less of the expenditure effected before the deadlines, no reduction shall be made;

(b) above the threshold of 4%, all further expenditure effected late shall be reduced in accordance with the following rules:

– for expenditure effected in the first month following the month in which the payment deadline expired, expenditure shall be reduced by 10%,

– for expenditure effected in the second month following the month in which the payment deadline expired, expenditure shall be reduced by 25%,

– for expenditure effected in the third month following the month in which the payment deadline expired, expenditure shall be reduced by 45%,

– for expenditure effected in the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 70%,

– for expenditure effected later than the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 100%;

(c) the threshold of 4% referred to in paragraphs 1(a) and 1(b) shall be 5% for payments for which the deadlines expire after 15 October 2009.

…

3. The Commission shall apply a different time scale from those laid down in paragraphs 1 and 2, and/or lower reductions or none at all, if exceptional management conditions are encountered for certain measures or if justified reasons are advanced by the Member States.

…’

259 It has been held that the financing costs chargeable to the EAGGF must be calculated on the assumption that the time limits laid down by the applicable agricultural legislation have been observed. Accordingly, when national authorities pay aid after expiry of the time limit, they are charging irregular and thus non-eligible expenditure to the EAGGF (see, to that effect and by analogy, judgments of 28 October 1999, *Italy* v *Commission*, C-253/97, EU:C:1999:527, paragraph 126, and of 12 September 2007, *Greece* v *Commission*, T-243/05, EU:T:2007:270, paragraph 116). Consequently, the Member State must organise its system of checks taking into account the time limit set for payment of aid under EU law. Moreover, the 4% or 5% threshold laid down in Article 9(1)(a) and (c) of Regulation No 883/2006 is intended precisely to give Member States the opportunity to carry out additional checks whilst stating that the number of months’ delay does not affect payments which do not exceed that threshold (see, to that effect and by analogy, judgment of 12 September 2007, *Greece* v *Commission*, T-243/05, EU:T:2007:270, paragraph 116).

260 In addition, according to the case-law, it is incumbent on the Member State to show that the conditions laid down in Article 9(3) of Regulation No 883/2006 are met, that is to say, prove that exceptional management conditions are encountered for certain measures or provide well-founded justifications. It must also be demonstrated that the delays did not exceed reasonable limits (see, to that effect and by analogy, judgments of 18 September 2003, *Greece* v *Commission*, C-331/00, EU:C:2003:472, paragraph 117; of 11 June 2009, *Greece* v *Commission*, T-33/07, not published, EU:T:2009:195, paragraph 372; and of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 136).

261 Finally, since Article 9(3) of Regulation No 883/2006 is a provision introducing a derogation, it must be interpreted narrowly (see, by analogy, judgment of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 137 and the case-law cited).

262 In the present case, the Italian Republic does not deny the existence of delays in payment. Nor does it deny that the expenditure effected late exceeds the threshold of 5% of the expenditure effected before the deadlines. It maintains, however, that the delays were justified by exceptional management conditions. According to the Italian Republic, those exceptional management conditions were characterised by the existence in Italy of a number of complex legal disputes concerning the regularity of certain expenditure incurred by it and the fact that, on account of those disputes, the Agenzia veneta per i pagamenti in agricultura (AVEPA, the paying agency for the Veneto region, Italy) had suspended all payments due to the undertakings involved in them.

263 In the first place, it should be recalled that by means of a notification from the Nucleo Antifrodi Carabinieri di Parma (Italy) (Anti-Fraud Unit of the Carabinieri, Parma, Italy), dated 7 February 2005, AVEPA and AGEA were informed of the existence of alleged fraud against the Fund, particularly in relation to special premiums for male bovines and extensification payments between 2000 and 2003 received by several Italian undertakings.

264 Following that notification, criminal proceedings were initiated against those undertakings before the Tribunale di Treviso (District Court, Treviso, Italy) and a preliminary hearing was scheduled for 2 October 2006.

265 In the light of the foregoing, AVEPA adopted a measure suspending all payments due to two undertakings involved in those criminal proceedings, in accordance with Article 33(1) of the Italian Decreto Legislativo (Legislative Decree) No 228/2001 of 18 May 2001 ('Legislative Decree No 228'), which provides: 'the procedures for payment by accredited paying agencies … shall be suspended vis-à-vis beneficiaries in respect of whom the verification and control bodies have submitted detailed information concerning the improper receipt of funds chargeable to the Community or national budget until the facts have been definitively established'.

