



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 December 2015 *

(Appeal — Regional policy — Regional operational programme (ROP) Puglia (Italy) covered by objective No 1 (2000-2006) — Reduction of the Community financial assistance initially granted by the European Regional Development Fund)

In Case C-280/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 June 2014,

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

the other party to the proceedings being:

European Commission, represented by D. Recchia and A. Steiblytė, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas, E. Juhász and C. Vajda, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 13 May 2015,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its appeal, the Italian Republic seeks to have set aside the judgment of the General Court of the European Union of 28 March 2014 in *Italy v Commission* (T-117/10, EU:T:2014:165, ‘the judgment under appeal’), by which the General Court dismissed its action for annulment of Commission

* Language of the case: Italian.

Decision C(2009) 10350 final of 22 December 2009 reducing the financial assistance from the European Regional Development Fund awarded to the Italian Republic pursuant to Commission Decision C(2000) 2349 of 8 August 2000 approving the regional operational programme ROP Puglia, in respect of the period 2000-2006, under objective No 1 ('the decision at issue').

Legal context

- 2 Article 38(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) provides as follows:

'Without prejudice to the Commission's responsibility for implementing the general budget of the European Communities, Member States shall take responsibility in the first instance for the financial control of assistance. To that end, the measures they take shall include:

- (a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly;
- (b) providing the Commission with a description of these arrangements;
- (c) ensuring that assistance is managed in accordance with all the applicable Community rules and that the funds placed at their disposal are used in accordance with the principles of sound financial management;

...'

- 3 According to Article 39(1) to (3) of Regulation No 1260/1999:

'1. The Member States shall, in the first instance, bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or conditions for the implementation or supervision of assistance and making the financial corrections required.

The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made by the Member State shall consist in cancelling all or part of the Community contribution. ...

2. If, after completing the necessary verifications, the Commission concludes that:

...

- (c) there are serious failings in the management or control systems which could lead to systemic irregularities;

the Commission shall suspend the interim payments in question and, stating its reasons, request that the Member State submit its comments and, where appropriate, carry out any corrections, within a specified period of time.

If the Member State objects to the observations made by the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership make efforts to reach an agreement about the observations and the conclusions to be drawn from them.

3. At the end of the period set by the Commission, the Commission may, if no agreement has been reached and the Member State has not made the corrections and taking account of any comments made by the Member State, decide within three months to:

...

(b) make the financial corrections required by cancelling all or part of the contribution of the Funds to the assistance concerned.

The Commission shall when deciding the amount of a correction take account, in compliance with the principle of proportionality, of the type of irregularity or change and the extent and financial implications of the shortcomings found in the management or control systems of the Member States.

...'

- 4 Article 4 of Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21) provides:

'Management and control systems shall include procedures to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to ensure compliance with the terms of the relevant Commission decision under Article 28 of Regulation ... No 1260/1999 and with applicable national and Community rules ...

The procedures shall require the recording of verifications of individual operations on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies. Where any physical or administrative verifications are not exhaustive, but performed on a sample of operations, the records shall identify the operations selected and describe the sampling method.'

- 5 Article 8 of Regulation No 438/2001 is worded as follows:

'The managing or paying authority shall keep an account of amounts recoverable from payments of Community assistance already made, and ensure that the amounts are recovered without unjustified delay. After recovery, the paying authority shall repay the irregular payments recovered, together with interest received on account of late payment, by deducting the amounts concerned from its next statement of expenditure and request for payment to the Commission, or, if this is insufficient, by effecting a refund to the Community. ...'

- 6 Article 9 of Regulation No 438/2001, which is entitled 'Certification of expenditure', provides that certificates relating to statements of interim and final expenditure are to be drawn up by a person or department within the paying authority that is functionally independent of any services that approve claims. That article also specifies, inter alia, the checks which that authority must carry out before certifying such statements of expenditure.

