

JUDGMENT OF THE COURT (First Chamber)

29 July 2010 \*

In Case C-54/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 6 February 2009,

**Hellenic Republic**, represented by I. Chalkias and M. Tassopoulou, acting as Agents,  
with an address for service in Luxembourg,

appellant,

the other party to the proceedings being:

**European Commission**, represented by H. Tserepa-Lacombe and F. Jimeno  
Fernández, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

\* Language of the case: Greek.

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet (Rapporteur),  
M. Ilešić, M. Safjan and M. Berger, Judges,

Advocate General: J. Kokott,  
Registrar: R. Grass,

after hearing the Opinion of the Advocate General at the sitting on 18 March 2010,

gives the following

**Judgment**

- <sup>1</sup> By its appeal, the Hellenic Republic seeks to have set aside the judgment of the Court of First Instance of the European Communities (now ‘the General Court’) of 11 December 2008 in Case T-339/06 *Greece v Commission* [2008] ECR II-3525 (‘the judgment under appeal’), by which that court dismissed its action for annulment of Commission Decision 2006/669/EC of 4 October 2006 fixing, for the 2006 financial year and in respect of a certain number of hectares, the definitive financial allocations

to Member States for the restructuring and conversion of vineyards under Council Regulation (EC) No 1493/1999 (OJ 2006 L 275, p. 62) (the contested decision).

## Legal context

### *Regulation (EC) No 1493/1999*

- <sup>2</sup> Article 14 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1) provides:

‘1. The Commission shall make initial allocations to Member States per year on the basis of objective criteria taking into account particular situations and needs, and efforts to be undertaken in the light of the objective of the scheme.

2. Initial allocations shall be adapted in view of real expenditure and on the basis of revised expenditure forecasts submitted by the Member States taking into account the objective of the scheme and subject to funds available.

3. Financial allocation between Member States shall take due account of the proportion of the Community vineyard area in the Member State concerned.

...’

*Regulation (EC) No 1227/2000*

- <sup>3</sup> Article 16 of Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Regulation No 1493/1999 on the common organisation of the market in wine, as regards production potential (OJ 2000 L 143, p. 1), in the version applicable to the financial year 2006, ('Regulation No 1227/2000') provides:

'1. The Member States shall forward to the Commission, not later than 10 July each year in respect of the restructuring and conversion system:

- (a) a statement of expenditure actually incurred at 30 June of the current financial year and the total area concerned;
- (b) a statement of expenditure validated at 30 June of the current financial year and the total area concerned;
- (c) any requests for the subsequent financing of expenditure in the current financial year in excess of the financial allocations made pursuant to Article 14(1) of Regulation (EC) No 1493/1999, and the total area concerned in each case;
- (d) amended expenditure forecasts, and the total areas concerned, for subsequent financial years until the end of the period provided for implementing the restructuring and conversion plans, in accordance with the allocation for each Member State.

2. Without prejudice to the general rules established for budgetary discipline, where the information which Member States are required to transmit to the Commission according to paragraph 1 is incomplete or the time-limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure on a temporary and flat-rate basis.'

4 Article 17 of Regulation No 1227/2000 provides:

'1. For each Member State, expenditure actually incurred, validated and declared for any given financial year shall be financed within the limits of the amounts notified to the Commission under Article 16(1)(a) and (b), provided that those amounts do not exceed in total the financial amount allocated to the Member State pursuant to Article 14(1) of Regulation ... No 1493/1999.

...

3. Requests made by Member States in accordance with Article 16(1)(c) shall be accepted on a pro rata basis, using the amounts available after deducting, for all Member States, the total of the amounts notified in accordance with Article 16(1)(a) and the amounts declared in accordance with Article 16(1)(b) from the total amount allocated to the Member States pursuant to Article 14 of Regulation ... No 1493/1999. The Commission shall notify the Member States as soon as possible after 30 June of the extent to which the requests may be accepted.

4. Notwithstanding paragraphs 1 and 2, where the total area notified in accordance with Article 16(1)(a) is less than the number of hectares indicated in the allocation for the financial year made to the Member State pursuant to Article 14(1) of Regulation

... No 1493/1999, then expenditure declared for the financial year in question shall be financed only up to a limit equal to the total area notified multiplied by the average amount of aid per hectare; this figure is calculated as a ratio between the amount allocated to the Member State pursuant to Article 14(1) of Regulation ... No 1493/1999 and the anticipated number of hectares.