266 At the same time, the Procura presso la Corte dei Conti per il Veneto (Public Prosecutor at the Court of Auditors, Veneto, Italy) brought accounting proceedings before the Corte dei Conti per il Veneto (Court of Auditors, Veneto, Italy) for the same facts. On 23 September 2009, that court issued a preservation order *ante causam* against the assets of the beneficiary undertakings involved and against the payments they were owed by AVEPA, except for, inter alia, the disputed payments.

267 In the light of that decision, on 19 October 2009, AVEPA resumed the payment of some amounts not covered by the preservation order *ante causam*, including the slaughter premiums relating to claim year 2004, forming the subject matter of the disputed payments.

268 It must also be stated that the Italian Republic did not claim that the disputed payments were at issue in the criminal and accounting proceedings referred to in paragraphs 264 and 266 above. On the contrary, in the context of the clearance procedure in question, it admitted that the disputed payments relating to budget lines 050302092124023, 050302102124033 and 050302992128007 were not specifically related to a judgment, while relying on the 'inseparable link' between the payments at issue in the proceedings described in paragraphs 263 to 266 above and the disputed payments.

269 In the light of the foregoing, it must be held that since the national proceedings relied on by the Italian Republic do not concern the disputed payments, the suspension of those payments is not the result of legal proceedings or a judgment but rather the result of AVEPA applying Article 33(1) of Legislative Decree No 228.

270 In the second place, it should be pointed out that the payment suspension procedure provided for in Article 33 of Legislative Decree No 228 is applied as a preventive measure. Under that procedure, the existence of irregularities may be presumed where the supervisory bodies have issued an opinion to that effect even before the facts have been definitively proven and the amounts concerned are not paid to the beneficiary unless that beneficiary is ultimately cleared. According to the case-law, such an

approach is thus, as a matter of principle, at odds with compliance with the payment deadlines (judgment of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 140).

271 It must therefore be found, as the Commission did, that, in the instant case, the procedure for suspending the disputed payments does not amount to exceptional management conditions. The payment suspension procedure provided for in Article 33 of Legislative Decree No 228 is a derogation from the payment deadlines which interferes with the proper functioning of the applicable EU rules (see, to that effect, judgment of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 142).

272 In the third place, despite the Commission's invitation, to which the conciliation body referred in its report of 6 May 2014, the Italian Republic did not adduce any evidence to prove that the 5% threshold had been exceeded exclusively on account of the payments that were challenged before the national courts.

273 The argument put forward by the Italian Republic in the reply, to the effect that, in essence, the Commission had been wrong to require it to prove that the delay in the disputed payments arose from a single judgment, must be rejected. It is clear particularly from the letter of 18 January 2012 sent by the Commission to the Italian Republic under the second subparagraph of Article 11(1) of Regulation No 885/2006 that, for the purposes of applying Article 9(3) of Regulation No 883/2006, the Commission asked the Italian authorities to demonstrate that the 4% threshold referred to in Article 9(1)(a) of Regulation No 883/2006, subsequently increased to 5% pursuant to Article 9(1)(c) of that regulation, had been exceeded on account of legal proceedings, not a single judgment. In the letter of 18 January 2012, the Commission also requested the Italian authorities for the last time to provide a copy of the judgments specifying the excess amounts for each of the following budget items: 050302092124023, 050302102124033 and 050302992128007.

274 In the fourth and last place, the complexity of the legal disputes before the District Court, Treviso, and the Court of Auditors, Veneto, coupled with the exceptional nature of the instant case, as claimed by the Italian Republic, cannot justify the delay in the disputed payments either because, as stated in paragraph 259 above, the threshold of 5% provided for in Article 9(1)(c) of Regulation No 883/2006 is intended precisely to give Member States the opportunity to carry out additional checks without the number of months' delay affecting payments which do not exceed that threshold (see also, to that effect and by analogy, judgments of 5 July 2012, *Greece* v *Commission*, T-86/08, EU:T:2012:345, paragraph 191, and of 26 September 2012, *Italy* v *Commission*, T-84/09, not published, EU:T:2012:471, paragraph 146).

