



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 5 December 2018¹

Case C-341/17 P

Hellenic Republic

v

European Commission

(Appeal — EAGGF, EAGF and EAFRD — Expenditure excluded from EU financing — Expenditure incurred by the Hellenic Republic — Regulation (EC) No 1782/2003 — Regulation (EC) No 796/2004 — Area-related aid scheme — Concept of ‘permanent pasture’ — Flat-rate financial correction)

I. Introduction

1. By the present appeal, the Hellenic Republic asks the Court to set aside the judgment of the General Court of the European Union of 30 March 2017 in *Greece v Commission*² in so far as the General Court dismissed its action brought against Commission Implementing Decision 2014/950/EU,³ by which flat-rate reductions were imposed on the contribution of the European Union to various agricultural aid payments by the Hellenic Republic.

2. The aid scheme of the European Union’s common agricultural policy (CAP) is characterised not only by a certain degree of technical complexity, but also by the fact that the provisions of the policy are subject to constant clarification, updating and development.

3. One result of this is a juxtaposition of various concepts defining the eligible agricultural land. The terminological differences, which are primarily attributable to the specific regulatory context in which the respective concepts are used, can lead to considerable difficulties in the determination of the conditions governing the eligibility of the land concerned.

4. In the present appeal proceedings, these difficulties are particularly acute with regard to the determination of the scope of the concept of ‘permanent pasture’, as applied in the CAP system of 2005 to 2015. In particular, the appeal proceedings raise the question of the legality of the Commission’s narrow interpretation of this concept, which was approved by the General Court in the judgment under appeal.⁴ According to that interpretation, an area can be classified as ‘permanent

¹ Original language: German.

² T-112/15, EU:T:2017:239; ‘the judgment under appeal’.

³ Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 369, p. 71); ‘the implementing decision at issue’.

⁴ This interpretation has in the meantime been endorsed by the General Court again; see judgment of 4 October 2018, *Greece v Commission* (T-272/16, not published, EU:T:2018:651, paragraphs 33 to 66).

pasture’ only if it is covered predominantly with grasses or other herbaceous forage, and not if it is covered with ligneous vegetation. This narrow interpretation has far-reaching consequences in relation to the payment of agricultural aid in the Mediterranean countries, which explains why the Kingdom of Spain has intervened in support of the Hellenic Republic in the present case. Going beyond the present proceedings, the determination of the scope of the concept of ‘permanent pasture’ is also of significance to another appeal brought before the Court of Justice by the Hellenic Republic⁵ and to a case brought before the General Court by the Kingdom of Spain.⁶

II. Legal context

5. The present appeal proceedings concern reductions in the European Union’s contributions to aid payments for claim year 2008. The relevant legal framework consists of Regulation (EC) No 1782/2003⁷ and Implementing Regulations (EC) No 795/2004⁸ and No 796/2004,⁹ which were adopted on the basis of that regulation.

6. Regulation No 1782/2003 was replaced by Regulation (EC) No 73/2009,¹⁰ which was replaced, in turn, by Regulation (EU) No 1307/2013.¹¹ The Hellenic Republic relies on the latter in the present case since, at least on the basis of its wording, the definition of ‘permanent pasture’ in that regulation is explicitly broader than that in Regulation No 1782/2003, the regulation relevant in the present case.

⁵ Case C-252/18 P, *Greece v Commission*.

⁶ Case T-459/16, *Spain v Commission*.

⁷ Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1). Regulation No 1782/2003 has been amended several times. As far as can be seen, neither the implementing decision at issue nor the judgment under appeal explicitly specifies which amended version is taken as a basis by the Commission and the General Court in the present instance. As far as can be seen, of the provisions of Regulation No 1782/2003 that are relevant here, subsequent amendments relate only to Article 44(2); in this regard, it can be seen from paragraph 28 of the judgment under appeal that the General Court took the original version of Article 44(2) of Regulation No 1782/2003 as the basis, i.e. the version of this provision *before* it was amended by Article 123(5) of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (OJ 2008 L 148, p. 1), which, moreover, was not applicable until 1 January 2009, pursuant to Article 129(2)(c) of that regulation. This Opinion is therefore also based on the original version of Article 44(2) of Regulation No 1782/2003 (see point 10 of this Opinion).

⁸ Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 1). Regulation No 795/2004 has also been amended several times. It is not necessary to determine specifically which version of this regulation as last amended was applicable in the period that is relevant in the present case; for the purposes of the present proceedings, it is sufficient to establish that at least Article 2(a) cited here (point 11 of this Opinion) in its original version was applicable, since it was only deleted by Article 1(1) of Commission Regulation (EC) No 370/2009 of 6 May 2009 amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 (OJ 2009 L 114, p. 3), which was applicable from 1 January 2009.

⁹ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18). Regulation No 796/2004 has also been amended several times. However, it is also not necessary here to determine specifically which version of this regulation as last amended was applicable in the period that is relevant in the present case; for the purposes of the present proceedings, it is sufficient to establish that, in any event, the provisions relevant here as amended by Commission Regulations (EC) No 239/2005 (OJ 2005 L 42, p. 3) and No 972/2007 (OJ 2007 L 216, p. 3) but not yet amended by Commission Regulation (EC) No 380/2009 of 8 May 2009 (OJ 2009 L 116, p. 9) were applicable (see points 12 to 14 of this Opinion).

¹⁰ Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

¹¹ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608).

A. Regulation No 1782/2003

7. Regulation No 1782/2003 established common conditions for direct payments under the various income support schemes in the framework of the CAP. Recitals 3, 4, 21 and 24 of Regulation No 1782/2003 stated the following in this regard:

‘(3) In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established which may or may not have a basis in provisions of the Member States. It is therefore appropriate to establish a Community framework within which Member States may adopt standards taking account of the specific characteristics of the areas concerned, including soil and climatic conditions and existing farming systems (land use, crop rotation, farming practices) and farm structures.

(4) Since permanent pasture has a positive environmental effect, it is appropriate to adopt measures to encourage the maintenance of existing permanent pasture to avoid a massive conversion into arable land.

...

(21) The support schemes under the common agricultural policy provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. In order to avoid misallocations of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.

...

(24) Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. While decoupling will leave the actual amounts paid to farmers unchanged, it will significantly increase the effectiveness of the income aid. It is, therefore, appropriate to make the single farm payment conditional upon cross-compliance with environmental, food safety, animal health and welfare [standards], as well as the maintenance of the farm in good agricultural and environmental condition.’

8. Pursuant to Article 2(1)(c) of Regulation No 1782/2003:

“agricultural activity” means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5’.

9. Article 29 of Regulation No 1782/2003 provided as follows:

‘Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.’

10. A central element of Regulation No 1782/2003, provided for in Title III, was the single farm payment, which was decoupled from production. In order to benefit from this, farmers had to acquire ‘payment entitlements’, which, together with each hectare of eligible land declared by the farmer, gave rise to a single payment scheme payment. In the version relevant to the present proceedings,¹² paragraph 2 of Article 44 (‘Use of payment entitlements’) stated the following in this regard:

‘2. “Eligible hectare” shall mean any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non-agricultural activities.’

B. Regulations No 795/2004 and No 796/2004

11. In the version relevant in the present case,¹³ Article 2 of Regulation No 795/2004 stated, *inter alia*:

‘For the purposes of Title III of Regulation (EC) No 1782/2003 and of this Regulation, the following definitions shall apply:

(a) “agricultural area” shall mean the total area taken up by arable land, permanent pasture and permanent crops’.

12. In the version, as amended by Regulations No 239/2005 and No 972/2007,¹⁴ that is relevant in the present case, the first paragraph of Article 2 of Regulation No 796/2004 contained the following definitions:

‘(1) “Arable land”: shall mean land cultivated for crop production and land under set-aside, or maintained in good agricultural and environmental condition in accordance with Article 5 of Regulation (EC) No 1782/2003, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

(1a) “Agricultural parcel”: shall mean a continuous area of land on which a single crop group is cultivated by a single farmer; however, where a separate declaration of the use of an area within a crop group is required in the context of this Regulation, that specific use shall further limit the agricultural parcel;

...

(2) “Permanent pasture”: shall mean land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding land under set-aside schemes ...

(2a) “Grasses or other herbaceous forage”: shall mean all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals). ...’

¹² See footnote 7 above.

¹³ See footnote 8 above.

¹⁴ See footnote 9 above.

13. In relation to Article 2, first paragraph, points 2 and 2a, of Regulation No 796/2004, recital 1 of Regulation No 239/2005, which is the source of the version of these provisions that is set out above, stated:

‘Article 2 of Commission Regulation (EC) No 796/2004 contains several definitions that need to be clarified. In particular, the definition of “permanent pasture” in point 2 of that Article needs to be clarified and it is also necessary to introduce a definition for the term “grasses or other herbaceous forage”. However, in that context it has to be considered that the Member States need to have a certain flexibility to be able to take account of local agronomic conditions.’

14. In the version that is relevant to the present case (that is to say, not yet amended by Regulation No 380/2009),¹⁵ Article 8 (‘General principles in respect of agricultural parcels’) of Regulation No 796/2004 provided in paragraph 1:

‘1. A parcel that contains trees shall be considered an agricultural parcel for the purposes of the area-related aid schemes provided that agricultural activities referred to in Article 51 of Regulation (EC) No 1782/2003 or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.’