This amount cannot in any event be greater than the expenditure declared in accordance with Article 16(1)(a).

For the purposes of implementing this paragraph, a tolerance of 5% shall be applied to the total area notified as compared with that appearing in the allocation for the financial year.

Amounts not financed under this paragraph shall not be available for the purpose of applying paragraph 3.

...

8. References to a given financial year shall refer to payments actually made by Member States between 16 October and the following 15 October.

...

*Regulation (EC) No 1258/1999*

- 5 Article 5(1) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103) provides:

‘The financial resources required to cover the expenditure referred to in Articles 2 and 3 shall be made available to the Member States by the Commission by means of advances on the provision for expenditure effected in a reference period.

...’

- 6 Article 7(2) of that regulation provides:

‘The Commission shall decide on monthly advances on the provision for expenditure effected by the accredited paying agencies.

Expenditure for October shall be attributed to October if it is effected from 1 to 15 October and to November if it is effected from 16 to 31 October. Advances shall be paid to the Member State not later than the third working day of the second month following that in which the expenditure is effected.

...’

## Background to the dispute

7 The facts giving rise to the dispute were set out by the General Court as follows:

‘6 For the financial year 2006 (16 October 2005 to 15 October 2006), the indicative breakdown of the allocations made pursuant to Regulation No 1493/1999 for the restructuring and conversion of vineyards was established by Commission Decision 2005/716/EC of 10 October 2005 fixing, for the 2005/2006 marketing year and in respect of a certain number of hectares, an indicative financial allocation by Member State for the restructuring and conversion of vineyards under Regulation No 1493/1999 (OJ 2005 L 271, p. 45). In the Annex to that decision, the amount of the indicative financial allocation to the Hellenic Republic was fixed at EUR 8 574 504 for an area of 1 249 ha.

7 On 10 July 2006, pursuant to Article 14 of Regulation No 1493/1999 and Article 16 of Regulation No 1227/2000, the Greek authorities submitted to the Commission a statement of the expenditure connected with the restructuring and conversion of vineyards in Greece in the course of the financial year 2006 for the purpose of obtaining financial allocations. According to that statement, the expenditure amounted to EUR 6 829 204.46 in total and the corresponding area was 788.002 ha.

8 On 22 September 2006, the Greek authorities sent a letter to the Commission in order to inform it of a computer data capture error, as the area to be taken into account was 1 102.271 ha. They explained that that area corresponded to the sum of the total area mentioned in the table annexed to the letter of 10 July 2006 setting out the expenditure for the restructuring and conversion of vineyards in Greece actually incurred at 30 June 2006, namely 1 085.391 ha, and the total area



mentioned in the table annexed to the letter of 10 July 2006 setting out the expenditure for the restructuring and conversion of vineyards in Greece validated at 30 June 2006, namely 16.88 ha. They also reiterated that the total expenditure amounted to the sum of EUR 6 829 204.46.

- 9 On 26 September 2006, at the 890th meeting of the Management Committee for Wine, the Greek authorities reiterated their request that the Commission take into account the corrected data. The Commission orally rejected the Greek authorities' request, stating that the corrected information had been submitted too late.
- 10 On 4 October 2006, the Commission adopted [the contested decision]. On the same day a representative of the Commission met representatives of the Greek authorities to whom he explained that it was impossible, in view of the time-limit, to grant their request to take into account the corrected data communicated on 22 September 2006.
- 11 On 16 October 2006, the Greek authorities sent a letter to the Commission requesting that it amend the Annex to the contested decision. The Commission did not grant that request.

### **The proceedings before the General Court and the judgment under appeal**

- 8 By application lodged at the Registry of the General Court on 30 November 2006, the Hellenic Republic brought an action seeking to have the contested decision annulled or altered in so far as it concerns the allocation of aid for the restructuring and conversion of vineyards in Greece, in order that the corrected information sent to the Commission on 22 September 2006 be taken into account and the corresponding funds allocated to that Member State.

- 9 In support of its action before the General Court, the Hellenic Republic relied on five pleas in law, alleging respectively that the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is indicative; infringement of the principle of cooperation in good faith; infringement of the principles of good faith and sound administration; infringement of the principle of proportionality; and infringement of the principle of effectiveness.
- 10 By the judgment under appeal, the General Court dismissed that action.
- 11 As regards the first plea, the General Court found, in paragraph 25 of the judgment under appeal, that it is apparent from the wording of Article 16(1) of Regulation No 1227/2000, as well as from the general scheme and purpose of the rules of which it forms part, that the time-limit laid down by that article is a mandatory time-limit.
- 12 In that regard, first, it pointed out, in the following paragraph of that judgment, that the addition of the words 'mandatory time-limit' was not necessary to make the time-limit in question binding.
- 13 Secondly, the General Court found that the fact that three language versions of Article 16(1) of Regulation No 1227/2000 provide that the Member States must forward to the Commission 'by' 10 July each year the data referred to by that provision does not confer on those versions a meaning which is different from that of the other language versions.

- <sup>14</sup> It also took the view that the binding nature of that time-limit laid was clearly borne out by the function which it has in the restructuring and conversion of vineyards system and by the objective pursued by the statement of expenditure and the areas concerned mentioned in Article 16(1) of Regulation No 1227/2000 in respect of which that time-limit is laid down within the framework of the system.
- <sup>15</sup> In that regard, the General Court found, in paragraph 29 of the judgment under appeal, that the time-limit laid down in Article 16(1) of Regulation No 1227/2000 has the function of making it possible for the allocations provided for in Article 14(1) and (2) of Regulation No 1493/1999 to be determined effectively. Accordingly, the date by which Member States are required to communicate the information to the Commission each year must be complied with so that the indicative financial allocations, provided for in Article 14(1) of Regulation No 1493/1999, are adapted, *inter alia* in view of real expenditure, in accordance with Article 14(1) and (2) of that regulation.
- <sup>16</sup> It also pointed out, in paragraphs 30 to 32 of the judgment under appeal, that the date of 10 July, which is linked to that of 15 October, was established in order to make it possible for the Commission to have the necessary time to adopt and publish the decision fixing the definitive financial allocations provided for in Article 14(2) of Regulation No 1493/1999 before the end of the financial year.
- <sup>17</sup> Furthermore, the General Court found, in paragraphs 33 to 35 of the judgment under appeal, that, in order to enable Member States to make those payments, relating to the expenditure declared under Article 16(1) of Regulation No 1227/2000, before the end of the current financial year and to obtain reimbursement thereof by the Commission before the end of the budgetary year, under the budget headings available for that financial year, the effectiveness of the provisions in question implies that the decision fixing the definitive financial allocations to the Member States for the financial year must be adopted before the end of that year, namely 15 October.

- 18 The General Court subsequently found, in paragraph 39 of the judgment under appeal, that no argument as to whether or not the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is binding can be derived from Article 16(2) of that regulation, as Article 16(2) concerns the consequences of the Member State concerned transmitting incomplete information or failing to comply with the time-limit for that transmission.
- 19 The General Court also rejected, in paragraph 41 of the judgment under appeal, the Hellenic Republic's argument that Article 17(1) of Regulation No 1227/2000 confirms that the time-limit laid down is indicative inasmuch as it establishes the principle that the Commission must finance expenditure actually incurred by the Member States, which implies that it is possible for the Member States to correct their errors after 10 July. In that regard, the General Court found, after pointing out that Article 17(1) of Regulation No 1227/2000 relates to the financing of expenditure actually incurred and validated, which is declared for any given financial year, and not merely to expenditure actually incurred, that that argument was irrelevant in so far as it was based on an incomplete reference to that provision.
- 20 In paragraphs 50 to 60 of the judgment under appeal, the General Court rejected the second and third pleas of the action by which the Hellenic Republic maintained, in essence, that the allegedly incorrect nature of the data which it had sent to the Commission before the time-limit laid down in Article 16(1) of Regulation No 1227/2000 had passed was obvious and that, consequently, by virtue of the principles of genuine cooperation, good faith and sound administration, the Commission was required to take account of the corrected data communicated after that time-limit had passed.
- 21 Having found that the erroneous nature of the data communicated by the Greek authorities to the Commission on 10 July 2006 was in no way obvious, the General Court concluded, in paragraph 57 of the judgment under appeal, that the Hellenic Republic's line of argument was based on an incorrect factual premise.

- 22 The General Court also held, in paragraph 58 of the judgment under appeal, that, in view of the binding nature of the time-limit laid down in Article 16(1) of Regulation No 1227/2000, a Member State is not entitled to require the Commission to take into account data communicated after that time-limit has passed. It also stated, in paragraph 59 of that judgment, that, although a taking into account of data communicated belatedly by a Member State is not totally inconceivable, the Commission may refuse to take into account such data if it is likely to preclude the decision fixing the definitive financial allocations to Member States for the financial year concerned from being adopted in good time. From this the General Court concluded that the Commission had not infringed the principles relied on in deciding not to take the corrected data into account inasmuch as the Hellenic Republic had communicated them only on 22 September 2006, more than two months after the allegedly incorrect data had initially been communicated and only three weeks before the deadline for the adoption of the decision, that is to say, 15 October 2006.
- 23 The General Court also rejected the fourth plea put forward by the Hellenic Republic, alleging infringement of the principle of proportionality.
- 24 First, it found, in paragraph 66 of the judgment under appeal, that, contrary to the argument of the Hellenic Republic that the Commission had infringed the principle of proportionality in imposing on it a dual sanction by the cumulative application of Article 16(2) and Article 17(4) of Regulation No 1227/2000, in contravention of the principle of *ne bis in idem*, it was not apparent from the contested decision that the Commission had applied Article 16(2) of that regulation to it.
- 25 Secondly, the General Court rejected, in paragraphs 69 to 75 of the judgment under appeal, the Hellenic Republic's argument that the Commission had infringed the principle of proportionality by imposing on it a sanction which was disproportionate in the light of the Greek authorities' computer error.

- <sup>26</sup> The General Court also rejected the fifth plea, alleging infringement of the principle of effectiveness.
- <sup>27</sup> After pointing out that the fixing of a mandatory time-limit is necessary in order to make it possible for the Commission to adopt the decision fixing the definitive financial allocations to Member States before the end of the financial year concerned, the General Court concluded, in paragraph 79 of the judgment under appeal, that the effectiveness of Articles 11, 13 and 14 of Regulation No 1493/1999 and of Articles 16 and 17 of Regulation No 1227/2000 does not preclude the application of a mandatory time-limit and a refusal to take into account the data communicated by a Member State after that time-limit, even if the consequence is a reduction in the aid granted to the Member State concerned.

### **Forms of order sought**

- <sup>28</sup> The Hellenic Republic claims that the Court should:

- declare the appeal admissible;
- set aside the judgment under appeal;
- uphold the action in accordance with the form of order sought;

- order the Commission to pay the costs, both of the appeal proceedings and of the proceedings before the General Court.

<sup>29</sup> The Commission contends that the Court should:

- dismiss the appeal as inadmissible and unfounded;

- order the Hellenic Republic to pay the costs.

## **The appeal**

<sup>30</sup> In support of its appeal the Hellenic Republic relies on three grounds of appeal alleging, respectively, that the General Court misinterpreted Articles 16(1) and (2) and 17 of Regulation No 1227/2000, that it failed to appreciate the significance of a number of general legal principles, and that the judgment under appeal contains contradictory reasoning.

*The first ground of appeal: misinterpretation of Articles 16(1) and (2) and 17 of Regulation No 1227/2000*

Arguments of the parties

- <sup>31</sup> The Hellenic Republic complains that the General Court misinterpreted Articles 16(1) and (2) and 17 of Regulation No 1227/2000, a combined interpretation of which, in its view, shows, contrary to what the General Court held, that the time-limit referred to in Article 16(1) is indicative.
- <sup>32</sup> The indicative nature of that time-limit, it argues, is apparent in particular from Article 16(2) of Regulation No 1227/2000. In that regard, the Hellenic Republic maintains that it follows from the wording of that provision that the transmission of information which is incomplete or out of time gives rise only to the application of a temporary and flat-rate reduction in advances. According to that Member State, it follows that that sanction may be lifted a posteriori if the Member State concerned has supplemented or transmitted the information before the adoption of the decision fixing the definitive financial allocations to Member States, with the result that it will not be subject to any sanction or reduction in the amounts to which it is entitled.
- <sup>33</sup> According to the Hellenic Republic, it is inconceivable that the European Union legislature would have adopted, with regard to Member States which transmit incorrect information within the time-limit, a provision which is more punitive than that which applies to those which have not transmitted any information or which have transmitted incomplete information.



- 34 The indicative nature of the time-limit in question is also, it argues, apparent from the wording of Article 17(1) of Regulation No 1227/2000, under which expenditure actually incurred is financed, and not expenditure incurred and declared, as stated by the General Court. From this the Hellenic Republic concludes that it is possible for Member States to correct manifest capture errors even after 10 July.
- 35 It also submits that the absence, in the Greek version of Article 16(1) of Regulation No 1227/2000, of the words ‘not later than’, which appear in other language versions, confirms that the time-limit referred to in that provision is indicative.
- 36 The fact that the Commission itself conceded that it had accepted information transmitted after the passing of that time-limit also militates, according to the Hellenic Republic, in favour of that meaning.
- 37 The Commission submits that the first ground of appeal is inadmissible in so far as it reiterates the arguments put forward at first instance.
- 38 In particular, it maintains that the Hellenic Republic’s argument that the indicative nature of the time-limit referred to in Article 16(1) of Regulation No 1227/2000 is confirmed by Article 17(1) of that regulation must be declared inadmissible in so far as it seeks to secure a re-examination of the facts.
- 39 The Commission further submits that it cannot be inferred from Article 16(2) of Regulation No 1227/2000 that the time-limit laid down in Article 16(1) is indicative, in so far as the role and objective of those provisions are different. Consequently, Article 16(2) applies only where the information is transmitted incomplete or out of time, which is not the case here.

- <sup>40</sup> The Commission submits that the Hellenic Republic's argument based on the absence of the words 'not later than' in the Greek version of Article 16(1) of Regulation No 1227/2000 is inadmissible in so far as it seeks to secure a re-examination of the action brought before the General Court. As to substance, the Commission maintains that the absence of those words in the Greek version is not an aid to interpretation which is essential in assessing the nature of the disputed time-limit and that, in any event, it does not show that that time-limit is indicative.
- <sup>41</sup> Lastly, in response to the argument that the indicative nature of the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is borne out by the fact that the Commission conceded that it accepted information transmitted out of time, the Commission submits that the General Court was right to hold that a Member State cannot insist on information transmitted after the passing of the time-limit being taken into account and that the Commission may reject such an application where the timeous adoption of the decision fixing the definitive financial allocations to Member States proves to be impossible.

## Findings of the Court

### – Admissibility

- <sup>42</sup> It follows, admittedly, from settled case-law that, pursuant to the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of that Court, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal. Thus, an appeal which merely repeats or reproduces verbatim the

pleas and arguments relied on before the General Court does not satisfy the requirement to state reasons under those provisions (see, inter alia, Joined Cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P *Erste Group Bank and Others v Commission* [2009] ECR I-8681, paragraph 131).

<sup>43</sup> However, provided that the appellant challenges the interpretation or application of Community law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (Case C-425/07 P *AEPI v Commission* [2009] ECR I-3205, paragraph 24).

<sup>44</sup> The first ground of appeal put forward by the Hellenic Republic seeks specifically to call into question the interpretation of Articles 16 and 17 of Regulation No 1227/2000 adopted by the General Court. It must for that reason be declared admissible.

– Substance

<sup>45</sup> Article 16(1) of Regulation No 1227/2000 provides, in most of the language versions, that the Member States are to forward to the Commission, ‘not later than’ 10 July each year, the information referred to in that provision.

- 46 There can be no doubt that such wording makes that time-limit binding. The fact that three language versions, including the Greek version, provide that Member States are to forward that information to the Commission 'by' 10 July each year does not confer on that article a different meaning as against the other language versions.
- 47 That interpretation is confirmed both by the general scheme of Regulation No 1227/2000 and by the purpose of Article 16(1) of that regulation.
- 48 First, it must be pointed out that the Hellenic Republic's argument that the indicative nature of the time-limit laid down in that provision follows from Article 16(2) of Regulation No 1227/2000 is based on the erroneous premiss that that provision also covers the case in which a Member State has not forwarded to the Commission a statement under Article 16(1) of that regulation, whereas it is clear from the wording of Article 16(2) that it relates only to incomplete statements which have not been supplemented by 10 July each year.
- 49 Under Article 16(2) of Regulation No 1227/2000, the Commission is to reduce advances on entry in the accounts of agricultural expenditure in cases where the information which Member States are required to transmit to the Commission according to Article 16(1) is incomplete or the time-limit has not been met.
- 50 It follows that the Hellenic Republic's arguments on that point cannot be upheld.

- 51 Moreover, it must be pointed out that Article 16(2) of Regulation No 1227/2000 relates to advances on the entry in the accounts of agricultural expenditure, within the terms of Article 5(1) of Regulation No 1258/1999, and not to definitive financial allocations.
- 52 Under that article, the Commission is to make available to the Member States, by means of advances on the provision for expenditure effected in a reference period, the financial resources required to cover the expenditure referred to in Articles 2 and 3 of Regulation No 1258/1999. Under Article 7(2) of that regulation, the Commission is to decide on monthly advances on the provision for expenditure effected by the accredited paying agencies. Those advances are to be paid to the Member State not later than the third working day of the second month following that in which the expenditure is effected.
- 53 It is against that background that Article 16(2) of Regulation No 1227/2000 provides that, where the information which Member States are required to transmit to the Commission in accordance with Article 16(1) is incomplete or the time-limit has not been met, the Commission is required to reduce advances on entry in the accounts of agricultural expenditure on a temporary and flat-rate basis.
- 54 Consequently, Article 16(2) of Regulation No 1227/2000 seeks precisely to encourage Member States to comply with their obligation to provide a statement under Article 16(1) of that regulation.
- 55 Secondly, the Hellenic Republic's argument that the wording of Article 17(1) of Regulation No 1227/2000 confirms that the time-limit laid down in Article 16(1) of that regulation is indicative cannot be upheld.

- 56 Under Article 17 of Regulation No 1227/2000, expenditure actually incurred, validated and declared is to be financed within the limits of the amounts notified to the Commission under Article 16(1) of that regulation.
- 57 Contrary to what the Hellenic Republic maintains, nothing in the wording of that provision indicates that the Commission is required to base its decision on actual data and therefore to take account of corrections provided by Member States after the time-limit laid down in Article 16(1) of Regulation No 1227/2000 has passed.
- 58 By contrast, it follows expressly from Article 17(4) of that regulation that, by derogation from Article 17(1), a penalty is applied where the total area notified in accordance with Article 16(1)(a) of that regulation is less than the number of hectares indicated in the allocation for the financial year made to the Member State pursuant to Article 14(1) of Regulation No 1493/1999.
- 59 It follows that, contrary to what the Hellenic Republic maintains, the Commission is required to base itself, in respect of the adoption of the decision fixing the definitive financial allocations, not on the actual total area, but only on that which has been notified to it within the time-limit laid down in Article 16(1) of Regulation No 1227/2000.
- 60 Thirdly, it is apparent from the objective of the statement provided for in Article 16(1) of Regulation No 1227/2000 that the date of 10 July is intended to enable the Commission to adopt, in good time, the decision fixing the definitive financial allocations to Member States, and thus the Commission cannot be required to base itself, for the purpose of adopting that decision, on amended data communicated after that date.

- <sup>61</sup> In that regard, it must be borne in mind that, under Article 14(1) of Regulation No 1493/1999, the Commission is to make initial allocations to Member States each year on the basis of objective criteria taking into account particular situations and needs, and efforts to be undertaken in the light of the objective of the scheme. Under Article 14(2) of that regulation, initial allocations are, at a second stage, to be adapted in view of real expenditure and on the basis of revised expenditure forecasts submitted by the Member States taking into account the objective of the scheme and subject to the funds available.
- <sup>62</sup> Against that background, the obligation laid down in Article 16(1) of Regulation No 1227/2000 is intended to enable the Commission to have at its disposal the information necessary to fix the financial allocations definitively, in accordance with Article 14(2) of Regulation No 1493/1999.
- <sup>63</sup> However, only a strict interpretation of the time-limit laid down in Article 16(1) of Regulation No 1227/2000 makes it possible to ensure that financial allocations provided to Member States, which are initially granted only provisionally under Article 14(1) of Regulation No 1493/1999, can be adapted in good time by the Commission in the light of actual expenditure.
- <sup>64</sup> In that regard, it must be pointed out, first, that, under Article 17(8) of Regulation No 1227/2000, references to a given financial year are to refer to payments actually made by Member States between 16 October and the following 15 October and, secondly, that, under Article 7(2) of Regulation No 1258/1999, the Commission is to decide on monthly advances on the provision for expenditure effected by the accredited paying agencies, expenditure for October being attributed to that month if it is effected from 1 to 15 October and to November if it is effected from 16 to 31 October.

Those advances are to be paid to the Member State not later than the third working day of the second month following that in which the expenditure is effected.

<sup>65</sup> In those circumstances, it is necessary, in order to enable Member States to make the final payments relating to the expenditure declared under Article 16(1) of Regulation No 1227/2000 before the end of the current financial year and to obtain reimbursement thereof by the Commission before the end of the budgetary year, under the budget headings available for that financial year, that the decision fixing the definitive financial allocations to the Member States for the financial year concerned be adopted before the end of that year, that is to say, before 15 October.

<sup>66</sup> In order for the Commission to be in a position to adopt and publish the decision fixing those definitive financial allocations before that date, it is important, given the procedural constraints on it, for it to have information relating to all of the Member States not later than 10 July of the year in question.

