

JUDGMENT OF THE COURT (Fifth Chamber)

9 January 2003 *

In Case C-178/00,

Italian Republic, represented by U. Leanza, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by E. de March and L. Visaggio, acting as Agents, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for partial annulment of Commission Decision 2000/197/EC of 1 March 2000 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 61, p. 15), in so far as it imposed financial adjustments in respect of certain expenditure declared by the applicant Member State,

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2002,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 12 May 2000, the Italian Republic brought an action, pursuant to the first paragraph of Article 230 EC, for partial annulment of Commission Decision 2000/197/EC of 1 March 2000 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 61, p. 15, 'the contested decision'), in so far as it imposed financial adjustments in respect of certain expenditure declared by the applicant Member State.

- 2 The application for partial annulment concerns the following adjustments, the description of which and reasons for which are given in the Commission's summary report of 12 January 1999 on the results of the inspections for the clearance of the accounts of the Guarantee Section of the EAGGF for 1995 (Document VI/6462/98 ('the summary report')):
 - negative adjustments of ITL 3 358 746 955 and ITL 807 967 249 and a positive adjustment of ITL 22 116 046 015 in respect of expenditure relating to storage costs for durum wheat (paragraph 4.5.1.2.1.11 of the summary report);

- negative adjustments of ITL 7 883 033 994, ITL 1 756 934 916 and ITL 44 888 325 908 in respect of expenditure relating to storage costs for durum wheat (paragraph 4.5.1.2.1.14 of the summary report);

- a negative adjustment of ITL 1 923 101 478 corresponding to the amount of the security which should have been forfeited in connection with the sale of durum wheat for export to Algeria (paragraph 4.5.1.2.1.16 of the summary report);

- negative adjustments of ITL 5 263 394 861 and ITL 4 701 973 982 corresponding to the value of the discrepancies found in the stocks of common wheat, barley and maize between the end of the 1994 financial year and the start of the 1995 financial year (paragraphs 4.5.1.3, 4.5.1.3.1.1 and 4.5.1.3.1.2 of the summary report);

- a negative adjustment of ITL 2 502 127 250 corresponding to the balance of the adjustments made by the Commission in an earlier monthly declaration concerning common wheat, barley and maize (paragraph 4.5.1.3.5 of the summary report);

- in addition, the Commission's decision refusing to award the Italian Republic the sum of ITL 11 952 457 079 in the context of the clearance of accounts for

financial year 1995 in respect of the final regularisation of invoices for the sale of cereals by intervention agencies is contested.

The negative adjustments of ITL 3 358 746 955 and ITL 807 967 249 and the positive adjustment of ITL 22 116 046 015 relating to storage costs for durum wheat

- 3 It is clear from the documents before the Court, and in particular from paragraph 4.5.1.2.1.11 of the summary report that, following the discovery of discrepancies between the annual declaration for financial year 1995 and the actual situation regarding intervention stocks of durum wheat, the Commission made an adjustment consisting of a reduction of ITL 3 358 746 955 in the expenditure declared in respect of budget item 1011.003, a reduction of ITL 807 967 249 in the expenditure declared in respect of budget item 1012.003, and an increase of ITL 22 116 046 015 in the expenditure declared in respect of budget item 1013.003.

- 4 In its application the Italian Government seeks the annulment by the Court of 'the proposed negative adjustment of ITL 26 282 760 219', an amount that was apparently obtained by adding together ITL 3 358 746 955, ITL 807 967 249 and ITL 22 116 046 015; and, submitting its own stock records but not setting out the legal grounds in support of that head of claim, maintains that the EAGGF derived unjustified enrichment in respect of that sum.

- 5 In that regard, it is clear from the documents before the Court, and in particular from paragraph 4.5.1.2.1.11 of the summary report that the adjustment of

ITL 22 116 046 015 in respect of budget item 1013.003 is a positive adjustment, that is to say, it is in the Italian Republic's favour, and only the adjustments of ITL 3 358 746 955 and ITL 807 967 249 are negative adjustments.