- 7 Article 10 of that regulation, entitled 'Sample checks on operations', provides:

'1. Member States shall organise checks on operations on an appropriate sampling basis, designed in particular to:

- (a) verify the effectiveness of the management and control systems in place;
- (b) verify selectively, on the basis of risk analysis, expenditure declarations made at the various levels concerned.

2. The checks carried out before the winding-up of each assistance shall cover at least 5% of the total eligible expenditure and be based on a representative sample of the operations approved, taking account of the requirements of paragraph 3. Member States shall seek to spread the implementation of the checks evenly over the period concerned. They shall ensure an appropriate separation of tasks as between such checks and implementation or payment procedures concerning operations.

3. The selection of the sample of operations to be checked shall take into account:

- (a) the need to check an appropriate mix of types and sizes of operations;
- (b) any risk factors which have been identified by national or Community checks;
- (c) the concentration of operations under certain intermediate bodies or certain final beneficiaries, so that the main intermediate bodies and final beneficiaries are checked at least once before the winding-up of each assistance.'

Background to the dispute

- 8 By Decision C(2000) 2349 of 8 August 2000, the Commission approved the regional operation programme (ROP) Puglia, for the period 2000-2006, under Objective No 1 ('the Puglia ROP programme') and made EUR 1 721 827 000 available to the Italian authorities from the European Regional Development Fund (ERDF).
- 9 In 2007, the Commission carried out audits of the management and control systems set up by the authorities responsible for that programme and concluded that those authorities had not established management and control systems that ensured sound financial management of the assistance from the ERDF and that the systems that had been put in place did not provide adequate assurance of the correctness, regularity and eligibility of payment claims.
- 10 Taking the view that the Italian Republic had not fulfilled its obligations under Articles 4 and 8 to 10 of Regulation No 438/2001 and that the failings identified in the management and control systems were liable to lead to systemic irregularities, the Commission suspended, by Decision C(2008) 3340 of 1 July 2008, the interim payments from the ERDF for the Puglia ROP programme. The Commission set a three-month period for the Italian Republic to carry out checks and make the necessary corrections in order to ensure that only eligible expenditure was covered by the ERDF contribution.
- 11 In the course of an audit carried out in January 2009, the Commission found that the requirements laid down in that decision had not been complied with within the periods prescribed. The EU auditors unearthed a number of irregularities so far as concerned (i) the checks undertaken by the managing authority under Article 4 of Regulation No 438/2001 ('the first-level checks'), (ii) the functioning of the paying authority and (iii) the checks carried out by the supervisory body under Article 10 of Regulation No 438/2001 ('the second-level checks'). The Commission concluded that there was no reasonable assurance that the management and control systems of the Puglia ROP programme could effectively ensure that the expenditure declared, for the period from the start of the programming period to the date on which interim payments were suspended, was lawful, correct and accurate.
- 12 By a letter of 3 April 2009, the Commission informed the Italian authorities of its conclusions, telling them that it intended to propose a financial correction to the ERDF financial assistance at a rate of 10%, taking account of the expenditure that had, as at the date on which interim payments were suspended, been declared under the programme concerned. The Italian Republic objected to the application of that flat-rate correction and requested that the suspension of interim payments be lifted. Pursuant to Article 39(2) of Regulation No 1260/1999, a hearing was held on 30 September 2009.

- 13 By the decision at issue, the Commission reduced the financial assistance granted from the ERDF to the Puglia ROP programme for the period 2000-2006, applying a flat-rate 10% correction to expenditure certified up to the date on which interim payments were suspended. Under Article 1 of that decision, the assistance allocated under the ERDF was reduced by EUR 79335741.11.