15. Article 30(2) of Regulation No 796/2004, a provision which was never amended, read:

‘2. The total area of an agricultural parcel may be taken into account provided that it is fully utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

...’

C. Regulation No 1307/2013

16. Regulation No 1307/2013 built on the reform processes of the 1990s and 2000s in relation to the CAP.

17. Article 4 of Regulation No 1307/2013 now provides:

‘1. For the purposes of this Regulation, the following definitions shall apply:

...

(h) “permanent grassland and permanent pasture” (together referred to as “permanent grassland”) means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more; it may include other species such as shrubs and/or trees which can be grazed provided that the grasses and other herbaceous forage remain predominant as well as, where

¹⁵ See footnote 9 above.

Member States so decide, land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas;

...

2. Member States shall:

...

Member States may decide that land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas is to be considered to be permanent grassland, as referred to in point (h) of paragraph 1.'

18. In addition, Article 32(5) of Regulation No 1307/2013 on the application of the basic payment scheme, which, in principle, corresponds to the single payment scheme under Regulation No 1782/2003, reads:

'For the purposes of determining "eligible hectare", Member States having taken the decision referred to in the second subparagraph of Article 4(2) may apply a reduction coefficient to convert the hectares concerned into "eligible hectares".'

III. Background to the dispute

A. Commission decision

19. According to paragraphs 1 to 11 of the judgment under appeal, the background to the dispute is essentially as follows.

20. In September 2008 and February 2009, the European Commission carried out two inquiries concerning expenditure in respect of area aid and area-related rural development measures that the Hellenic Republic incurred under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Fund for Rural Development (EAFRD), respectively.¹⁶

21. By letters of 21 November 2008 and 13 May 2009, the Commission informed the Hellenic Republic of the results of the inquiries, on which the Hellenic Republic submitted written observations in January and July 2009.

22. As a result, a bilateral meeting was held on 8 April 2010. On 2 June 2010, the Commission sent its findings to the Hellenic Republic, to which the latter replied on 2 August 2010.

23. On 31 May 2013, the Commission informed the Hellenic Republic that it would be maintaining its position regarding the net amount and the reasons for the intended corrections.

24. The Hellenic Republic subsequently referred the matter on 11 July 2013 to the Conciliation Body, which, although ultimately unable to record a reconciliation of the positions of the parties in its opinion delivered on 31 January 2014, invited them to engage in further contacts.

¹⁶ Collectively, 'the agricultural funds'.

25. On 26 March 2014, the Commission adopted its final opinion. It found, first, weaknesses in the operation of the Land Parcel Identification System and the Geographic Information System¹⁷ affecting the cross-checks and the administrative checks, secondly, weaknesses in the on-the-spot checks and, thirdly, incorrect calculation of payments and sanctions. Moreover, the Commission drew attention to the recurrent nature of those weaknesses. The final net amount of the correction imposed on the Hellenic Republic was EUR 86 007 771.11.

26. On 19 December 2014, the Commission adopted the implementing decision at issue. By that decision, the Commission, first, refused, as regards the Hellenic Republic, expenditure of EUR 61 012 096.85 for claim year 2008 in the field of area aid, from which it then deducted EUR 2 135 439.32, resulting in a financial impact of EUR 58 876 657.53. Secondly, the Commission refused expenditure of EUR 10 504 391.90 in the field of area-related rural development measures, from which it then deducted EUR 2 588 231.20, resulting in a financial impact of EUR 7 916 160.70.

27. The corrections were based on the following categorisations:

- for farmers declaring only pasture, a 10% flat-rate correction was imposed;
- for farmers declaring no pasture, a 2% flat-rate correction was imposed;
- for the additional area aid, a 5% flat-rate correction was imposed,
- for all the area-related rural development measures, a 5% flat-rate correction was imposed.

28. In its summary report attached to the implementing decision at issue,¹⁸ the Commission justified the corrections on the basis of the recurring weaknesses established in the operation of the integrated administration and control system, namely in the operation of the LPIS-GIS and in the on-the-spot checks, which did not comply with the requirements of Article 20 of Regulation No 1782/2003 and Articles 23 and 30 of Regulation No 796/2004. The following discrepancies were established, amongst others:

- As regards the application of the LPIS-GIS, errors had been established — particularly in the areas that were used for pasture — regarding the boundaries of the reference parcels and their maximum eligible area. Consequently, the cross-checks to avoid undue multiple granting were often not conclusive.
- In the on-the-spot checks, areas that did not meet the criteria for pasture on the basis of Article 2, first paragraph, points 2 and 2a, of Regulation No 796/2004 had been classified as eligible; the areas were covered with ligneous plants and herbaceous forage, were located in remote areas and were without visible boundaries. The areas had not been measured. In addition, the on-the-spot checks by remote sensing and the standard on-the-spot checks had been inadequate.

29. These shortcomings constituted a continued failure in the functioning of key control and ancillary controls and generated a risk for the agricultural funds in respect of area aid. They also had an effect on the additional ‘coupled’ area aid.

¹⁷ ‘the LPIS-GIS’.

¹⁸ ‘the summary report’.

B. Judgment of the General Court

30. By an action brought on 2 March 2015, the Hellenic Republic requested the General Court to annul the implementing decision at issue in so far as 10% of the whole amount of expenditure incurred for pasture-related aid, 5% of the whole amount of expenditure incurred for additional area aid and 5% of the whole amount of the expenditure incurred in respect of area-related rural development measures were excluded from EU financing for claim year 2008.

31. The General Court found, first, in respect of the 10% correction relating to expenditure for pasture-related aid, that, irrespective of the interpretation of the concept of ‘permanent pasture’, this correction had been justified and proportionate solely on the basis of the deficiencies in the integrated administration and control system.¹⁹ In this respect, the General Court referred to the incorrect application of the LPIS-GIS, which affected the detection of multiple claims, and to the reliability of the administrative cross-checks, to the absence of measurement of areas in the context of the on-the-spot checks and to the incorrect performance of the checks by remote sensing; moreover, no data that would have made it possible to review the on-the-spot checks actually carried out had been recorded.²⁰ In view of these extensive deficiencies, the General Court considered the question regarding the eligibility of the declared areas as ‘permanent pasture’ pursuant to Article 2, first paragraph, point 2, of Regulation No 796/2004, and therefore the question regarding the interpretation of that term, not to be relevant for the decision.²¹ Nevertheless, the General Court expressly approved the Commission’s assessment regarding the eligibility of the areas and regarding the interpretation of the concept of ‘permanent pasture’ on which that assessment was based.²²

32. Secondly, the 5% correction regarding additional area aid was upheld by the General Court.²³

33. Thirdly, the General Court annulled the implementing decision at issue in so far as, with regard to area-related rural development measures, a correction of EUR 5 007 867.36 with financial consequences of EUR 2 689 811.61 (after deducting EUR 2 318 055.75) had been made for expenditure established for the 2009 financial year, in respect of claim year 2008. According to the General Court, the reason for this was that the Commission did not provide a sufficient statement of reasons as to the extent to which a previous correction made in Implementing Decision 2013/214/EU²⁴ had been taken into account to avoid a double correction.²⁵

34. As to the remainder, the General Court dismissed the action and ordered the Hellenic Republic to pay the costs.

IV. Forms of order sought and proceedings before the Court of Justice

35. On 6 June 2017, the Hellenic Republic lodged the present appeal against the judgment under appeal. It requests that the Court:

- set aside the judgment under appeal in so far as the action brought against the implementing decision at issue was dismissed,

19 Cf., in particular, paragraphs 40 to 43 and 66 and paragraphs 77 and 84 to 97 of the judgment under appeal.

20 Cf., in particular, paragraphs 40 and 41 and 89 to 94 of the judgment under appeal.

21 Cf., in particular, paragraphs 66, 88 and 95 of the judgment under appeal.

22 Cf. paragraphs 24 to 67, in particular 33 to 36 of the judgment under appeal.

23 Paragraphs 107 to 137 of the judgment under appeal.

24 Commission Implementing Decision 2013/214/EU of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 123, p. 11).

25 Paragraphs 152 to 168 of the judgment under appeal.

- annul the implementing decision at issue, and
- order the Commission to pay the costs.

36. In turn, the Commission requests that the Court:

- dismiss the appeal as being, in part, inadmissible and, in part, unfounded, and
- order the Hellenic Republic to pay the costs.

37. The Kingdom of Spain has intervened in the dispute in support of the Hellenic Republic. It requests that the Court:

- uphold the appeal, and
- order the Commission to pay the costs.

38. The parties submitted written observations. The hearing took place on 13 September 2018.

V. Legal assessment

39. The appeal, which the Commission contends is inadmissible (see A. in this regard), is based on six grounds of appeal in total. By the first three grounds of appeal, the Hellenic Republic challenges the General Court's assessment regarding the 10% flat-rate correction for farmers declaring only pasture (see B. in this regard). By the fourth and fifth grounds of appeal, it challenges the General Court's assessment regarding the 5% flat-rate correction in respect of additional area aid (see C. in this regard). By the sixth ground of appeal, finally, the Hellenic Republic criticises the General Court's assessment regarding the 5% flat-rate correction in respect of rural development, in so far as it was not annulled by the General Court (see D. in this regard).