- 6 The claims made by the Italian Government, which is seeking the annulment of a negative adjustment of ITL 26 282 760 219 in total, on the ground that the EAGGF had clearly derived unjustified enrichment in respect of that amount, are therefore incomprehensible. As the Advocate General stated at point 6 et seq. of his Opinion, it is clear from Article 38(1)(c) of the Rules of Procedure of the Court of Justice, and from the case-law relating to that provision, that an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based, and that that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application. It is therefore necessary for the basic legal and factual particulars on which a case is based to be indicated coherently and intelligibly in the application itself.

- 7 The Italian Government's claims in this case fail to meet those requirements, since it is incomprehensible how the EAGGF can be regarded as having derived [unjustified] enrichment in respect of ITL 26 282 760 219, when clearly ITL 22 116 046 015 of that amount was an adjustment in the applicant Member State's favour.

- 8 The application is therefore inadmissible in so far as that head of claim is concerned and must be dismissed.

The negative adjustments of ITL 7 883 033 994, ITL 1 756 934 916 and ITL 44 888 325 908 relating to storage costs for durum wheat

- 9 The Italian Government challenges a negative adjustment totalling ITL 54 528 294 818, comprising negative adjustments of ITL 7 883 033 994, ITL 1 756 934 916 and ITL 44 888 325 908, which the Commission imposed on the ground that an inspection conducted in March and April 1995 revealed that a total of 122 709.192 tonnes of durum wheat stored in the warehouses of Coop. San Giorgio were of very poor quality and did not meet the minimum conditions required for admission into public intervention.
- 10 It is clear from paragraph 4.5.1.2.1.14 of the summary report that in respect of some of the 122 709.192 tonnes of durum wheat concerned, namely 84 481.128 tonnes, the buying-in price and related storage costs were charged to the Italian authorities because the Commission staff considered that the cereals in question did not meet the conditions required from the time they were submitted for public intervention. The Commission relies in this regard on Article 7(1) of Commission Regulation (EEC) No 3597/90 of 12 December 1990 on the accounting rules for intervention measures involving the buying-in, storage and sale of agricultural products by intervention agencies (OJ 1990 L 350, p. 43), which provides that '[q]uantities entering storage which are found not to meet the conditions laid down for storage, shall be entered in the accounts at the time of removal from storage as a sale at the price at which they were purchased'.
- 11 As regards the remainder of the 122 709.192 tonnes of durum wheat concerned, namely 38 228.064 tonnes, the Commission explains in the summary report that

it applied Article 2(3)(c) of that regulation, which provides that ‘[i]n cases of deterioration or destruction of the product as a result of... bad conservation conditions..., the value of the product shall be accounted for in accordance with paragraph 1’, that is to say, ‘by multiplying [the] quantities [in question] by the basic intervention price in force for the standard quality on the first day of the current financial year, increased by 5%’.

The quantity of 84 481.128 tonnes

- 12 As regards the quantity of 84 481.128 tonnes of durum wheat, the Italian Government maintains that the Commission infringed Articles 2 and 7 of Regulation No 3597/90. It contends that at the time when it was submitted to the intervention agency that quantity complied with all the requirements laid down by Community legislation. As evidence of this, it produced to the Court 37 certificates of analyses carried out by a private laboratory, which are said to confirm that the product was of good quality at the time when it was bought in. The Commission should therefore not have applied Article 7 of Regulation No 3597/90, which refers to ‘[q]uantities... which are found not to meet the conditions laid down for storage’, but Article 2(3)(c) of that regulation, which refers to ‘bad conservation conditions’.
- 13 The Commission rejects that criticism. In its submission, the very poor quality of the 84 481.128 tonnes of durum wheat from the time when they were submitted for intervention clearly emerges from the analyses conducted during the official inspections carried out in March and April 1995 by the Consorzio Controlli Integrati in Agricoltura (‘the CCIA’). The results of the analyses carried out by a private laboratory which are now submitted to the Court by the Italian

Government cannot be taken into account since they appear to be based on samples taken by the storer itself and not by independent persons.