Proceedings before the General Court and the judgment under appeal

- 14 By application lodged at the Registry of the General Court on 5 March 2010, the Italian Republic brought an action for annulment of the decision at issue.
- 15 In support of its action, the Italian Republic put forward four pleas in law. The first and second pleas alleged distortion of the facts and infringement of Article 39(2)(c) and (3) of Regulation No 1260/1999 as regards the first-level checks, the functioning of the paying authority and the second-level checks. By its third plea, the Italian Republic alleged failure to state the reasons and infringement of Article 39(2) and (3) of Regulation No 1260/1999. The fourth plea alleged infringement of Article 12 of Regulation No 1260/1999 and of the first paragraph of Article 4 of Regulation No 438/2001 and lack of competence on the part of the Commission.
- 16 By the judgment under appeal, the General Court dismissed the Italian Republic's action.

Forms of order sought by the parties

- 17 The Italian Republic claims that the Court should:
- set aside the judgment under appeal;
 - annul the decision at issue, pursuant to Article 61 of the Statute of the Court of Justice of the European Union, and
 - order the Commission to pay the costs.
- 18 The Commission contends that the Court should dismiss the appeal and order the Italian Republic to pay the costs.

The appeal

- 19 The Italian Republic has put forward three grounds of appeal.

First ground of appeal

Arguments of the parties

- 20 By its first ground of appeal, the Italian Republic submits that, in paragraph 37 and paragraph 50 et seq. of the judgment under appeal, the General Court disregarded the adversarial principle and the obligation to state the grounds for its judgment in so far as it examined together the first and second pleas relating to the efficacy and reliability of, on the one hand, the first-level checks carried out by the managing authority and the paying authority and, on the other, the second-level checks undertaken by the supervisory body.

- 21 The Italian Republic maintains that, by virtue of the adversarial principle, the General Court was obliged to examine those two pleas in law separately since they entailed different questions of fact which related to the work of separate bodies and to very different irregularities, which had been identified in the decision at issue. Moreover, in examining those two pleas together, the General Court automatically transferred to one of those pleas the reasoning applied to the other.
- 22 The Italian Republic argues that, in examining the first and second pleas together, the General Court also infringed its obligation to state the grounds for its decisions. It failed to explain in a manner as thorough as was the case of the originating application the reasons why it considered unfounded the arguments which the Italian Republic had put forward to challenge each of the irregularities that formed, as a whole, the basis for the decision at issue.
- 23 The Commission disputes the merits of the appellant's arguments.

Findings of the Court

- 24 According to the Court's case-law, the adversarial principle entails, as a general rule, the parties to proceedings being given an opportunity to state their views on the facts and documents on which a judicial decision will be based, and to discuss the evidence and observations submitted to the court and the points of law which the court has raised of its own motion and on which it proposes to base its decision (judgments in *Commission v Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraphs 52 and 55, and Review of *M v EMEA*, C-197/09 RX-II, EU:C:2009:804, paragraph 41).
- 25 In that regard, the Court finds that the Italian Republic had the opportunity properly to state its view before the General Court on the irregularities identified in the decision at issue so far as concerns the first-level checks, the functioning of the paying authority and the second-level checks. Furthermore, it is clear, in particular from paragraphs 40, 48 and 60 to 66 of the judgment under appeal, that the General Court also took into account the arguments which the Italian Republic put forward to deny that those irregularities actually existed.
- 26 As regards the obligation to state the grounds, the General Court cannot be criticised for having failed to address all the details of the arguments put forward by the Italian Republic to challenge the irregularities identified in the decision at issue. It is settled case-law that the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may also be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (judgments in *Coop de France bétail et viande and Others v Commission*, C-101/07 P and C-110/07 P, EU:C:2008:741, paragraph 75 and the case-law cited; *A2A v Commission*, C-318/09 P, EU:C:2011:856, paragraph 97; and *France v Commission*, C-559/12 P, EU:C:2014:217, paragraph 86).
- 27 In the present case, the reasoning in paragraphs 69 to 77 and 79 to 92 of the judgment under appeal is such as (i) to enable the Italian Republic to understand the reasons why the General Court rejected all the arguments that it put forward to deny that there were delays in the performance of the first- and second-level checks, that the proposed corrections could not be relied on and that the paying authority was not functioning properly and (ii) to enable the Court to exercise its power of review. The General Court also explained, in paragraphs 60 to 63 of the judgment under appeal, the reasons which prompted it not to rule upon the alleged non-existence of each of the specific irregularities which the EU auditors had identified, in January 2009, in connection with the first- and second-level checks. Accordingly, the Court must also reject as unfounded the argument that the General Court infringed its obligation to state the grounds for its decision.

- 28 As regards the objection that the General Court applied the same reasoning to different questions of law and of fact, it must be stated that that objection is based on an obvious misreading of the judgment under appeal. Contrary to what is maintained by the Italian Republic, the General Court undertook a detailed and separate assessment of (i) the questions of fact and of law relating to the first-level checks (paragraphs 69 to 71 and 79 to 81 of the judgment under appeal), (ii) the questions relating to the second-level checks (paragraphs 72 to 77 and 82 to 87 of that judgment) and (iii) the questions pertaining to the paying authority (paragraphs 88 to 92 of the judgment).
- 29 The first ground of appeal must therefore be rejected as unfounded.

Second and third grounds of appeal

Arguments of the parties

- 30 Despite the somewhat unstructured nature of the reasoning, the second ground of appeal may be understood as being divided into four parts.
- 31 By the first part of this ground of appeal, the Italian Republic maintains that the General Court, in paragraphs 40, 63 and 88 to 93 of the judgment under appeal, distorted the facts and evidence before it. The Italian Republic submits that, as a result of the distortion affecting those paragraphs of the judgment under appeal, the General Court also infringed Article 39 of Regulation No 1260/1999, Article 9 of Regulation No 438/2001 and the principles of proportionality and partnership.
- 32 In the second part of this ground of appeal, the Italian Republic argues that the General Court erred in holding, in paragraphs 60 to 63 of the judgment under appeal, that it was not necessary to examine the evidence produced to support the assertion that the irregularities identified by the EU auditors in a sample of first-level checks that was audited in January 2009 did not actually exist. The Italian Republic argues that it follows from point 40 of the grounds of the decision at issue, which emphasises the fact that the Italian authorities had not corrected those irregularities, that the Commission in fact took them into account in the decision at issue. Moreover, the General Court itself, in paragraphs 78 to 81 of the judgment under appeal, took those alleged irregularities into account in finding that the first-level checks could not be relied on.
- 33 The Italian Republic submits that in the absence of any proof of the existence of the specific irregularities relating to the first-level checks, which were identified by the Commission in January 2009, the General Court should have found that the decision at issue infringed Article 39(2) and (3) of Regulation No 1260/1999 and, in particular, that the 10% flat-rate correction was manifestly disproportionate.
- 34 By the third part of the second ground of appeal, the Italian Republic maintains that the decision at issue is contrary to the principles of proportionality and partnership, which are entrenched in Article 39 of Regulation No 1260/1999, inasmuch as that decision imposes a 10% flat-rate correction also in respect of irregularities relating to awards of additional works or of engineering services carried out, although the Italian authorities had proposed flat-rate corrections of 25% in respect of those irregularities. Thus, the General Court was not entitled merely to state, in paragraph 60 of the judgment under appeal, that those corrections had been taken into consideration by the Commission in the calculation of the final reduction in the ERDF assistance.
- 35 Finally, by the fourth part of this ground of appeal, the Italian Republic pleads infringement of Article 4 of Regulation No 438/2001 and of the principles relating to the burden of proof.
- 36 The third ground of appeal may be understood as being divided into four parts.

- 37 The first part of this ground of appeal alleges that paragraphs 72 to 74 of the judgment under appeal are vitiated by a distortion of the facts and evidence. The Italian Republic submits that the consequence of that distortion is that the General Court also infringed Article 39 of Regulation No 1260/1999, the principles of proportionality and partnership and Article 10 of Regulation No 438/2001.
- 38 By the second part of this ground of appeal, the Italian Republic argues that the General Court infringed Article 10 of Regulation No 438/2001 in holding that the second-level checks had to have reached the rate of checking provided for in that article before the winding-up of the programme concerned. It maintains that it follows from the very wording of Article 10 — which provides that the second-level checks are to cover at least 5% of the certified expenditure ‘before the winding-up of each assistance’ — that the system of second-level checks must be evaluated above all at the time of such winding-up.
- 39 Furthermore, in the framework of the third part of this ground of appeal, the Italian Republic takes issue with the General Court for having held, in paragraphs 84 to 86 of the judgment under appeal, that the argument that the corrections arising from the second-level checks amounted to EUR 59 186 909, rather than to EUR 309 509 78.33, was ineffective because the Commission had taken all the corrections into account in its determination of the total amount of EUR 956 720 43.08 for corrections arising from the first and second-level checks.
- 40 The fourth part of the third ground of appeal concerns an infringement of the principles relating to the burden of proof.
- 41 The Commission contends that the second and third grounds of appeal are inadmissible since, given that they amount to no more than a restatement of the arguments raised before the General Court, they in fact seek a second assessment of the substance of the case, this time by the Court of Justice. In any event, these grounds of appeal are, in the Commission’s view, wholly unfounded.

Findings of the Court

– Admissibility of the second and third grounds of appeal

- 42 It should be recalled that, according to settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 168(1)(d) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, *inter alia*, judgments in *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraph 43, and *Ezz and Others v Council*, C-220/14 P, EU:C:2015:147, paragraph 111 and the case-law cited). In this regard, Article 169(2) of the Rules of Procedure specifies that the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested.
- 43 Accordingly, an appeal which merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court does not satisfy the requirements to state reasons under those provisions. However, the points of law examined at first instance may be argued again in the course of an appeal, provided that the appellant challenges the interpretation or application of EU law by the General Court. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see, to that effect, judgments in *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 46 and 47, and *Spain v Commission*, C-197/13 P, EU:C:2014:2157, paragraphs 44 and 45 and the case-law cited).

- 44 As regards the objection to admissibility raised by the Commission, it should be noted that, by its second and third grounds of appeal, the Italian Republic does not seek a mere re-examination of the action brought before the General Court, but challenges findings made by the latter in specific paragraphs of the judgment under appeal, which it considers to be vitiated both by a distortion of the facts and evidence and by other errors of law. Thus, contrary to what has been argued by the Commission, the second and third grounds of appeal do not simply repeat arguments already made at first instance but are in fact directed against a substantial part of the reasoning of the judgment under appeal and thus enable the Court to carry out its review.
- 45 The Commission's objection to admissibility must accordingly be rejected.
- 46 As regards the infringement of Article 4 of Regulation No 438/2001, which is mentioned in the fourth part of the second ground of appeal, and the infringement of the principles relating to the burden of proof, which is mentioned both in the fourth part of the second ground of appeal and in the fourth part of the third ground of appeal, it should be observed that, although the Italian Republic refers to those errors of law in the title preceding the arguments relating to its second and third grounds of appeal, those arguments do not contain any particulars as to the paragraphs of the judgment under appeal that are allegedly vitiated by those errors of law, nor any reasoning intended to establish in what respect the General Court made such errors. Those parts of the second and third grounds of appeal are therefore inadmissible.
- 47 As regards the third part of the third ground of appeal, although the Italian Republic criticises the findings made in paragraphs 84 to 86 of the judgment under appeal on a ground other than distortion of the facts, it should be noted that it nevertheless does not indicate the principle or rule of law which the General Court is said to have infringed in holding that the legality of the decision at issue was not affected by any error that the Commission may have made with regard to the identification of certain corrections proposed by the Italian authorities as corrections arising from the second-level checks, given that the Commission had taken account of all those corrections in the decision at issue.
- 48 Accordingly, the fourth part of the second ground of appeal, the third part of the third ground of appeal, in so far as it does not allege distortion of the facts, and the fourth part of the third ground of appeal, must be rejected as inadmissible.
- 49 Moreover, as regards the arguments whereby the Italian Republic criticises the General Court on the ground that the latter distorted the clear sense of a letter of 15 June 2009, the Court notes that the appellant does not identify the paragraphs of the judgment under appeal that are concerned by its criticisms. Those arguments must also be rejected as inadmissible.
- Substance of the first part of the second ground of appeal and of the first and third parts of the third ground of appeal
- 50 By the first part of the second ground of appeal and the first and third parts of the third ground of appeal, which it is appropriate to consider together, the Italian Republic maintains that the findings in paragraphs 40, 63, 72 to 74, 84 to 86 and 88 to 93 of the judgment under appeal show that its action was not properly understood and are vitiated by distortion of the facts and evidence. The Italian Republic submits that, as a result of that distortion, the General Court also infringed Article 39 of Regulation No 1260/1999, Articles 9 and 10 of Regulation No 438/2001, and the principles of proportionality and partnership.
- 51 It should be recalled that it follows from the second subparagraph of Article 256(1) TFEU and from the first paragraph of Article 58 of the Statute of the Court of Justice that the General Court has exclusive jurisdiction to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess those facts (see judgment in *Commission*

v *Aalberts Industries and Others*, C-287/11 P, EU:C:2013:445, paragraph 47 and the case-law cited). That assessment thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (see judgments in *Lafarge v Commission*, C-413/08 P, EU:C:2010:346, paragraph 15, and *Activision Blizzard Germany v Commission*, C-260/09 P, EU:C:2011:62, paragraph 51 and the case-law cited).

- 52 There is such distortion where, without recourse to new evidence, the assessment of the existing evidence is clearly incorrect (judgment in *Comitato 'Venezia vuole vivere' and Others v Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 153 and the case-law cited). However, such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment in *General Motors v Commission*, C-551/03 P, EU:C:2006:229, paragraph 54). Moreover, where an appellant alleges distortion of the evidence by the General Court, he must indicate precisely the evidence alleged to have been distorted by that Court and show the errors of appraisal which, in his view, led to that distortion (see, to that effect, *Aalborg Portland and Others v Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 50, and *PepsiCo v Grupo Promer Mon Graphic*, C-281/10 P, EU:C:2011:679, paragraph 78).
- 53 The Court finds that the arguments directed against paragraphs 40, 63 and 72 of the judgment under appeal are based on a clear misreading of that judgment. As regards paragraphs 40 and 72, there are no grounds for maintaining that the General Court misconstrued the originating application by proceeding on the basis that the Italian Republic was not challenging any of the irregularities identified in a sample of first- and second-level checks which was audited in January 2009 or that it was challenging only some of them. On the contrary, it is clear from paragraphs 60 to 64 of the judgment under appeal that the General Court did indeed take account of the fact that the Italian Republic was challenging all those irregularities.
- 54 Contrary to the Italian Republic's assertion, it cannot be inferred from paragraph 63 of the judgment under appeal that, according to the General Court, the decision at issue is not founded on those irregularities. The General Court in fact expressly stated in paragraph 63 of that judgment, read in conjunction with paragraph 58 thereof, that the specific irregularities identified by the EU auditors in January 2009 formed 'one of the complaints' made in respect of the functioning of the management and control system established for the Puglia ROP programme.
- 55 As regards the findings made in paragraphs 73 and 74, 84 to 86 and 88 to 93 of the judgment under appeal, it must be stated that the Italian Republic has not established in what respect the findings of the General Court amount to a distortion of the clear sense of the documents to which the Italian Republic refers.
- 56 Consequently, all the arguments alleging distortion of the facts and evidence must be rejected as in part inadmissible and in part unfounded.
- 57 That being so, the Court must also reject the arguments alleging infringement of Article 39 of Regulation No 1260/1999, Articles 9 and 10 of Regulation No 438/2001 and the principles of proportionality and partnership, which the Italian Republic has based on the allegations of distortion advanced in respect of paragraphs 40, 63, 72 to 74 and 88 to 93 of the judgment under appeal.
- 58 Accordingly, the first part of the second ground of appeal and the first and third parts of the third ground of appeal must be rejected as in part inadmissible and in part unfounded.

– Substance of the second part of the third ground of appeal

- 59 By the second part of the third ground of appeal, the Italian Republic complains that the General Court, in paragraph 76 of the judgment under appeal, misinterpreted Article 10 of Regulation No 438/2001 in holding that, in order to dispel the doubts regarding the reliability of the management and control system in question, it was not sufficient to establish that the rate of checking provided for by Article 10 would be reached by the time the ERDF assistance for the Puglia ROP programme was wound up.
- 60 In that regard, it is sufficient to note that it is clear from the very wording of Article 10(2) of Regulation No 438/2001 — which provides that Member States are to seek to spread the implementation of the checks to be carried out before the winding-up of each assistance evenly over the period concerned — that the second-level checks must be operational throughout the whole period of the assistance concerned and not only at the time of its winding-up.
- 61 The second part of the third ground of appeal must therefore be rejected as unfounded.

– Substance of the second part of the second ground of appeal

- 62 By the second part of the second ground of appeal, the Italian Republic takes issue with the findings in paragraphs 60 to 63 of the judgment under appeal. It argues that, since the decision at issue was founded also on the irregularities identified by the EU auditors in a sample of first-level checks which was audited in January 2009, the General Court could not rule on the legality of that decision — from the point of view of Article 39(2) and (3) of Regulation No 1260/1999 and the principle of proportionality — without having examined the arguments whereby the Italian Republic disputed the existence of those irregularities. It adds that, in paragraphs 78 to 81 of the judgment under appeal, the General Court itself took those irregularities into account for the purpose of finding that the first-level checks could not be relied on.
- 63 In that regard, reference should be made to the settled case-law concerning the European Agricultural Guidance and Guarantee Fund (EAGGF), according to which, since the Member State concerned is best placed to collect and verify the data required for the clearance of EAGGF accounts, the Commission, for the purpose of proving an infringement of the rules on the common organisation of the agricultural markets, is not required to show exhaustively that the checks carried out by the national authorities were inadequate or that the figures they have transmitted are irregular, but must rather produce evidence of its serious and reasonable doubt regarding such checks or figures (see, to that effect, judgments in *Greece v Commission*, C-300/02, EU:C:2005:103, paragraphs 34 and 36 and the case-law cited, and *Denmark v Commission*, C-417/12 P, EU:C:2014:2288, paragraphs 80 and 81).
- 64 The Member State, for its part, cannot rebut the findings that underpin such evidence of the Commission's serious and reasonable doubt unless it substantiates its own assertions with evidence of a reliable and operational supervisory system. If it is not able to show that the Commission's findings are inaccurate, the latter amount to evidence liable to give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures (see judgment in *Denmark v Commission*, C-417/12 P, EU:C:2014:2288, paragraph 82 and the case-law cited).
- 65 Consequently, it is for the Member State concerned to adduce the most detailed and comprehensive evidence that its checks have been carried out and its figures are accurate and, as the case may be, that the Commission's assertions are incorrect (judgments in *Greece v Commission*, C-300/02, EU:C:2005:103, paragraph 36 and the case-law cited, and *Denmark v Commission*, C-417/12 P, EU:C:2014:2288, paragraph 83).

- 66 The principles stemming from that line of authority also apply *mutatis mutandis* so far as the ERDF is concerned, a point which was not disputed by the Italian Republic at the hearing before the Court of Justice. In view of the structure of the management and control systems established in Article 38(1) of Regulation No 1260/1999, under which the Member States are to take responsibility in the first instance for the financial control of ERDF assistance, the Member States are in fact best placed to collect and verify the data relating to that assistance.
- 67 In the present case, the Italian Republic objects to the fact that the General Court did not take into consideration the matters which it advanced to dispute the existence of the irregularities identified by the EU auditors in a sample of first- and second-level checks which was audited in January 2009. In that regard, it should be noted that, according to the findings made by the General Court and set out in paragraph 63 of the judgment under appeal, those specific irregularities represented only one of the complaints made with regard to the functioning of the management and control system established for the Puglia ROP programme and the decision at issue was also based on ‘other failings’ in that system which were liable to give rise to serious and reasonable doubts as to whether that system was reliable and rational.
- 68 It follows from the examination of the first part of the second ground of appeal and the first to third parts of the third ground of appeal, which reached the conclusions set out in paragraphs 58 and 61 of the present judgment, that the General Court did not err in law in rejecting all the arguments deployed by the Italian Republic to challenge the findings underpinning those other shortcomings in the management and control system established for the Puglia ROP programme, which resulted from delays in carrying out the first-level checks, from the fact that the proposed corrections could not be relied on and from the fact that the paying authority was not functioning properly.
- 69 Thus, the General Court did not depart from the case-law referred to in paragraphs 63 to 65 of the present judgment when it held, in paragraph 63 of the judgment under appeal, that it was not necessary to rule on the existence (denied by the Italian authorities) of the specific irregularities identified by the EU auditors in January 2009.
- 70 It should be added that, in its appeal, the Italian Republic does not object to paragraphs 109 to 118 of the judgment under appeal, in which the General Court concluded that the flat-rate correction applied was proportionate, basing its conclusion on the shortcomings of the management and control system that were related to delays in carrying out the checks, the fact that the proposed corrections could not be relied on and the fact that the paying authority was not functioning properly, all of which were liable to give rise to serious and reasonable doubts as to whether that system was reliable and rational.
- 71 As regards the complaint that, in paragraphs 78 to 81 of the judgment under appeal, the General Court itself took into account the specific irregularities identified in a sample of first-level checks that was audited in January 2009, it should be noted that the considerations set out in those paragraphs do not concern those specific irregularities but rather the doubts relating to the approach taken by the Italian authorities with regard to financial corrections.
- 72 Thus, the General Court cannot be criticised for taking into account, in paragraphs 78 to 81 of the judgment under appeal, the findings made by the Commission concerning the reliability of the financial corrections proposed by the Italian authorities, after concluding, in paragraphs 60 to 63 of that judgment, that there was no need to rule on whether the irregularities identified by the EU auditors in an audited sample in January 2009 actually existed.
- 73 The second part of the second ground of appeal must therefore be rejected as unfounded.

– Substance of the third part of the second ground of appeal

- 74 By the third part of its second ground of appeal, the Italian Republic challenges the finding in paragraph 60 of the judgment under appeal on the ground that it is contrary to the principles of proportionality and partnership, entrenched in Article 39 of Regulation No 1260/1999, to impose a flat-rate correction of 10% when the Italian authorities had proposed flat-rate corrections of 25% in respect of irregularities relating to awards of additional works or of engineering services, which had been identified by the EU auditors in January 2009.
- 75 In that regard, the Court notes that those corrections proposed by the Italian authorities concern only some of the specific irregularities identified by the EU auditors in January 2009. As is clear from paragraph 69 of the present judgment, the General Court did not make an error of law in holding that the alleged non-existence of those specific irregularities did not affect the legality of the decision at issue. That being so, the General Court did not infringe the principles mentioned in the previous paragraph when, in paragraphs 60 and 62 of the judgment under appeal, it found that the arguments concerning those corrections — corrections which had been taken into account by the Commission in the calculation of the final amount of the reduction in the ERDF assistance — were ineffective for the purposes of the claim for annulment of the decision at issue.
- 76 The third part of the second ground of appeal must therefore be rejected as unfounded.
- 77 It follows from all the above considerations that the appeal must be dismissed in its entirety as in part inadmissible and in part unfounded.

Costs

- 78 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

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

- 1. Dismisses the appeal;**
- 2. Orders the Italian Republic to pay the costs.**

[Signatures]