A. Admissibility of the appeal

40. Contrary to the statements made by the Commission, the Hellenic Republic has not confined itself to repeating the pleas in law already put forward at first instance against the initial decision of the Commission. Rather, irrespective of the similarity between the grounds of appeal and the pleas in law originally put forward against the Commission decision and the detailed references to the pleadings filed at first instance, it has developed an independent legal critique of the General Court's statements, making reference to specific passages of the judgment, which are cited verbatim in some cases.

41. The action is therefore admissible.

B. Grounds of appeal put forward against the General Court's assessment regarding the financial correction of 10% of the expenditure for farmers declaring only pasture

42. The Hellenic Republic raises three grounds of appeal against the General Court's assessment regarding the flat-rate correction of 10% of the expenditure for farmers declaring only pasture.²⁶

²⁶ Paragraphs 23 to 106 of the judgment under appeal.

43. The first and second grounds of appeal are connected with the question of the eligibility of the claimed areas pursuant to Article 2, first paragraph, point 2, of Regulation No 796/2004, which defines the concept of ‘permanent pasture’ (see 1. and 2. in this regard). By the third ground of appeal, the Hellenic Republic challenges the General Court’s assessment that the flat-rate correction rate of 10% could have been established solely on the basis of the deficiencies in the integrated administration and control system (see 3. in this regard).

1. The first ground of appeal

44. By its first ground of appeal, the Hellenic Republic complains, first, that Article 2, first paragraph, point 2, of Regulation No 796/2004 has been infringed owing to an error of law in the interpretation of the concept of ‘permanent pasture’ (see (a) in this regard). Secondly, it challenges what it believes to be a legally erroneous and insufficiently justified assessment in paragraph 66 of the judgment under appeal (see (b) in this regard). Thirdly, it accuses the General Court of not having provided a sufficient explanation of the relevant criterion for the interpretation of the concept of ‘permanent pasture’ (see (c) in this regard).

(a) The first part of the first ground of appeal

45. The Hellenic Republic asserts that the judgment under appeal misinterprets the concept of ‘permanent pasture’ as regards to the types of vegetation covered by it.

46. According to the General Court, with respect to aid for pasture, the criterion used by Regulation No 796/2004 was the type of vegetation present in the areas in question. This was to ensure that there was no payment of aid in respect of areas not subject to agricultural activity. The predominance of plants other than herbaceous plants was an indicator that agricultural activity had been abandoned on the areas in question. Therefore, the limitation of the definition of ‘permanent pasture’ solely to areas covered with grasses and herbaceous forage was intended to prevent the risk of areas which would not actually be used for rearing animals being eligible for area aid.²⁷

47. According to the explanations of the General Court,²⁸ the categorisation of an area as ‘permanent pasture’ pursuant to Regulations No 1782/2003 and No 796/2004 therefore requires an ‘area covered by agricultural production’,²⁹ which encompasses, in principle, ‘only grasses and herbaceous forage’,³⁰ whereas ‘forests and parcels covered with ligneous plants were not, in principle, eligible’.³¹ Only ‘a marginal presence of ligneous plants’ could be tolerated ‘to the extent that they did not compromise the development of herbaceous forage resources and, hence, the parcels genuinely being used as pasture areas’.³²

²⁷ Paragraph 35 of the judgment under appeal.

²⁸ Paragraphs 24 to 67 of the judgment under appeal.

²⁹ Paragraph 29 of the judgment under appeal.

³⁰ Paragraph 34 of the judgment under appeal.

³¹ Paragraph 36 of the judgment under appeal.

³² Paragraphs 35 and 51 of the judgment under appeal.

48. Details are not given, particularly in relation to the extent to which the coexistence of herbaceous and ligneous plants may be tolerated. Although, in this connection, the General Court refers to the guide of the Commission's Joint Research Centre containing guidance on how best to comply with the legal provisions in force relating to the CAP,³³ dated 2008,³⁴ it fails to explain precisely how much importance it attaches to this guide.³⁵

49. The Hellenic Republic, supported by the Kingdom of Spain, advocates a broad interpretation of the concept of 'permanent pasture', which in their submission also includes 'Mediterranean-type pasture', the vegetation of which is also (or only) characterised by shrubs and ligneous plants.

50. According to established case-law of the judicature of the European Union, provisions of EU law must be interpreted not only in relation to their wording, but also with regard to the context in which they occur and the objectives pursued by the rules of which they are part.³⁶

51. The basis for the interpretation in the present case is the system for area aid as it stood pursuant to Regulations No 1782/2003 and No 796/2004, which are applicable to claim year 2008.

52. The Hellenic Republic also refers to Article 4(1)(h) of Regulation No 1307/2013, which contains a broad definition of the concept of 'permanent grassland'. Under that definition, permanent pasture or permanent grassland may also include land on which other species such as shrubs and/or trees which can be grazed grow provided either that the grasses and other herbaceous forage remain predominant or that the land forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas.³⁷

53. As correctly noted by all parties, direct application of this provision, which did not enter into force until after the period relevant to the present proceedings, is not possible, as no provision was made for retroactive effect. Contrary to the arguments put forward by the Hellenic Republic, the provision can be used only to a limited extent, even in the context of interpretation. This is because successor provisions in themselves do not contain any binding indication in relation to the normative content of their predecessor provision, as amendments made to the wording may be understood not only as clarification, but also as a substantive change to the legal position.³⁸ Nevertheless, it must be found in the present case that, at the least, the definition of 'permanent pasture' in Regulation No 1307/2013 does not preclude a broad interpretation of this concept in the period in which Regulation No 1782/2003 was applicable.

54. The point of departure for the interpretation is therefore Article 2, first paragraph, point 2, of Regulation No 796/2004 in the version in force at the material time.³⁹ This defines 'permanent pasture' as 'land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation ... for five years or longer'. Pursuant to Article 2, first paragraph, point 2a, of Regulation No 796/2004, 'grasses or other herbaceous forage' are 'all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals)'.⁴⁰

33 'the WikiCAP recommendations'.

34 Available at: <http://ies-webarchive-ext.jrc.it/mars/mars/Bulletins-Publications/Art-30-guidelines-version-of-22-05-2008-for-the-2008-campaign.html>

35 Paragraphs 37 to 39 of the judgment under appeal.

36 Judgments of 14 June 2012, *Banco Español de Crédito* (C-618/10, EU:C:2012:349, paragraph 61); of 14 January 2016, *Vodafone* (C-395/14, EU:C:2016:9, paragraph 40); and of 25 January 2018, *Commission v Czech Republic* (C-314/16, EU:C:2018:42, paragraph 47).

37 Cf. point 17 of this Opinion.

38 Nor is there anything different in the judgment of the General Court of 6 November 2014, *Greece v Commission* (T-632/11, EU:T:2014:934, paragraphs 90 to 99), cited by the Hellenic Republic. This is because, in that judgment too, the interpretation that was relevant for that decision is carried out solely on the basis of the legislative regime that is applicable *ratione temporis*, whereas the reference to the successor provision serves only as illustration.

39 Cf. point 5 and footnote 9 as well as point 12 and footnote 14 of this Opinion.

40 Cf. point 12 of this Opinion.

55. This allows three conclusions: First, for categorisation as permanent pasture, Article 2, first paragraph, points 2 and 2a, of Regulation No 796/2004 requires ‘herbaceous plant’ vegetation.⁴¹ Secondly, the origin of that vegetation is irrelevant. Article 2, first paragraph, point 2, of Regulation No 796/2004 focuses explicitly on both sowing and self-seeding. It is clear from this, thirdly, that the wording ‘to grow grasses or other herbaceous forage’ is not to be understood in the traditional sense of the word ‘grow’ as planting seeds and actively tilling soil with the aim of producing agricultural products. It may be seen at most as a reference to an agricultural use of the area concerned.

56. It is therefore only areas that are used for agriculture and are covered exclusively with herbaceous plants that are unequivocally covered by the wording of Article 2, first paragraph, point 2, of Regulation No 796/2004. The wording is unclear in relation to mixed areas: thus, it is questionable whether the purpose of expressly mentioning ‘grasses or other herbaceous forage’ was to exclude categorically the presence or agricultural use of other forms of vegetation.

57. A strict meaning under which mixed areas and areas covered exclusively with ligneous plants are not covered by the concept of ‘permanent pasture’ must be rejected, however.

58. Thus, first, according to recital 1 of Regulation No 239/2005, the Member States must have a certain flexibility in connection with the definitions of ‘permanent pasture’ or ‘grasses or other herbaceous forage’, in order to be able to take account of the various agronomic conditions prevailing in the European Union.⁴² This allows the conclusion that the definition of ‘permanent pasture’ in Article 2, first paragraph, point 2, of Regulation No 796/2004 as amended by Regulation No 239/2005 must not be interpreted too narrowly — in particular also with regard to vegetation. As stated by both the Hellenic Republic and the Kingdom of Spain at the hearing, account must be taken of factors that affect the agronomic conditions, particularly environmental conditions, such as geography and climate, as well as agricultural traditions.

59. Secondly, it should be noted that, in defining ‘permanent pasture’, Regulation No 796/2004 serves to implement Regulation No 1782/2003, which governs inter alia the single farm payment, within the framework of which ‘permanent pasture’ is an eligible area.⁴³ An implementing regulation must, if possible, be given an interpretation consistent with the basic regulation.⁴⁴

60. Regulation No 1782/2003 does not require a specific type of vegetation for ‘permanent pasture’. Article 44(2) merely excludes ‘permanent crops’ and ‘forests’.⁴⁵ Although some language versions of this provision suggest ‘herbaceous plant’ vegetation,⁴⁶ the vast majority of the language versions use vegetation-neutral terms which are most likely to be translated as ‘permanent pasture’.⁴⁷

41 As Article 2, first paragraph, points 2 and 2a, of Regulation No 796/2004 expressly mentions the presence of ‘grasses or other herbaceous forage’, such a ‘herbaceous plant requirement’ can be assumed even though the majority of the language versions use vegetation-neutral terms to designate the area concerned itself, which would most likely be translated as ‘permanent pasture’. Cf., on the one hand, the German (‘Dauergrünland’), Dutch (‘blijvend grasland’), Danish (‘permanente græsarealer’) and Polish (‘trwałe użytki zielone’) language versions, and, on the other hand, the French (‘pâturages permanents’), English (‘permanent pasture’), Italian (‘pascolo permanente’), Spanish (‘pastos permanentes’), Portuguese (‘pastagens permanentes’), Estonian (‘püsikarjamaa’), Finnish (‘pysyvä laidun’), Greek (‘μόνιμος βοσκότοπος’), Hungarian (‘állandó legelő’) or Bulgarian (‘постоянни пасбища’) language versions. Cf. also, in this regard, point 60 and footnotes 46 and 47 of this Opinion.

42 Cf. point 13 of this Opinion.

43 Cf. point 10 of this Opinion.

44 Judgments of 10 March 1971, *Deutsche Tradax* (38/70, EU:C:1971:24, paragraph 10); of 19 July 2012, *Pie Optiek* (C-376/11, EU:C:2012:502, paragraph 34); and of 26 July 2017, *Czech Republic v Commission* (C-696/15 P, EU:C:2017:595, paragraph 33).

45 Cf., again, point 10 of this Opinion.

46 Cf. e.g. the German (‘Dauergrünland’), Dutch (‘blijvend grasland’) or Danish (‘permanente græsarealer’) language versions.

47 Cf. e.g. the French (‘pâturages permanents’), English (‘permanent pasture’), Italian (‘pascolo permanente’), Spanish (‘pastos permanentes’), Portuguese (‘pastagens permanentes’), Estonian (‘püsikarjamaa’), Finnish (‘pysyvä laidun’), Polish (‘trwałe pastwiska’), Greek (‘μόνιμος βοσκότοπος’), Hungarian (‘állandó legelő’) or Bulgarian (‘постоянни пасища’) language versions.

61. In addition, ‘permanent pasture’ under Article 44(2) of Regulation No 1782/2003 in conjunction with Article 2(a) of Regulation No 795/2004 is a sub-category of agricultural areas. This is because Article 2(a) of Regulation No 795/2004 defines the term ‘agricultural area’ as ‘the total area taken up by arable land, permanent pasture and permanent crops’.⁴⁸

62. A defining feature of any eligible agricultural area is the ‘agricultural activity’ pursuant to Article 2(1)(c) of Regulation No 1782/2003 that is carried out on that area.⁴⁹ This follows, first, from the differentiation from abandoned agricultural land, as mentioned in recital 3 of that regulation, and, second, from the function of the single farm payment, expressed in recitals 21 and 24 of the regulation, of stabilising agricultural income with a view to ensuring a fair standard of living for the agricultural community.⁵⁰ As evidenced by the explanatory memorandum in the Commission’s proposal for Regulation No 1782/2003, only active farmers ‘actively producing or maintaining land in good agronomic condition, maintaining the link to land’, are to benefit from the income support.⁵¹

63. It follows from the foregoing, so far as concerns the definition of ‘permanent pasture’, that the type of vegetation constitutes a secondary criterion in relation to the use of the area. What is important is, therefore, the actual use of the area for an agricultural activity that is typical for ‘permanent pasture’.⁵² Pursuant to Article 2(1)(c) of Regulation No 1782/2003, this may be the keeping of animals, for example, as asserted by the Hellenic Republic and the Kingdom of Spain.

64. The presence of ligneous plants therefore cannot preclude the classification of an area as ‘permanent pasture’ if this does not impair the *effective* exercise of agricultural activity. This may be the case, for example, if the ligneous plants play only a subordinate role in relation to the herbaceous plants. In addition, the effectiveness of the exercise of agricultural activity may even be enhanced by the presence of ligneous plants. This is because effectiveness must always be understood in the specific context of the agronomic conditions as already referred to.⁵³ Consequently, mixed areas dominated by ligneous plants or areas covered exclusively with ligneous plants must also be covered by the concept of ‘permanent pasture’ in any event if vegetation dominated by herbaceous plants is not to be expected on account of the prevailing agronomic conditions and those areas must therefore be used for activities typical for ‘permanent pasture’.

65. This broad interpretation of the concept of ‘permanent pasture’, which, in addition to pure herbaceous plant areas, also covers mixed areas and areas covered exclusively with ligneous plants provided that they are devoted to effective agricultural use, is also in line with the objectives of Regulation No 1782/2003, namely the stabilisation of agricultural income, the maintenance of rural areas, and environmental protection.

66. In accordance with the concept behind Regulation No 1782/2003, the objective of stabilising agricultural income⁵⁴ applies without distinction to the entire agricultural population of the European Union. Consequently, the regional origin of a farmer must not determine — even indirectly — whether he has access to the single farm payment provided for in that regulation. This would be the consequence, however, if a type of vegetation whose presence is strongly influenced by climatic factors were to be decisive for the eligibility of agricultural areas. It would therefore be unacceptable if active

48 Cf. point 11 of this Opinion.

49 Cf. point 8 of this Opinion.

50 Cf. point 7 of this Opinion.

51 COM(2003) 23 final, p. 4.

52 Cf. also, to that effect, judgments of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 37); of 2 October 2014, *Grund* (C-47/13, EU:C:2014:2248, paragraph 35); of 2 July 2015, *Wree* (C-422/13, EU:C:2015:438, paragraph 36); and of 9 June 2016, *Planes Bresco* (C-333/15 and C-334/15, EU:C:2016:426, paragraph 35).

53 Cf. point 58 of this Opinion.

54 Cf. point 62 of this Opinion.

farmers who put the areas available to them to effective use under the prevailing agronomic conditions were to benefit from the stabilisation of their income by way of the single farm payment to a lesser extent than farmers in other EU Member States solely on account of a type of vegetation that is different due to climatic factors.

67. In addition, according to recital 21 of Regulation No 1782/2003, the stabilisation of income is closely related to the maintenance of rural areas.⁵⁵ In this regard, in the 2003 CAP reform the Commission also focused on the targeted support of a diverse range of traditional and high-nature-value farming systems in order to reverse the trend towards more specialised forms of animal and cereal production and towards permanent crops.⁵⁶ Against this background, traditionally cultivated mixed areas and areas covered exclusively with ligneous plants seem to be particularly eligible for support.

68. Furthermore, environmental protection is not only one of the general objectives of the CAP,⁵⁷ but is also one of the specific objectives of the single payment scheme pursuant to Regulation No 1782/2003.⁵⁸ The support of 'permanent pasture' in accordance with recitals 3 and 4 of that regulation is particularly important in this regard, as it creates financial incentives to avoid ecologically undesirable scenarios, namely the abandonment of agricultural land or the conversion of other areas into arable land. However, the effectiveness of this mechanism would be undermined if the definition of 'permanent pasture' in Article 2, first paragraph, point 2, of Regulation No 796/2004 were to be given an overly restrictive interpretation with regard to vegetation. Even if there is no reason to fear land abandonment or conversion, a broad definition appears to be required with regard to environmental protection. The reason for this is that, otherwise, there would be an incentive to remove divergent vegetation structures without regard for their ecological benefit, even if they do not have a negative effect on the exercise of agricultural activity on the areas concerned.

69. A broad understanding of 'permanent pasture' that is based on the objectives of Regulation No 1782/2003 and is largely connected with effective agricultural use does not mean, however, that the vegetation criterion laid down in Article 2, first paragraph, point 2, of Regulation No 796/2004 becomes obsolete. Rather, that criterion forms the basis of a legal presumption in the sense that an area used for agriculture the vegetation of which consists exclusively of herbaceous plants can be automatically classified as 'permanent pasture' within the meaning of Article 2, first paragraph, point 2, of Regulation No 796/2004. By contrast, in the case of mixed areas or areas covered exclusively with ligneous plants a further check is required, in the context of which it must be demonstrated that there is an effective use and, if applicable, a traditional cultivation method.

70. In addition, Article 8(1) and Article 30(2) of Regulation No 796/2004⁵⁹ underline the fact that effective agricultural use and traditional cultivation methods are more important than rural features as far as an area's eligibility for aid is concerned. Pursuant to those provisions, parcels containing trees or other features such as hedges, ditches and walls are nonetheless considered to be agricultural parcels provided that the agricultural activity is not restricted or these landscape features are part of local agricultural traditions.⁶⁰

⁵⁵ Cf. point 7 of this Opinion.

⁵⁶ Cf. Communication from the Commission to the Council and the European Parliament — Mid-Term Review of the Common Agricultural Policy of 10 July 2002, COM(2002) 394 final, pp. 8, 12 and 13.

⁵⁷ Judgment of 16 July 2009, *Horvath* (C-428/07, EU:C:2009:458, paragraph 29).

⁵⁸ Cf. COM(2002) 394 final, pp. 9, 13 and 21; COM(2003) 23 final, p. 10; judgment of 14 October 2010, *Landkreis Bad Dürkheim* (C-61/09, EU:C:2010:606, paragraph 39, with reference to recitals 3, 21 and 24 of Regulation No 1782/2003).

⁵⁹ Cf. points 14 and 15 of this Opinion.

⁶⁰ Cf., for an explanation in this regard, the WikiCAP recommendations 2008 (<http://ies-webarchive-ext.jrc.it/mars/mars/Bulletins-Publications/Art-30-guidelines-version-of-22-05-2008-for-the-2008-campaign.html>) and the WikiCAP recommendations 2009 (<http://ies-webarchive-ext.jrc.it/mars/mars/Bulletins-Publications/Art30-guidelines-for-the-2009-campaign.html>).

71. By contrast, the second subparagraph of Article 132(3) of Regulation No 1782/2003 (regarding the extensification payment), to which the Kingdom of Spain makes reference, is not directly relevant to the interpretation of the concept of ‘permanent pasture’. The extensification payment is part of a non-area-related aid scheme that is aimed at reducing intensive livestock farming and was already applicable before the introduction of the single farm payment. The concept of ‘pasture land’ used in this regard does not describe an eligible area, but rather serves merely as an arithmetic reference value for the calculation of the stocking density, i.e. the ratio between livestock units and the number of hectares. Even if a certain proximity between the concepts is to be expected, given the fact that ‘permanent pasture’ is used in particular for keeping animals, the concept of ‘permanent pasture’ must nevertheless be defined solely in its specific context.

72. The inclusion of mixed areas and areas covered exclusively with ligneous plants in the definition of ‘permanent pasture’ under Article 2, first paragraph, point 2, of Regulation No 796/2004 does not ultimately increase the risk of abuse. Thus, it is true that recital 21 and Article 29 of Regulation No 1782/2003 state that no payment is to be made to beneficiaries who have artificially created the conditions required for obtaining single payments with a view to obtaining an advantage contrary to the objectives of single payment.⁶¹ However, mixed areas and areas covered exclusively with ligneous plants that are used merely as a matter of form, that is to say, solely for the purpose of creating eligibility for aid without the intention to exploit the agricultural potential of the areas, do not receive any aid according to the broad definition of ‘permanent pasture’ either, as this definition is essentially based on the agricultural use of the land.

73. Therefore, the broad understanding of the concept of ‘permanent pasture’ in Regulations No 1782/2003 and No 796/2004 applicable to claim year 2008, which is based on the effective use of an area for an agricultural activity that is typical for ‘permanent pasture’, is ultimately very close to the definition of ‘permanent grassland’ in Article 4(1)(h) of the subsequent Regulation No 1307/2013. In addition to purely herbaceous areas, this definition expressly also includes areas covered with other species which can be grazed as part of local practices.⁶² It is clear from this that — even if Regulation No 1307/2013 in itself does not in principle allow any binding conclusions to be drawn regarding the interpretation of Regulation No 796/2004⁶³ — the concept of ‘permanent pasture’ pursuant to Article 2, first paragraph, point 2, of Regulation No 796/2004 may not in any event be interpreted more broadly than that in Article 4(1)(h) of Regulation No 1307/2013.

74. In this regard, Regulation No 1307/2013 allows — within the calculation of the single payment — account to be taken of the fact that pure herbaceous plant areas typically require different levels of maintenance in comparison with mixed areas and areas covered exclusively with ligneous plants. To this end, Article 32(5) of Regulation No 1307/2013 provides for a reduction coefficient to be optionally applied by the Member States. This has an effect similar to that of a pro-rata system, as for example provided for by the Greek Action Plan of 2012⁶⁴ mentioned in the judgment under appeal with regard to the new scheme under Regulation No 1307/2013.⁶⁵ When using such a system, the total number of hectares of ‘permanent pasture’ is reduced on a percentage basis by reference to the presence of ligneous plants for the purpose of calculating the single payment to be made.

61 Cf. points 7 and 9 of this Opinion.

62 Cf. points 17 and 52 of this Opinion.

63 Cf. point 53 of this Opinion.

64 Cf., in particular, paragraphs 58, 61 and 64 of the judgment under appeal.

65 The Commission stated at the hearing, in response to a question, that the Action Plan drawn up at the end of 2012 served to improve, step by step, the issues arising in connection with the control system. However, the Action Plan was not implemented until Regulation No 1307/2013, alongside the CAP reform.

75. If the concept of ‘permanent pasture’ in Article 2, first paragraph, point 2, of Regulation No 796/2004 is understood as an area that is effectively used for an agricultural activity that is typical for ‘permanent pasture’, the application of such a pro-rata system is accordingly not thereby precluded. This makes it possible to take the quantity of herbaceous plants on the permanent pasture areas into account in a proportional manner when calculating the aid.

76. The classification of the area concerned as ‘permanent pasture’ as a matter of principle is not called into question by this, however. The reason for this is that, contrary to the view taken by the Commission, and as correctly noted by the Kingdom of Spain at the hearing, the question of the eligibility of ‘permanent pasture’ comes before the question of whether the aid for that area can be reduced on a percentage on account of the presence of ligneous plants when a pro-rata system is applied.

77. It is true that, in the judgment under appeal, the General Court stated that the actual, effective use of an area for agricultural activity constituted a fundamental condition for that area’s eligibility for aid pursuant to Regulation No 1782/2003.⁶⁶ However, the General Court ultimately affirmed the Commission’s assessment in the implementing decision at issue and therefore attached too much weight to the indicative value of herbaceous plant vegetation as a decisive condition for the classification of an area as ‘permanent pasture’.⁶⁷ The first part of the first ground of appeal must therefore be upheld.

(b) The second part of the first ground of appeal

78. By the second part of the first ground of appeal, the Hellenic Republic challenges the finding of the General Court in paragraph 66 of the judgment under appeal, according to which the areas at issue would have been ineligible irrespective of the definition of the concept of ‘permanent pasture’. According to the Hellenic Republic, the General Court — like the Commission in the implementing decision at issue — did not take sufficient account of the fact that only a small proportion of the areas claimed were used to activate payment entitlements under the single payment scheme.⁶⁸

79. By this argument, the Hellenic Republic is alluding to the so-called ‘buffer effect’. This effect arises from the fact that many farmers own more land than payment entitlements, meaning that only part of the ‘permanent pasture’ declared can form the basis of a payment under the single payment scheme. This reduces the risk of loss for the agricultural funds that exists if areas that do not fulfil the prescribed criteria are used to activate payment entitlements, since it can be assumed that there are areas which have not yet been declared and would have met those criteria. The buffer effect is therefore an important factor in the calculation of the correction rate, which is determined by the extent to which the control system is defective and the extent of the resulting risk of loss for the agricultural funds.

80. In paragraph 66 of the judgment under appeal, however, the General Court does not examine the calculation of the correction rate, but merely makes clear that the areas at issue would have been ineligible irrespective of the understanding of the concept of ‘permanent pasture’. As shown by paragraph 40 and confirmed by the Commission at the hearing, this is because the areas at issue were neither purely herbaceous areas nor mixed areas or areas covered exclusively with ligneous plants, but rather — in so far as they could be located — sandy wasteland next to the sea, forest, or the like.

81. This head of complaint must therefore be rejected.

⁶⁶ Cf. paragraph 29 of the judgment under appeal.

⁶⁷ Cf. points 46 and 47 of this Opinion.

⁶⁸ Regarding the single payment scheme, cf. point 10 of this Opinion.

(c) The third part of the first ground of appeal

82. By the third part of the first ground of appeal, the Hellenic Republic alleges a failure to state reasons: the statements of the General Court in paragraphs 20 to 22 of the judgment under appeal do not, it is submitted, adequately explain the assessment criterion for the first plea. They do not relate to the core legal problem in the first plea, namely to the interpretation of the concept of ‘permanent pasture’ pursuant to Article 2, first paragraph, point 2, of Regulation No 796/2004.

83. This head of complaint is based on a misreading of paragraphs 20 to 22 of the judgment under appeal. The statements made in those paragraphs are not even intended to explain the legal criterion of assessment for the first plea. Rather, they are presented before the legal assessment of all the pleas and explain the case-law principles regarding the burden of proof and of producing evidence which are relevant to the entire judgment and to which the Commission is subject if it refuses expenditure under the agricultural funds owing to infringements of EU law. By contrast, the provisions that are relevant — in the view taken by the General Court — to the interpretation of the concept of ‘permanent pasture’ are set out in paragraphs 27 to 32 of the judgment under appeal. There does not appear to be an error of law here.

84. The third part of the first ground of appeal is therefore unfounded.

2. The second ground of appeal

85. By its second ground of appeal, the Hellenic Republic, first, alleges an infringement of Article 296 TFEU, pursuant to which legal acts of the European Union must state the reasons on which they are based, because, in its submission, the General Court committed an error of law in rejecting the complaint that the implementing decision at issue failed to provide an adequate statement of reasons (see (a) in this regard). Moreover, the Hellenic Republic pleads a failure to state adequate reasons in the judgment under appeal itself, as the General Court did not provide a sufficient statement of reasons for the judgment, as required by Article 36 in conjunction with Article 53(1) of the Statute of the Court of Justice and Article 117 of the Rules of Procedure of the General Court (see (b) in this regard).

(a) The first part of the second ground of appeal

86. By the first part of its second ground of appeal, the Hellenic Republic makes the criticism that the General Court infringed Article 296 TFEU in paragraphs 68 to 76 of the judgment under appeal. The General Court is thus said to have committed an error of law when it rejected the submission that not all arguments of the Hellenic Republic regarding the interpretation of the concept of ‘permanent pasture’ were taken into consideration by the Commission in the grounds for the implementing decision at issue.

87. As explained by the General Court, making reference to the relevant case-law,⁶⁹ the statement of reasons for a decision not to charge expenditure to the agricultural funds is sufficient if the correspondence exchanged in the accounts clearance procedure and the summary report reveal that the Member State concerned was closely involved in the process and was therefore aware of the reasons for the decision. This is justified on account of the special nature of the accounts clearance procedure, which provides for extensive participation of the Member States. According to the findings of the General Court in paragraphs 72 to 74 of the judgment under appeal, which are not contested by

⁶⁹ Paragraph 71 of the judgment under appeal.

the Hellenic Republic, the question of the interpretation of the concept of ‘permanent pasture’ had been discussed in the accounts clearance procedure in the present instance. Therefore, no error of law is discernible in the rejection of the claim of failure to state reasons that is raised by the Hellenic Republic in relation to the decision of the Commission.

88. The first part of the second ground of appeal is therefore unfounded.

(b) The second part of the second ground of appeal

89. The complaint raised by the second part of the second ground of appeal, according to which the judgment under appeal itself did not sufficiently examine the Hellenic Republic’s arguments regarding the interpretation of the concept of ‘permanent pasture’, must also be rejected.

90. The General Court dealt with the interpretation of the concept of ‘permanent pasture’ in detail and, in so doing, made reference to the arguments put forward by the Hellenic Republic.⁷⁰ In that context, the General Court also discussed, in particular, the arguments put forward by the Hellenic Republic in the second ground of appeal relating to the importance of the eligibility of Mediterranean pasture for the Mediterranean countries and the importance of the new scheme under Regulation No 1307/2013.

3. The third ground of appeal

91. By its third ground of appeal, the Hellenic Republic criticises the findings of the General Court in paragraphs 88 to 103 of the judgment under appeal, according to which — irrespective of the definition of the concept of ‘permanent pasture’ — the 10% correction rate in respect of aid for farmers declaring only pasture is proportionate. In this connection, the Hellenic Republic essentially asserts that the General Court impermissibly supplemented the statement of reasons for the implementing decision at issue and also provided an insufficient statement of reasons for the judgment under appeal (see (a) in this regard) and that it infringed the principle of proportionality (see (b) in this regard).

(a) The first part of the third ground of appeal

92. The Hellenic Republic considers paragraphs 88 to 103 of the judgment under appeal to be incorrect in three respects. First, the General Court impermissibly supplemented the implementing decision at issue in finding that the irregularities in the administration and control system were sufficient in themselves to justify the correction rate of 10% for farmers declaring only pasture. According to the Hellenic Republic, that decision is based solely on the lack of eligibility of the areas declared as ‘permanent pasture’ and therefore on the incorrect interpretation of the concept of ‘permanent pasture’ in Article 2, first paragraph, point 2, of Regulation No 796/2004. Secondly, the General Court did not address the unjustified increase of the correction rate to 10% compared with 5% the previous year and the established improvements in the conventional on-the-spot checks. Thirdly, the judgment did not sufficiently examine the so-called ‘buffer effect’⁷¹ and its influence on the correction rate.

93. Contrary to the perception of the Hellenic Republic, however, the summary report, which contains the reasoning for the implementing decision at issue, reveals that the Commission did not base the correction rate of 10% in respect of the aid for farmers declaring only pasture fundamentally on the lack of eligibility of certain areas, but rather on the deficiencies in the control system. The lack of

⁷⁰ Cf. paragraphs 24 to 65, in particular paragraphs 43 to 65, of the judgment under appeal.

⁷¹ Regarding the buffer effect, cf. point 79 of this Opinion.

eligibility is used merely as an indication of the defectiveness of the on-the-spot checks. Accordingly, the General Court did not supplement the decision of the Commission in a legally incorrect manner when, in the judgment under appeal, it substantiated the correction rate by means of the individual deficiencies in the control system.⁷²

94. The General Court also expressly addressed the importance of the established improvement in the on-the-spot checks,⁷³ the correction rate from the previous year⁷⁴ and the buffer effect.⁷⁵

95. In light of this, the outcome of the evaluation, namely that the deficiencies in the control system justify the correction rate irrespective of the question regarding the definition of ‘permanent pasture’, neither constitutes an impermissible supplementation of the Commission’s statement of reasons nor is inadequately reasoned. The first part of the third ground of appeal is therefore unfounded.

(b) The second part of the third ground of appeal

96. The Hellenic Republic takes the view that the confirmation of the 10% correction rate in respect of aid for farmers declaring only pasture in paragraphs 88 to 103 of the judgment under appeal infringes the principle of proportionality. It considers that the correction rate should have been 5%. The 10% correction rate came about because the deficiencies in the control system were evaluated with regard to all areas declared — without taking sufficient account of the buffer effect.⁷⁶

97. According to the criteria taken as a basis by the General Court and developed in the case-law,⁷⁷ the amount of a flat-rate correction rate is determined by the extent to which the control system is defective and by the resulting risk of loss for the agricultural funds owing to expenditure not covered by EU law. The principle of proportionality must always be taken into account when determining the correction rate.

98. In the present instance, the General Court found, in line with the Commission, that the established irregularities in the LPIS-GIS and the on-the-spot checks are to be evaluated as constituting a seriously inadequate implementation of the checking system typically entailing a high risk of losses to the fund. The General Court takes the view that, under the Commission’s Guidelines for calculating the financial consequences when preparing the decision to clear the accounts of the EAGGF Guarantee Section,⁷⁸ this justifies, in principle, a correction rate of 25%.⁷⁹ At the hearing in the appeal proceedings, the Commission even stated that it had considered a correction rate of up to 50%. When the areas at issue in Greece were subsequently remeasured on the basis of an enlarged definition, a reduction of the eligible areas by roughly 50% was recorded, which attested to the scale of the initial problem in the implementation of the control system. The judgment under appeal has already referred to this aspect as well.⁸⁰ The 10% correction rate, which is heavily reduced when compared with 25% or 50%, was therefore attributable to the consideration of the buffer effect.⁸¹

72 Cf. point 31 of this Opinion and paragraphs 84 to 96 of the judgment under appeal.

73 Paragraphs 98 to 100 of the judgment under appeal.

74 Paragraph 101 of the judgment under appeal.

75 Paragraphs 95, 102 and 103 of the judgment under appeal.

76 Cf. point 92 of this Opinion.

77 Paragraphs 78 to 83 of the judgment under appeal.

78 Document VI/5330/97 of 23 December 1997.

79 Paragraphs 82, 95 and 105 of the judgment under appeal.

80 Paragraph 102 of the judgment under appeal; the reference in that paragraph to ‘the application from 2012 onwards of the more extensive definition of “permanent pasture”, which includes woody vegetation’ does not constitute a contradiction with paragraph 64 of the judgment under appeal, according to which there was nothing to indicate that the aforementioned action plan applied before 2012. Paragraph 102 refers exclusively to the remeasurement of the areas in order to update the LPIS-GIS, which, according to information provided by the Commission at the hearing, had already begun immediately after the action plan had been drawn up, in order to prepare for the actual implementation of the plan from 2014/2015 onwards.

81 Paragraphs 95, 102 and 103 of the judgment under appeal.

99. These considerations document the fact that the General Court dealt properly with the principle of proportionality and the factors relevant thereto, and no error of law is discernible in that analysis. Moreover, it must always be borne in mind here that a *flat-rate* correction is involved. This is precisely what the Hellenic Republic fails to recognise when it seeks to have the errors in the control system taken into account only to the extent that they arose in relation to areas used to activate payment entitlements.

100. In addition, the Hellenic Republic argues that an infringement of the principle of proportionality arose from the fact that the findings in paragraph 103 of the judgment under appeal contradicted the findings of the Court of Justice in the judgment in *Planes Bresco*.⁸² The importance of the passage cited from the *Planes Bresco* judgment — which conceptually distinguishes eligible permanent pasture areas pursuant to Article 44(2) of Regulation No 1782/2003 from the forage areas pursuant to Article 43(2) of that regulation that were originally used for the calculation of the payment entitlements of a farm — for the assessment of the proportionality of the correction rate is not, however, apparent.

101. The second part of the third ground of appeal must therefore also be rejected as unfounded.

4. *Interim conclusion*

102. In conclusion, it must therefore be found that only the first part of the first ground of appeal must be upheld. The General Court committed an error of law by basing the judgment under appeal on an overly restrictive interpretation of the concept of 'permanent pasture' in Article 2, first paragraph, point 2, of Regulation No 796/2004.

103. In the present case, however, this error of law does not lead to the judgment under appeal being set aside.⁸³ The reason for this is that the General Court expressly stated that the deficiencies in the integrated administration and control system justify the correction rate of 10% imposed for farmers declaring only pasture irrespective of the question regarding the definition of 'permanent pasture'.⁸⁴ The General Court itself therefore stated the reasons which support the operative part of the judgment under appeal irrespective of the interpretation of the concept of 'permanent pasture'. That finding of the General Court has been unsuccessfully challenged by the Hellenic Republic. For this reason, the success of the first part of the first ground of appeal is not capable of resulting in the judgment under appeal being set aside.

104. Nor is that finding called into question by the fact that, in the present case, not only the aid for farmers declaring only pasture, but also all aid affected by the reductions by the implementing decision at issue, was aid linked to the agricultural areas declared.⁸⁵

⁸² Judgment of 9 June 2016 (C-333/15 and C-334/15, EU:C:2016:426, paragraph 39).

⁸³ The fact that a ground of appeal is inoperative as the operative part of the judgment appears to be well founded on other legal grounds presented by the General Court itself can also be established by the Court of Justice after examining the content of the ground of appeal concerned, cf. judgment of 12 November 1996, *Ojha v Commission* (C-294/95 P, EU:C:1996:434, paragraph 52).

⁸⁴ Paragraphs 66, 88 and 95 of the judgment under appeal.

⁸⁵ Cf. points 26 and 27 of this Opinion.

105. First, the additional area aid is not based on the presence of permanent pasture as an eligible area, but rather on the areas used to cultivate specific agricultural products.⁸⁶ Secondly, in its appeal, the Hellenic Republic criticised the findings of the General Court on the reductions in the aid for the area-related rural development measures not in relation to the eligibility of the areas used or the proportionality of the reductions, but only in relation to the failure to take account of Implementing Decision 2013/214 in relation to claim year 2008/financial year 2010.⁸⁷

106. The finding in the present appeal proceedings of an error of law in the General Court's interpretation of the concept of 'permanent pasture' therefore cannot play a role in the assessment of the reductions concerning the additional area aid and the area-related rural development measures.

C. Grounds of appeal put forward against the General Court's assessment regarding the 5% financial correction for additional area aid

107. By the fourth and fifth grounds of appeal, the Hellenic Republic challenges the General Court's assessment regarding the 5% flat-rate correction in respect of additional area aid.⁸⁸

1. The fourth ground of appeal

108. By the fourth ground of appeal, the Hellenic Republic asserts that the interpretation and application of Article 31 of Regulation (EC) No 1290/2005⁸⁹ in conjunction with Article 11 of Regulation (EC) No 885/2006⁹⁰ was erroneous and lacked a sufficient statement of reasons. It states that these regulations required the Commission, on its own initiative, to discuss all the findings of the inspection on which the financial correction is ultimately based with the Member State concerned in a bilateral meeting.

109. The General Court did not attach any such importance to the bilateral meeting. According to the General Court, pursuant to the first subparagraph of Article 11(1) of Regulation No 885/2006, the *inter partes* procedure that leads to the decision on the clearance of accounts is initiated by a first written communication that must inform the Member State fully of the results of the inquiries so that it is provided with all the guarantees necessary for it to present its point of view.⁹¹ In so far as the Commission has discharged this obligation to provide information, the Member State cannot plead the fact that the results were not also discussed in the bilateral discussion pursuant to the third subparagraph of Article 11(1) of Regulation No 885/2006.⁹²

110. There does not appear to be any error of law in this interpretation.

111. Neither Article 31 of Regulation No 1290/2005 nor Article 11 of Regulation No 885/2006 gives any instructions on the content of the bilateral meeting. The former merely provides that the Member State must be notified of the inspection findings in writing, and this is clarified by the latter to the effect that such notification must take place by means of the first written communication.

⁸⁶ Cf. the statements of the General Court in paragraph 136 of the judgment under appeal as well as Article 72 et seq. of Regulation No 1782/2003.

⁸⁷ Cf. points 120 and 121 of this Opinion.

⁸⁸ Paragraphs 107 to 137 of the judgment under appeal.

⁸⁹ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

⁹⁰ 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).

⁹¹ Paragraphs 113 to 116 of the judgment under appeal.

⁹² Paragraph 120 of the judgment under appeal.

112. The bilateral meeting itself then no longer primarily serves to inform the Member State, but is intended, at this early stage of the procedure and on the basis of the exchange of information that has taken place beforehand, to enable agreement, as required by Article 31(3) of Regulation No 1290/2005, on the legal assessment of the breaches and on the measures to be taken.

113. In addition, the General Court applied its view of the content of the procedural guarantees in Article 31 of Regulation No 1290/2005 in conjunction with Article 11 of Regulation No 885/2006 to the underlying facts in a logical and transparent manner.⁹³

114. Moreover, the statements made by the General Court are also sufficiently detailed and understandable. Accordingly, the Hellenic Republic's criticism that the General Court's statement of reasons in relation to the aforementioned procedural guarantees was insufficient and contradictory must also be rejected.

115. Consequently, the fourth ground of appeal is unfounded in its entirety.

2. The fifth ground of appeal

116. In the fifth ground of appeal, the Hellenic Republic pleads an insufficient statement of reasons for the correction rate of 5% imposed in relation to the additional area aid and the impermissible supplementation of the statement of reasons for the implementing decision at issue by paragraphs 126 to 128 and 132 to 133 of the judgment under appeal.

117. Contrary to the view taken by the Commission, the fifth ground of appeal should not be rejected as inadmissible. Although the reasons provided for it are vague — as is the case at other points of the appeal — it is in essence sufficiently specific, particularly as a result of the references to specific passages of the judgment under appeal, to allow an examination as to its merits.

118. Contrary to the view taken by the Hellenic Republic, however, the factors that were relevant to the determination of the correction rate of 5% for the additional coupled area-based aid can be comprehensibly gathered from the judgment under appeal.⁹⁴ This applies, in particular, to the aforementioned irregularities in the control system, which, as already explained, are also identified by the summary report,⁹⁵ and to the buffer effect,⁹⁶ which is not relevant in the case of additional area aid, and therefore to the fact that the reduction rate of 5% for the additional area aid was higher than the 2% rate in respect of aid for farmers declaring no pasture.⁹⁷ In the context of its considerations in this regard, the General Court also took due account of the arguments put forward by the Hellenic Republic in this respect.

119. The fifth ground of appeal therefore also proves to be unfounded.

⁹³ Paragraphs 115 to 119 of the judgment under appeal.

⁹⁴ Paragraphs 126 to 136 of the judgment under appeal.

⁹⁵ Cf. point 93 of this Opinion.

⁹⁶ Regarding the buffer effect, cf. point 79 of this Opinion. As explained by the General Court in paragraph 136 of the judgment under appeal, the buffer effect cannot be applicable in relation to additional area aid. For that type of aid, which is coupled to production, 'payment entitlements', which are activated by eligible areas that may be fewer in number than the total areas declared by a farmer, are not used. By contrast, in the case of additional area aid, only the declared, actually cultivated area provides the basis for the relevant aid.

⁹⁷ Cf. point 27 of this Opinion.

D. Ground of appeal put forward against the General Court's assessment regarding the 5% financial correction for the area-related rural development measures (sixth ground of appeal)

120. The sixth ground of appeal relates to the 5% flat-rate correction in respect of rural development, in so far as it was not annulled by the General Court.⁹⁸

121. In this regard, the Hellenic Republic asserts that the General Court did not examine its complaint put forward at first instance in its entirety, which equates to a failure to state reasons. Thus, the General Court is said to have dealt with the complaint regarding the insufficient consideration of the correction already made by Implementing Decision 2013/214 in respect of rural development aid only in relation to claim year 2008/financial year 2009, and not in relation to claim year 2008/financial year 2010.

122. In its application at first instance, the Hellenic Republic initially asserted, in its plea relating to the 5% correction for rural development aid, a failure to state reasons as well as an error in the assessment of the facts and an infringement of the principle of proportionality and therefore challenged the correction concerned in its entirety (i.e. 5% of the expenditure concerned, amounting to EUR 10 504 391.90).⁹⁹ Secondly, the Hellenic Republic argued that the Commission had not taken sufficient account of a previous correction made by Implementing Decision 2013/214 for the same reasons, and which amounted to EUR 6 175 094.49, when it deducted only EUR 2 588 231.20 from the sum of EUR 10 504 391.90.¹⁰⁰ By this argument, the Hellenic Republic did not seek the annulment of the basic amount of the correction in relation to the rural development aid (5% of the expenditure concerned, EUR 10 504 391.90), but the annulment of the implementing decision at issue in so far as due account had not been taken of Implementing Decision 2013/214 when calculating the amount to be deducted from that basic amount.