- 14 In that regard, it should be observed that, as stated at points 22 to 28 of the Advocate General's Opinion, in the context of the clearance of the accounts of the Member States in respect of the expenditure of the EAGGF, conclusive factual data cannot normally be established except by impartial checks carried out by independent persons such as the CCIA. It is only where the Member State concerned succeeds in showing that those findings are incorrect that other evidence may be allowed. In the present case, as the Advocate General states at those same points of his Opinion, the production by the Italian Government during course of the proceedings of 37 certificates of analyses prepared by a private laboratory which does not meet the requirements of impartiality cannot invalidate the findings of the CCIA
- 15 The Italian Government has therefore failed to establish that the Commission infringed Articles 2 and 7 of Regulation No 3597/90.

The quantity of 38 228.064 tonnes

- 16 As regards the quantity of 38 228.064 tonnes, the Italian Republic contends that the Commission committed an error of assessment in calculating the quantity of the products in question. It maintains that during its inspections the CCIA recorded that the quantity of wheat held by Coop. San Giorgio was only 37 042.795 tonnes, which was 1 185.269 tonnes less than the figure which the Commission took when it calculated the adjustment in question.

- 17 According to the Commission, although the CCIA did indeed find that only 37 042.795 tonnes of durum wheat were of ‘poor quality’ as a result of bad conservation conditions, the CCIA did at the same time find that another quantity of 1 185.269 tonnes was missing. Since the value attributed to a quantity refused on grounds of poor quality is the same as that attributed to a quantity refused because it is missing, the arguments of the Italian Government are irrelevant.
- 18 In that regard, it should be pointed out, on the one hand, that the Italian Government, which merely states that the CCIA found during its inspections of the warehouses of Coop. San Giorgio that there were only 121 523.923 tonnes of durum wheat (84 481.128 tonnes + 37 042.795 tonnes) stored, does not by any means contradict the Commission’s statement that the CCIA also pointed out that a quantity of 1 185.269 tonnes was missing from storage.
- 19 On the other hand, according to Article 2(1) and (3)(c) of Regulation No 3597/90, in the context of the financing of intervention measures in the form of public storage by the EAGGF, the value to be taken into account is calculated in the same way for missing quantities ‘exceeding the tolerance for preservation and processing, or... due to theft or other identifiable causes’ as for quantities which have deteriorated or been destroyed ‘as a result of... bad conservation conditions’.
- 20 It is clear therefore that the Commission did not commit any error capable of causing the Italian Republic to incur financial loss. Consequently, the application must be dismissed as unfounded in so far as it relates to the total negative adjustment of ITL 54 528 294 818.

The negative adjustment of ITL 1 923 101 478 relating to the security which should have been forfeited in connection with an export to Algeria

Legal background

- 21 Article 21 of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5) provides, with regard to the release of securities:

‘Once the evidence laid down by the specific Regulation has been furnished that all primary, secondary and subordinate requirements have been fulfilled, the security shall be released.’

- 22 Article 20(2) of that regulation provides that ‘[a] primary requirement is a requirement, basic to the purposes of the Regulation imposing it, to perform, or to refrain from performing, an act.’

- 23 Under Article 1(a) of Regulation No 2220/85 that regulation applies to a large number of common organisations of markets in agricultural products, including cereals.

- 24 In connection with an operation to export intervention stocks of durum wheat to Algeria the Commission adopted Regulation (EC) No 2668/94 of 31 October

1994 authorising the Italian intervention agency to put up for sale by tender 148 000 tonnes of durum wheat for export in the form of durum wheat meal to Algeria (OJ 1994 L 284, p. 45). Article 11(4) of that regulation provides:

‘The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 of 22 July 1985... is payment of the purchase price for the wheat and export of the durum wheat meal within the specified period under the export licence referred to in Article 4(3).’

25 Article 11(2) of that regulation provided, at the material time, as follows:

‘To ensure performance of the requirement to export the products and import them into Algeria, a security of ECU 50 per tonne of durum wheat shall be lodged, ECU 25 per tonne of which shall be lodged at the time the licence is issued for the export of the wheat meal in respect of the corresponding quantity of durum wheat, and the balance of ECU 25 per tonne shall be lodged before the cereals are removed from storage.’

By way of derogation from Article 15(2) of Commission Regulation (EEC) No 3002/92... the amount of ECU 50 per tonne of durum wheat corresponding to the processed wheat meal must be released within 15 working days of the date on which the successful tenderer provides evidence that the wheat meal has actually arrived in Algeria.’