<sup>67</sup> In that regard, it must be borne in mind that, as is apparent from Article 17(3) of Regulation No 1227/2000, any isolated change to the financial allocation granted to a Member State is out of the question. Pursuant to that provision, requests for the subsequent financing of expenditure in the current financial year, referred to in Article 16(1)(c) of that regulation, may be accepted only in so far as amounts are available after deducting, for all Member States, the total of the amounts notified in accord-



ance with Article 16(1)(a) of Regulation No 1227/2000 and the amounts declared in accordance with Article 16(1)(b) from the total amount allocated to the Member States.

<sup>68</sup> It follows from the foregoing that the Commission cannot be required to accept data which have been transmitted to it out of time, in so far as that could preclude it from adopting in good time the decision fixing the definitive financial allocations to the Member States.

<sup>69</sup> That interpretation cannot be called into question by the fact that the Commission conceded that a taking into account, on its part, of data communicated belatedly is not totally inconceivable, in so far as the time-limit has been exceeded by a short period and it is possible to adopt, before 15 October, the decision fixing the definitive financial allocations to Member States for the financial year concerned.

<sup>70</sup> It follows from all of the foregoing that the first ground of appeal is unfounded. It must therefore be rejected.

*The second ground of appeal: erroneous assessment of a number of general legal principles*

<sup>71</sup> This ground of appeal is divided into two parts.

The first part of the second ground of appeal: infringement of the general principles of genuine cooperation, good faith and sound administration

– Arguments of the parties

<sup>72</sup> The Hellenic Republic submits that the General Court erred in holding that the Commission, by not taking account of the corrected data which the Greek authorities transmitted to it and by taking into account manifestly incorrect data, even though it had sufficient time to incorporate the corrected data in its decision, did not infringe the principles of genuine cooperation, sound administration and good faith.

<sup>73</sup> For its part, the Commission submits that that argument must be rejected as inadmissible inasmuch as it reiterates the arguments already put forward at first instance, without showing how the General Court's assessment is incorrect.

– Findings of the Court

<sup>74</sup> By the first part of its second ground of appeal, the Hellenic Republic maintains, in essence, that the principles of genuine cooperation, sound administration and good faith should have led the Commission, first, not to take into account the manifestly in-

correct data which had been transmitted to it and, secondly, to take into account the corrected data since it had the time necessary to incorporate them in the contested decision.

<sup>75</sup> It must be pointed out at the outset that, in so doing, the Hellenic Republic seeks, in essence, to challenge the factual assessments made by the General Court in paragraphs 57 and 59 of the judgment under appeal. The General Court found, first, in paragraph 57 of the judgment under appeal, that the erroneous nature of the data communicated by the Greek authorities on 10 July 2006 was in no way obvious. Secondly, in paragraph 59, it found, in essence, that when the corrected data were transmitted to the Commission, the Commission no longer had the necessary time to taken them into account for the purpose of adopting, in good time, the contested decision.

<sup>76</sup> In accordance with Article 225(1) EC and the first paragraph of Article 58 of the Statute of the Court of Justice, an appeal lies on points of law only, the General Court having exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where they distort the facts or evidence, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, *inter alia*, Case C-104/00 P *DKV v OHIM* [2002] ECR I-7561, paragraph 22; Case C-173/04 P *Deutsche SiSi-Werke v OHIM* [2006] ECR I-551, paragraph 35; and Case C-38/09 P *Schröder v CPVO* [2010] ECR I-3209, paragraph 69).

<sup>77</sup> In the present case, the Hellenic Republic has not shown, or even claimed, that there was any distortion of the facts or evidence submitted to the General Court. Therefore, the first part of the second ground of appeal must be rejected as inadmissible.

The second part of the second ground of appeal: infringement of the general principle of equal treatment

– Arguments of the parties

<sup>78</sup> By the second part of the second ground of appeal, the Hellenic Republic submits that the General Court erred in holding that the Commission, by refusing to take into account the corrected data which were transmitted to it belatedly, did not infringe the general principle of equal treatment.

<sup>79</sup> According to that Member State, the Commission's conduct is contrary to the principle of equal treatment of Member States in so far as that institution arbitrarily accepts information transmitted out of time by other Member States.

<sup>80</sup> For its part, the Commission maintains that that argument must be rejected as inadmissible since it was put forward for the first time in the appeal and does not mention the fundamental elements of law and fact on which that head of claim is based. In the alternative, it submits that that argument is unfounded.

– Findings of the Court

<sup>81</sup> It should be noted at the outset that, according to settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would be to authorise it to bring before the Court of Justice, the appellate jurisdiction of which is limited, a case of wider ambit

than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to a review of the findings of law on the pleas argued before the General Court (see, to that effect, Case C-136/92 P *Commission v Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 58 and 59; Case C-266/97 P *VBA v VGB and Others* [2000] ECR I-2135, paragraph 79; Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 50; and Case C-16/06 P *Les Éditions Albert René v OHIM* [2008] ECR I-10053, paragraph 126).

- 82 It is clear that the Hellenic Republic's head of claim that the Commission failed to respect the principle of equal treatment by accepting belatedly data from other Member States was not put forward before the General Court.
- 83 In those circumstances, the second part of the second ground of appeal must be rejected as inadmissible.
- 84 Accordingly, the second ground of appeal must be rejected as being inadmissible in its entirety.

*The third ground of appeal: contradictory reasoning*

Arguments of the parties

- 85 The Hellenic Republic maintains that the General Court contradicted itself, first, by stating, in paragraphs 25, 36 and 43 of the judgment under appeal, that the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is binding and, secondly, by

finding, in paragraph 59 of that judgment, that the Commission may take into consideration data communicated belatedly where the time-limit has been exceeded by a short period and this does not preclude adoption of the decision fixing the definitive financial allocations to Member States.

- <sup>86</sup> According to the Commission, the reasoning of the judgment under appeal is not contradictory but is part of one and the same logic, namely that of the correct application of the legislation and, at the same time, of compliance with the principle of genuine cooperation with the State concerned.

## Findings of the Court

- <sup>87</sup> It must be borne in mind at the outset that, according to settled case-law, the question whether the grounds of a judgment of the General Court are contradictory is a question of law which is amenable, as such, to judicial review on appeal (see, *inter alia*, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others v Council and Commission* [2008] ECR I-6513, paragraph 90, and Case C-385/07 P *Der Grüne Punkt - Duales System Deutschland v Commission* [2009] ECR I-6155, paragraph 71).

- <sup>88</sup> In the present case, the General Court stated, in paragraphs 25, 36 and 43 of the judgment under appeal, that the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is binding.

<sup>89</sup> The Hellenic Republic maintains that the General Court contradicted itself by then finding, in paragraph 59 of the judgment under appeal, that a taking into account of data communicated belatedly by a Member State to the Commission under Article 16(1) of Regulation No 1227/2000 is not totally inconceivable.

<sup>90</sup> That argument cannot, however, be accepted.

<sup>91</sup> It must be pointed out that, in paragraphs 31 and 32 of the judgment under appeal, the General Court found that the date of 10 July, which is laid down in Article 16(1) of Regulation No 1227/2000, was established to make it possible for the Commission to have the necessary time to adopt and publish the decision fixing the definitive financial allocations before 15 October. The General Court also stated, in paragraph 43 of the judgment under appeal, that that time-limit was binding on Member States in the sense that they are not entitled to require the Commission to take into account data communicated after that time-limit has passed.

<sup>92</sup> Consequently, the General Court was able to state, without contradicting itself, in paragraph 59 of the judgment under appeal, that a taking into account of data communicated after the time-limit had passed was conceivable only in so far as the time-limit had been exceeded by a short period and the adoption of the decision fixing the definitive financial allocations to Member States for the financial year concerned had not been jeopardised. Although Member States are under an obligation to forward to the Commission, not later than 10 July each year, the information referred to in Article 16(1) of Regulation No 1227/2000, the Commission has the discretionary power

to take into account data transmitted to it after that date in order not to exclude from the final decision Member States which exceeded that time-limit only by a few days.

<sup>93</sup> Consequently, the contradiction in the reasoning relied on by the Hellenic Republic cannot be regarded as well founded. The third ground of appeal must for that reason be rejected.

<sup>94</sup> It follows from all of the foregoing that none of the grounds of appeal relied on by the Hellenic Republic in support of its appeal can be upheld and therefore that appeal can only be dismissed.

## **Costs**

<sup>95</sup> Under the first subparagraph of Article 69(2) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

<sup>96</sup> Since the Commission applied for costs and the Hellenic Republic has been unsuccessful, the Hellenic Republic must be ordered to pay the costs.



On those grounds, the Court hereby:

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

[Signatures]