275 In the light of the foregoing, the Commission did not err in finding, first, that non-compliance with the payment deadlines as a result of court proceedings had to be covered by the 5% threshold referred to in Article 9(1)(c) of Regulation No 883/2006 and, secondly, that the fact that payments were made late on account of a dispute to determine the eligibility of payments previously refused or recovered by the national authorities did not constitute an exceptional management condition within the meaning of Article 9(3) of Regulation No 883/2006, a consideration that the Commission made known to the Italian Republic by its letter of 2 July 2014 (see paragraph 41 above).

276 The first part of the fifth plea must therefore be rejected.

Second part of the fifth plea in law alleging infringement of the principle of equal treatment

277 The Italian Republic complains that the Commission infringed the principle of equal treatment in so far as it applied a correction to the disputed payments, concerning the balance of slaughter premiums relating to claim year 2004, even though the situation of those payments was similar to the situation of

late payments in respect of expenditure subject to the preservation order *ante causam* issued by the Court of Auditors, Veneto, in the amount of approximately EUR 4.4 million, to which the Commission applied no correction.

278 The Commission disputes the arguments of the Italian Republic.

279 It is settled case-law that the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified (judgments of 9 September 2004, *Spain* v *Commission*, C-304/01, EU:C:2004:495, paragraph 31; of 14 December 2004, *Swedish Match*, C-210/03, EU:C:2004:802, paragraph 70; and of 21 July 2011, *Nagy*, C-21/10, EU:C:2011:505, paragraph 47).

280 In its defence, after stating that the Italian Republic's line of argument was not clear, the Commission explained that despite the belated nature of the payments subject to the preservation order *ante causam* issued by the Court of Auditors, Veneto, those payments had not been included in the correction because of the reference to the threshold of 4% in the various budget lines under which the payments had been declared, which was not the case as regards the disputed payments.

281 Those claims are not disputed by the Italian Republic, which simply asserts that all late payments covered by the clearance procedure in question had to be justified by a general preservation need, which was reflected by the adoption by AVEPA of a measure suspending all payments due to the undertakings involved in the pending proceedings in Italy, in accordance with Article 33 of Legislative Decree No 228.

282 It is apparent from paragraphs 266 and 271 above, respectively, that the Court of Auditors, Veneto, did not include the disputed payments in the amounts subject to the preservation order *ante causam* it issued and that the payment suspension procedure provided for in Article 33 of Legislative Decree No 228 is at odds with compliance with the EU rules on payment deadlines. The Italian Republic is therefore not entitled to plead the existence of a general preservation need justifying AVEPA's suspension of the disputed payments.

283 Furthermore, the Italian Republic does not deny that the budget lines under which payments in the amount of EUR 4.4 million had been declared mentioned the threshold of 4%, whereas the margin of 5% was not mentioned in the budget lines relating to the disputed payments.

284 In the light of the foregoing, the Italian Republic has not proven that the disputed payments and the payments covered by the threshold of 4%, amounting to EUR 4.4 million, were in a comparable situation and, accordingly, that the Commission infringed the principle of equal treatment by imposing a correction only in respect of the disputed payments.

285 The second part of the fifth plea must therefore be rejected.

Third part of the fifth plea in law alleging distortion of the facts

286 The Italian Republic complains that the Commission distorted the facts. In the application, it merely states that 'in the light of the foregoing considerations, the contested decision is, as regards the part thereof which is challenged by this plea, unlawful on account of distortion of the facts'.

287 The Commission did not dispute this complaint in its written pleadings. However, at the hearing, it raised a plea of inadmissibility claiming that the complaint lacks clarity.

288 Also at the hearing, the Italian Republic argued that the plea of inadmissibility raised by the Commission was inadmissible because its lateness undermined the adversarial nature of proceedings before the Court. The Italian Republic nonetheless submitted that the Court could raise the inadmissibility of the complaint in question of its own motion at the hearing. Finally, should the Court wish to do so, the Italian Republic stated that by means of its complaint alleging distortion of the facts, it essentially sought to challenge the Commission's assessment of the factual circumstances of the case. According to the Italian Republic, the circumstances of the case justified the delay in the disputed payments.

289 It should be recalled that the EU Courts are entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies the dismissal of a complaint without a prior ruling on its admissibility (see, to that effect, judgment of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraph 52).

290 It follows from the explanations provided by the Italian Republic at the hearing, set out in paragraph 288 above, that by its complaint alleging distortion of the facts, it implicitly but necessarily claimed that the Commission committed a manifest error of assessment of the facts.

291 It is apparent from paragraphs 263 to 275 above that the factual circumstances invoked by the Italian Republic did not amount to exceptional management conditions within the meaning of Article 9(3) of Regulation No 883/2006 capable of justifying the belated nature of the disputed payments. Accordingly, the Italian Republic has no grounds for pleading that the contested decision was vitiated by a manifest error of assessment.

292 Since the third part of the fifth plea is unfounded, it must be rejected without it being necessary to rule on the pleas of inadmissibility raised at the hearing by the Commission and the Italian Republic.

293 In the light of the foregoing, the fifth plea must be rejected.

Sixth plea in law: infringement of Article 20 of Regulation No 501/2008, breach of the principle of legitimate expectations and breach of the principle that Member States are answerable for financial corrections

294 The sixth plea is put forward in support of the application for annulment of the correction applied for late payment of certain expenditure relating to information provision and promotion measures for agricultural products. The Italian Republic criticises the Commission for having imposed a financial correction on it for non-compliance with the deadline of 60 calendar days, referred to in the first paragraph of Article 20 of Regulation No 501/2008, between receipt of the applications for payment and the actual payment of certain aid relating to information provision and promotion measures for agricultural products which it had granted in the financial years 2009 and 2010. In essence, first, the Italian Republic claims that the failure to comply with the payment deadline set in the first paragraph of Article 20 of Regulation No 501/2008 is the result of the Commission services incorrectly reproducing the Italian version of the second paragraph of Article 20 of that regulation, as worded prior to the entry into force of the corrigendum published in the *Official Journal of the European Union* on 18 October 2012 (OJ 2012 L 287, p. 25) ('the contested provision'), and, therefore, it cannot be held responsible for exceeding that deadline. Accordingly, it is unreasonable for the Italian Republic to have to bear the consequences flowing from the application of the contested provision especially since, in the present case, there is no finding of loss to the EU budget. Moreover, the Italian Republic argues that its alleged error is clearly excusable. Secondly, it submits that the financial correction applied by the Commission renders the contested provision retroactive, in breach of the principle of the protection of legitimate expectations.

295 The Commission disputes the arguments of the Italian Republic.

296 Article 20 of Regulation No 501/2008 provides:

‘Member States shall make the payments referred to in Articles 18 and 19 within 60 calendar days of receipt of the application for payment.

However, this deadline may be suspended at any time in the 60-day period after the payment application is first registered by notifying the creditor contracting organisation that its application is not admissible, either because the sum is not payable, or because the application is not supported by the requisite evidence for all the additional applications, or because the Member State deems it necessary to have further information or to undertake checks. The payment period shall start running again from the date of receipt of the information requested or the date of the checks undertaken by the Member State, which must be forwarded or undertaken, as the case may be, within 30 calendar days of the notification.

…’

297 The Italian version of the second paragraph of Article 20 of Regulation No 501/2008, as worded prior to the corrigendum published in the *Official Journal of the European Union* on 18 October 2012, provided:

‘However, this deadline may be suspended at any time in the 60-day period after the payment application is first registered by notifying the creditor contracting organisation that its application is not admissible, either because the sum is not payable, or because the application is not supported by the requisite evidence for all the additional applications, or because the Member State deems it necessary to have further information or to undertake checks. The payment period shall run again from the date of receipt of the information requested or the date of the checks undertaken by the Member State, which must be forwarded or undertaken, as the case may be, within 30 calendar days of the notification.’

(‘Tale termine può tuttavia essere sospeso in qualunque momento del periodo di 60 giorni successivo alla prima registrazione della domanda di pagamento, mediante notifica all’organizzazione contraente creditrice che la domanda non è ricevibile, in quanto il credito non è esigibile oppure la domanda non è corredata dei documenti giustificativi necessari per le domande successive o lo Stato membro ritiene necessario richiedere informazioni supplementari o procedere a verifiche. Il termine decorre nuovamente a partire dalla data di ricevimento delle informazioni richieste o dalla data delle verifiche effettuate dallo Stato membro, che devono essere trasmesse o rispettivamente effettuate entro un termine di 30 giorni di calendario a decorrere dalla notifica.’)

298 The corrigendum published in the *Official Journal of the European Union* on 18 October 2012 replaced, in the contested provision, the words ‘shall run again’ (‘decorre nuovamente’) by ‘shall start running again’ (‘continua a decorrere’).

299 It is settled case-law that the need for a uniform interpretation of EU regulations makes it impossible for a given piece of legislation to be considered in isolation and requires that, in case of doubt, it should be interpreted and applied in the light of the versions existing in the other official languages (judgment of 17 October 1996, *Lubella*, C-64/95, EU:C:1996:388, paragraph 17).

300 In the first place, as regards the complaints raised by the Italian Republic alleging, in essence, that Article 20 of Regulation No 501/2008 was infringed and that the Italian authorities are not answerable for failing to comply with the payment deadline laid down in the first subparagraph of that article, it should be pointed out that the Italian version of the second paragraph of Article 20 of Regulation No 501/2008 was ambiguous inasmuch as, in the first sentence, it expressly referred to the suspension of the payment deadline set in the first subparagraph of Article 20 of that regulation (‘this deadline may be suspended’ – in Italian, ‘tale termine può … essere sospeso’), while, in the second sentence, it

appeared to refer to the interruption of that deadline ('the period shall run again from the date of receipt of the information requested or the date of the checks undertaken by the Member State' – in Italian, 'il termine decorre nuovamente a partire dalla data di ricevimento delle informazioni richieste o dalla data delle verifiche effettuate dallo Stato membro').

301 On the other hand, the Italian Republic does not dispute the Commission's contention that Article 2941 et seq. of the Italian Civil Code draws a distinction between the suspension of a deadline and its interruption, whereby interruption causes a new deadline to start running whereas, in the case of suspension, the period which elapsed before the occurrence of the ground for suspension is added to the period which starts running again after that ground has disappeared.

302 Therefore, in accordance with the case-law recalled in paragraph 299 above, the Italian Republic was not entitled to interpret the contested provision as allowing it, by sending requests for information to or conducting additional checks with the creditor contracting organisations, to interrupt the deadline laid down in the first paragraph of Article 20 of Regulation No 501/2008, without first ascertaining whether the other language versions of the contested provision confirmed its interpretation and, where appropriate, interpreting and applying that provision in the light of the versions existing in the other official languages, as well as the scheme and purpose of the rules of which it forms part (see, by analogy, judgments of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14, and of 9 January 2003, *Givane and Others*, C-257/00, EU:C:2003:8, paragraph 37).

303 In the case in point, the Italian Republic applied the contested provision, notwithstanding its ambiguity in view of the second paragraph, first sentence, of Article 20 of Regulation No 501/2008, without taking into account the other language versions of the second paragraph of Article 20 of Regulation No 501/2008, thereby making it solely responsible for the breach of the payment deadline laid down in the first paragraph of Article 20 of Regulation No 501/2008.

304 Accordingly, the complaints alleging that Article 20 of Regulation No 501/2008 was infringed and that the Italian Republic is not answerable for the payment delays must be rejected.

305 In the second place, concerning the alleged breach of the principle of the protection of legitimate expectations due to the retroactive application of the contested provision as corrected in 2012, it should be recalled that, according to the case-law, that principle may be invoked as against EU rules only to the extent to which the European Union itself has previously created a situation which could give rise to a legitimate expectation (see judgment of 15 January 2002, *Weidacher*, C-179/00, EU:C:2002:18, paragraph 31 and the case-law cited; judgment of 10 June 2009, *Poland* v *Commission*, T-257/04, EU:T:2009:182, paragraph 245).

306 In the present case, it has not been established that the European Union created a situation in which the Italian Republic believed that the contested provision was correct and legitimately expected to be able to apply it.

307 In the first place, it is apparent, in essence, from the communication of 27 April 2010, sent pursuant to the first subparagraph of Article 11(1) of Regulation No 885/2006 (see paragraph 43 above), that in two previous audits, the Commission had already identified late payment problems as regards the Italian Republic, and that since 2005, the Commission services had always explained in their correspondence with the Italian authorities how the provisions then enshrined in Article 20 of Regulation No 883/2006 had to be interpreted.

308 Thus, in reply to a measure of organisation of procedure adopted on the basis of Article 89 of the Rules of Procedure, the Commission produced a letter dated 9 February 2006, sent to the Italian Republic in an earlier audit, in which it expressly stated that 'the [payment] deadline [must] start running again as soon as the expected information is received or the check is carried out'.

309 It should be pointed out that the legislation applicable to the facts at issue in the audit mentioned in paragraph 308 above was not Article 20 of Regulation No 501/2008, but Article 12(5) of Commission Regulation (EC) No 94/2002 of 18 January 2002 laying down detailed rules for applying Council Regulation (EC) No 2826/2000 on information and promotion actions for agricultural products on the internal market (OJ 2002 L 17, p. 30). However, those two provisions are essentially identical. Under Article 12(5) of Regulation No 94/2002:

'Member States shall make the payments referred to in the previous paragraphs within 60 calendar days of receipt of the application for payment. However, that period may be interrupted at any time during the 60 days after the application for payment is first recorded as received, by notifying the contractor concerned that the application is not acceptable either because the amount is not due or because the supporting documents required for all additional applications have not been supplied or because the Member State sees the need for further information or checks. The payment period shall start running again from the date of receipt of the information requested, which must be forwarded within 30 calendar days. Except in cases of force majeure, where the above payments are made late, the amount reimbursed to the Member State shall be reduced in accordance with Article 4 of Regulation (EC) No 296/96.'

310 Therefore, it must be held that before adopting the contested decision, the Commission had informed the Italian authorities on several occasions how the 60-day deadline was to be calculated after its suspension.

311 Secondly, at the hearing, the Italian Republic confirmed that when the clearance procedure in question was initiated, it was the Italian Republic itself that notified the Commission of the translation problem affecting the contested provision. Therefore, the Italian Republic was aware of the fact that the contested provision might not be correct but nonetheless deliberately decided to apply it.

312 In the light of the foregoing, the Italian Republic cannot claim that the contested provision led it to entertain a legitimate expectation.

313 In the third and last place, the Court must reject the Italian Republic's argument that, since failure to comply with the payment deadlines did not cause loss to the EU budget, it is unreasonable for it to have to bear the consequences flowing from the application of the contested provision.

314 It is apparent from the case-law that only intervention undertaken in accordance with the provisions of EU law in the framework of the common organisation of agricultural markets is to be financed by the EAGF (see, to that effect and by analogy, judgment of 24 February 2005, *Greece* v *Commission*, C-300/02, EU:C:2005:103, paragraph 32 and the case-law cited).

315 EU legislation requires Member States to comply with the payment deadline laid down in Article 20 of Regulation No 501/2008, on pain of financial penalties.

316 First of all, it follows from recital 15 of Regulation No 883/2006, set out in paragraph 257 above, that all payments effected after the deadlines established by EU legislation for the payment of aid to beneficiaries, and for which the delay in payment is unjustified, must be regarded as irregular expenditure which, therefore, should not be the subject of reimbursement by the Commission.

317 Furthermore, the third paragraph of Article 20 of Regulation No 501/2008 provides that 'except in cases of force majeure, where the payments are made late the amount of the monthly advance paid by the Commission to the Member State shall be reduced in accordance with Article 9 of Regulation … No 883/2006'.

318 Finally, recital 19 of Regulation No 501/2008 states that, 'to comply with budget management requirements, it is essential that a financial penalty be laid down for … late payment by Member States'.

319 In the light of the foregoing, the Italian Republic's failure to comply with the payment deadline laid down in the first paragraph of Article 20 of Regulation No 501/2008 infringes EU legislation and is sufficient to render the expenditure irregular and thus non-eligible, without there being any need to establish the existence of loss to the Fund.

320 Accordingly, the sixth plea must be rejected.

321 Since none of the pleas in law relied on by the Italian Republic is well founded, the action must be dismissed in its entirety.

Costs

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

323 Since the Italian Republic has been unsuccessful, it is ordered to bear its own costs and pay those incurred by the Commission.

324 Finally, under Article 138(1) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs.

325 Consequently, the French Republic and Hungary shall bear their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

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

3. **Orders the French Republic and Hungary to bear their own costs.**

Kanninen Schwarcz Iliopoulos

Delivered in open court in Luxembourg on 12 March 2019.

[Signatures]

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