26 Amendments were subsequently made to the second subparagraph of that provision by Commission Regulation (EC) No 545/95 of 10 March 1995

amending Regulation No 2668/94 (OJ 1995 L 55, p. 27). That subparagraph now provides that the amount of ECU 50 must be released 'within 15 working days of the date on which the successful tenderer provides evidence that the primary requirement referred to in paragraph 4 has been met'.

The contested adjustment

- 27 It is clear from the documents before the Court, and in particular from paragraph 4.5.1.2.1.16 of the summary report, that in the context of the operation to export durum wheat to Algeria provided for in Regulation No 2668/94, the Italian company Italgrani SpA took part in the tendering procedure and that with regard to a contract for 32 873.951 tonnes it failed to comply with one of the requirements laid down in Article 11(4) of Regulation No 2668/94, namely payment of the purchase price. The Italian authorities none the less released the security of ECU 50/tonne which had been lodged. Considering that that security had been forfeited, the Commission therefore imposed a negative adjustment of ITL 1 923 101 478.
- 28 The Italian Government does not dispute either the amount of the adjustment or the fact that Italgrani SpA failed to meet the requirement to pay the purchase price. It contends, however, that the Commission should not have considered that payment of the purchase price was a condition for the release of the security, since the second subparagraph of Article 11(2) of Regulation No 2668/94, in the version applicable at the material time, provided, as the sole condition for release of the security, that evidence must be provided that the wheat meal processed from the durum wheat had arrived in Algeria. It was only subsequently, after that provision had been amended by Regulation No 545/95, that compliance with the primary requirements referred to in Article 11(4) of Regulation No 2668/94 was introduced as a prior condition for release of the security. That amendment was not, however, applied to the facts of the case. The Commission therefore committed an error of law by applying Regulation No 545/95 retroactively and hence unlawfully.

- 29 In that regard, it is clear from an overview of the whole scheme of the applicable legislation that the conditions for the release of the security were not contained exclusively in the second subparagraph of Article 11(2) of Regulation No 2668/94, in the original version applicable to the facts of the case, but that that provision had to be read in conjunction with Article 11(4), and with Regulation No 2220/85, which constitutes the basic regulation in that area, to which Article 11(4) of Regulation No 2668/94 moreover expressly refers.
- 30 Since Article 21 of Regulation No 2220/85 provides generally that release of the security is conditional upon all the primary requirements being fulfilled, the specific regulation, Regulation No 2668/94, cannot derogate from that principle unless it does so explicitly and on special grounds. This is not the case as regards the second subparagraph of Article 11(2) of Regulation No 2668/85 in its original version, since Article 11(4) of that regulation provides that payment of the purchase price is the primary requirement and thus makes a clear reference to Regulation No 2220/85.
- 31 In those circumstances, release of the security was not only conditional on the goods arriving in Algeria, as required by Article 11(2) of Regulation No 2668/94, but also on the the purchase price being paid, as required by Article 11(4) of the same regulation in conjunction with Articles 20 and 21 of Regulation No 2220/85. The subsequent amendment of the second subparagraph of Article 11(2) of Regulation No 2668/94 by Regulation No 545/95, which makes express reference to that second condition, merely confirms the state of the previous law. That reading of the situation is supported by the fact that the preamble to Regulation No 545/95, which sets out the grounds for the other amendments to Regulation No 2668/94, does not even mention the amendment to the second subparagraph of Article 11(2) of that regulation.

- 32 The Commission was therefore entitled to require, on the basis of Regulation No 2668/94 in its original version applicable to the facts of the case, that release of the security should be conditional upon payment of the purchase price, so that the Commission by no means applied Regulation No 545/95 retroactively and hence did not commit any error of law.
- 33 The application must therefore be dismissed in so far as it relates to the negative adjustment of ITL 1 923 101 478.