123. In the judgment under appeal, the General Court first rejected the complaint regarding the failure to state reasons as well as — even if implicitly — the complaint regarding the erroneous assessment of the facts and the infringement of the principle of proportionality.¹⁰¹ In this regard, the Hellenic Republic argued that the Commission had not taken sufficient account of the increase in on-the-spot checks, even though these increased checks had brought about a significant risk reduction in relation to the established errors. The General Court discussed the substance of these complaints and rejected them, even if it did not explicitly reiterate the legal grounds of erroneous assessment of the facts and infringement of the principle of proportionality.¹⁰² It is clear from this rejection that the General Court refused the Hellenic Republic's request for annulment of the 5% correction for rural development aid in its entirety.

124. In relation to the second part of the relevant plea, which related to insufficient consideration of the correction already made by the previous Implementing Decision 2013/214 and which the present ground of appeal concerns, the General Court upheld the Hellenic Republic's request in part, however. Thus, the General Court came to the conclusion, despite its own investigations and calculations, that it was not clear how the amounts that the Commission had deducted from the 5% correction for rural development aid had been calculated. The General Court concluded from this that there was a failure to state reasons for the implementing decision at issue with regard to the account taken of the previous correction made by Implementing Decision 2013/214 for rural development aid.¹⁰³

⁹⁸ Paragraphs 138 to 168 of the judgment under appeal.

⁹⁹ Cf. points 26 and 27 of this Opinion.

¹⁰⁰ Cf. point 26 of this Opinion.

¹⁰¹ Paragraphs 140 to 151 of the judgment under appeal.

¹⁰² Paragraphs 141 to 145 and 150 to 151 of the judgment under appeal.

¹⁰³ Paragraphs 152 to 168 and the operative part of the judgment under appeal.

125. However, for no apparent reason, the General Court confined its statements in this regard, both in the grounds and in the operative part of the judgment under appeal, to the correction for claim year 2008/financial year 2009 imposed by the implementing decision at issue and the amount deducted in this regard (correction of EUR 5 007 867.36, deduction of EUR 2 318 055.75 and final amount of EUR 2 689 811.61).¹⁰⁴ In its application at first instance, however, the Hellenic Republic had expressly referred to the account taken, in the implementing decision at issue, of the entire correction for rural development aid imposed by Implementing Decision 2013/214, both of which decisions related to both claim year 2008/financial year 2009 and claim year 2008/financial year 2010. It is in fact apparent from Implementing Decision 2013/214 and the implementing decision at issue, as well as the associated summary reports, that both implementing decisions make provision for corrections in respect of rural development aid for claim year 2008/financial year 2009 and for claim year 2008/financial year 2010.¹⁰⁵

126. In confining itself to the correction for claim year 2008/financial year 2009 in its considerations, the General Court therefore failed to address the submissions of the Hellenic Republic in their entirety. This constitutes a breach of the duty to state reasons.¹⁰⁶

127. Therefore, the sixth ground of appeal is well founded.

128. Moreover, it is clear from the statements made in points 122 and 125 of this Opinion that, contrary to the submission of the Commission, this ground of appeal does not constitute an extension of the pleas submitted at first instance. This ground of appeal also relates to the statement of reasons in the judgment under appeal and the question whether the submissions of the Hellenic Republic were sufficiently addressed by the General Court, and not, as the Commission sees it, to questions of fact, which cannot be reviewed in appeal proceedings.

129. However, it is found, in line with the Commission, that the operative part of the judgment under appeal is to be understood in the light of the grounds for that judgment, to the effect that the General Court annulled the 5% correction in respect of rural development aid for claim year 2008/financial year 2009 not in relation to the basic amount of that correction, but only in relation to the (insufficient) amount that the Commission had deducted from that basic amount in order to take account of the correction already made by way of Implementing Decision 2013/214.¹⁰⁷ Accordingly, the present ground of appeal is to be understood as meaning that the Hellenic Republic requests that the judgment under appeal be set aside in so far as, in relation to rural development aid, the General Court did not take account of the correction for claim year 2008/financial year 2010 that had already been made by Implementing Decision 2013/214 for the same reasons.

¹⁰⁴ The entire correction for rural development aid imposed by the implementing decision at issue is made up of the following: Total correction of EUR 10 504 391.90, of which EUR 5 007 867.36 is for the 2009 financial year and EUR 5 496 524.54 for the 2010 financial year; total deduction of EUR 2 588 231.20, of which EUR 2 318 055.75 is for the 2009 financial year and EUR 270 175.45 for the 2010 financial year; total final amount of EUR 7 916 160.70, of which EUR 2 689 811.61 is for the 2009 financial year and EUR 5 226 349.09 for the 2010 financial year.

¹⁰⁵ There could have been confusion due to the fact that Implementing Decision 2013/214 provided for corrections not only for claim year 2008, but also for claim year 2009. It is clear from the summary report regarding that implementing decision, however, that the corrections for claim year 2008 related to the 2009 financial year *and* the 2010 financial year. Implementing Decision 2013/214 therefore related both to claim year 2008/financial year 2009 and to claim year 2008/financial year 2010, as did the implementing decision at issue. Moreover, the Commission stated, both in its written submissions and at the hearing, that it is in the process of recalculating, in implementation of the judgment under appeal, the amount that is to be deducted from the correction made in the implementing decision at issue in relation to rural development aid, in order to take account of Implementing Decision 2013/214, and that this deduction will relate both to the correction of EUR 5 007 867.36 for the 2009 financial year and to the correction of EUR 5 496 524.54 for the 2010 financial year.

¹⁰⁶ Judgments of 14 July 2005, *Acerinox v Commission* (C-57/02 P, EU:C:2005:453, paragraph 36); of 11 April 2013, *Mindo v Commission* (C-652/11 P, EU:C:2013:229, paragraph 41); and of 30 May 2018, *L'Oréal v EUIPO* (C-519/17 P and C-522/17 P to C-525/17 P, not published, EU:C:2018:348, paragraph 81 et seq.).

¹⁰⁷ Cf. points 122 to 124 of this Opinion.

VI. Setting aside of the judgment under appeal and final judgment in the matter

130. Under Article 61(1) of the Statute of the Court of Justice, if the appeal is well founded, the Court of Justice must quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

131. The first part of the first ground of appeal and the sixth ground of appeal are well founded. However, it has already been stated that the success of the first part of the first ground of appeal is not capable of resulting in the judgment under appeal being set aside.¹⁰⁸ Consequently, the judgment under appeal is to be set aside only with regard to the General Court's assessment regarding the 5% financial correction for the rural development aid, to which the sixth ground of appeal relates.

132. The state of the proceedings also permits final judgment in this regard. The General Court addressed the complaint regarding the double correction only with regard to claim year 2008/financial year 2009. However, the statements made in this regard, according to which the Commission was unable to substantiate the extent to which the correction imposed in Implementing Decision 2013/214 influenced the amount of the correction in the implementing decision at issue, can also be transferred to the correction with regard to claim year 2008/financial year 2010. In this respect, the Court of Justice is therefore able to give final judgment in the matter.

VII. Costs

133. Article 138(3) of the Rules of Procedure of the Court of Justice, applicable to proceedings on appeal under Article 184(1) of those rules, provides that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may also order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

134. In the present case, the Hellenic Republic succeeds on some heads both in relation to the appeal and in relation to the proceedings at first instance.

135. It therefore appears to be justified, both in relation to the costs at first instance and in relation to the costs in the appeal proceedings, to rule that the Hellenic Republic must bear a third of its own costs and a third of the Commission's costs, and that the Commission must bear two thirds of its own costs and two thirds of the costs of the Hellenic Republic.

VIII. Conclusion

136. In view of all the foregoing considerations, I propose that the Court should:

- (1) set aside the judgment of the General Court of the European Union of 30 March 2017, *Greece v Commission* (T-112/15, EU:T:2017:239), in so far as the General Court rejected the complaint regarding the double correction imposed for the same reason in the case of claim year 2008/financial year 2010 in relation to the financial correction of 5% for rural development aid, and ordered the Hellenic Republic to bear all the costs of the proceedings at first instance;
- (2) annul Commission Implementing Decision 2014/950/EU of 19 December 2014 with regard to the expenditure incurred by the Hellenic Republic in the sector of Rural Development EAFRD Axis 2 (2007-2013, area related measures) in so far as that decision relates to the taking into account of

¹⁰⁸ See point 103 of this Opinion.

Commission Implementing Decision 2013/214/EU of 2 May 2013 in the calculation of the correction for the 2010 financial year owing to deficiencies in the Land Parcel Identification System (LPIS) and in on-the-spot checks (second pillar, claim year 2008);

- (3) dismiss the appeal as to the remainder;
- (4) order the Hellenic Republic to bear one third of its own costs at first instance and of its costs in the appeal proceedings as well as one third of the costs of the Commission at first instance and of the costs of the Commission in the appeal proceedings;
- (5) order the Commission to bear two thirds of its own costs at first instance and of its costs in the appeal proceedings as well as two thirds of the costs of the Hellenic Republic at first instance and of the costs of the Hellenic Republic in the appeal proceedings.