The negative adjustments of ITL 5 263 394 861 and ITL 4 701 973 982 relating to discrepancies in stocks of common wheat, barley and maize

- 34 It is clear from the documents before the Court, and in particular paragraphs 4.5.1.3, 4.5.1.3.1.1 and 4.5.1.3.1.2 of the summary report, that the Commission made the negative adjustments of ITL 5 263 394 861 and ITL 4 701 973 982, totalling ITL 9 965 368 843, by reason of the discrepancies which appeared, from inspections made by the CCIA, in stocks of maize, common wheat and barley on 1 October 1994 (date on which the 1995 financial year began) as compared with the stocks appearing in the EAGGF tables on 30 September 1994 (end of the 1994 financial year). The discrepancies were as follows:

maize: + 35 446.263 tonnes

common wheat: + 275 000 tonnes

barley: - 27 844.6 tonnes

- 35 By means of the adjustments at issue, the Commission intended, according to what it has told the Court, to charge to the Italian authorities the ‘carry-over’ value of the surplus quantities of common wheat and maize and the value of the missing quantities of barley. According to the Commission, the carry-over values declared on 1 October 1994 in respect of durum wheat and maize should have tallied with those recorded on 30 September 1994, so that it was appropriate to make the adjustments concerned. As for the missing quantities of barley, in the Commission’s submission they should be regarded as a loss and their value should therefore be refunded to the EAGGF.
- 36 In its application the Italian Republic maintains that those negative adjustments are unfounded and that no grounds have been given for them. The stock adjustments resulted from the fact that during October 1994 the Italian administration made the required adjustment of the stocks shown on the books to accord with the actual stocks as they were found to exist following the inspection carried out by the CCIA.
- 37 The Commission’s approach is opportunist since it takes economic advantage of the fact that the Italian administration, correctly, adjusted the stocks shown on the books to accord with the stocks actually in storage. The Commission benefits, on the one hand, from the carry-over value due to the increase in the stocks of common wheat and maize, without giving the Italian State a similar advantage in return as regards barley, and, on the other hand, from the value calculated on the basis of Regulation No 3597/90 following the reduction in the stock of barley, a reduction not due to the actual loss of the product.
- 38 According to the Italian Government, if the Commission’s reasoning were to be followed it would also be necessary to credit the Italian administration with the following positive adjustments:

— A refund to the Italian State of the reduction in the carry-over value charged to it for the 1994 financial year in respect of 27 844.6 tonnes of barley;

- the technical storage costs (budget item 1011.03) due in respect of financial year 1994 on the 35 446.263 tonnes of maize declared in addition and discovered after the analysis of the inventory checks carried out by the CCIA, an increase which resulted from failure to take that quantity into account in the EAGGF tables in respect of the 1994 financial year;

- the technical storage costs (budget item 1011.03) due in respect of financial years 1992, 1993 and 1994 on 275 tonnes of common wheat stored because none of the 5 000 tonnes of common wheat to be supplied as food aid to Albania in full in December 1992 were delivered.

39 Failing this, the EAGGF should be held to have derived unjustifiable enrichment at the expense of the Italian Republic.

40 Those arguments put forward by the Italian Government do not make it possible to identify the factual and legal grounds on which that head of claim is based. As is clear from points 7 and 47 of the Advocate General's Opinion, it is necessary, in order for an action to be admissible under Article 38(1)(c) of the Rules of Procedure of the Court of Justice, which requires that the subject-matter of the proceedings and the pleas in law on which the application is based should be stated, that the basic legal and factual particulars relied on be indicated coherently and intelligibly in the application itself. This is not the case as regards the claims of the Italian Government relating to the subject-matter of the dispute concerning the adjustments in question.

41 The application must therefore be declared inadmissible in so far as it relates to the negative adjustments of ITL 5 263 394 861 and ITL 4 701 973 982.

The negative adjustment of ITL 2 502 127 250 corresponding to the balance of the adjustments made in an earlier monthly declaration concerning common wheat, barley and maize

- 42 It is clear from the documents before the Court, and in particular from paragraph 4.5.1.3.5 of the summary report, that the Commission made a negative adjustment of ITL 2 502 127 250 (+ 467 306 950 + ITL 146 883 900 - ITL 3 116 318 100) in order to rectify an error committed by the Italian administration when it drew up the annual EAGGF tables for financial year 1995.
- 43 That error resided in a failure to take into account, when making the annual declaration, in line 110 of Table 5, adjustments made in a monthly declaration under Article 9(7) of Commission Regulation (EEC) No 2776/88 of 7 September 1988 on data to be sent in by the Member States with a view to the booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1988 L 249, p. 9). That provision states that ‘corrections effected by the Commission to data referred to in Article 6 concerning the full year are to be indicated in an annex to a decision relating to advances and are to entail a charge or payment by the departments or agencies before the end of the month during which that decision was taken’.
- 44 In its application the Italian Republic maintains that in making that adjustment the Commission imposed a double penalty on it. In the twelfth monthly declaration for the financial year 1995 the Italian administration provided the following information in Tables 8, line 1, and 52, line 30:

— maize stocks at 1 October 1994 equivalent to 27 371.061 tonnes;

— technical costs (budget item 1011.006): ITL 472 481 200;

— financial costs (budget item 1012.006): ITL 141 376 660;

— other costs (budget item 1013.006): ITL 2 946 864 571.

45 According to the Italian Republic, the Commission informed the Italian authorities of the need to make the adjustments provided for by Regulation No 2776/88 in respect of financial year 1995, adjustments resulting from the fact that the Commission did not accept the costs set out above for public intervention because of deterioration of the stocks of maize concerned following a natural disaster which affected Cavalli's warehouses.

46 Subsequently, during the clearance of the accounts for financial year 1994, it was decided, under a conciliation procedure, with regard to the volume of maize stored in that company's warehouses, to impose in respect of the Italian administration two negative adjustments of ITL 448 148 256 and ITL 123 262 537 and a positive adjustment of ITL 8 132 491 172, which were referred to in paragraph 4.5.1.3.2 of the summary report.

47 It follows, according to the Italian Republic, that the negative adjustment proposed under Article 9 of Regulation No 2776/88 is unfounded in that, on the one hand, it conflicts with the decisions adopted during the conciliation procedure for the 1994 financial year and, on the other hand, it imposes a double penalty on the Italian administration, as follows:

— ITL 472 481 200 in respect of budget item 1011.006;

— ITL 141 376 660 in respect of budget item 1012.006, and

— ITL 2 946 864 571 in respect of budget item 1013.006.

- 48 On that point, as point 50 of the Advocate General's Opinion makes clear, the Italian Government's arguments do not make it possible to identify the subject-matter of the proceedings in that regard, namely the legal and factual grounds on which the application is based. They do not, therefore, satisfy the requirements laid down in Article 38(1)(c) of the Rules of Procedure.
- 49 The application must therefore be declared inadmissible in so far as it relates to the negative adjustment of ITL 2 502 127 250.

Refusal to grant the sum of ITL 11 952 457 079 in respect of the final regularisation of invoices for the sale of cereals into public intervention

- 50 In its application, the Italian Government raises one final complaint which, it admits, does not concern adjustments effected by the Commission in the context of the contested decision but the refusal to grant an application lodged by the Italian administration, as part of the clearance of the accounts for financial year 1995, for payment of ITL 11 952 457 079 in respect of the final regularisation of invoices for the sale of cereals by public intervention.
- 51 The Italian Government explains in detail that this is a problem linked to missing quantities of products which appear in the EAGGF tables as 'identifiable losses' and whose value, according to the Italian Government, was wrongly charged to the Italian administration.
- 52 The Commission has explained in that regard that the operations to which the Italian Government refers concern sales made from the 1993 financial year

onwards. An application for regularisation was not made by the Italian authorities until February 1999, however. The question of the regularisation of those sales invoices cannot therefore fall within the scope of the proceedings relating to the contested decision, which concerns matters brought to a close in October 1998.

- 53 In that regard, it need merely be observed that this head of claim does not relate to the decision contested in the present case. The Italian Government does not mention any other measure which it seeks to have annulled and to which the assertions in question relate. In those circumstances, the corresponding head of claim in the application does not satisfy the requirements of Article 38(1) of the Rules of Procedure since it clearly falls outside the context of the case.
- 54 The application is therefore inadmissible in so far as it relates to that head of claim.
- 55 Since the application by the Italian Government has proved to be inadmissible in part and unfounded in part, it must be dismissed in its entirety.

Costs

- 56 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application;
2. Orders the Italian Republic to pay the costs.

Wathelet

Edward

La Pergola

Jann

von Bahr

Delivered in open court in Luxembourg on 9 January 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber