Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

30 April 2020*

(Appeal — European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) — Expenditure excluded from EU financing — Expenditure incurred by the Hellenic Republic — Regulation (EC) No 1782/2003 — Regulation (EC) No 796/2004 — Regulation (EC) No 1120/2009 — Regulation (EU) No 1306/2013 — Area-related aid scheme — Concept of 'permanent pasture' — Flat-rate financial corrections — Regulation (EC) No 1698/2005 — Assessment of the eligibility of expenditure — Managing authority — Regulation (EC) No 1290/2005 — Expenses covered by the 24-month period — Regulation (EC) No 817/2004 — System of effective, proportionate and dissuasive penalties — Method of calculating the correction)

In Case C-797/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 17 December 2018,

Hellenic Republic, represented by G. Kanellopoulos and E. Leftheriotou and A. Vasilopoulou, acting as Agents,

applicant,

the other parties to the proceedings being:

European Commission, represented by M. Konstantinidis, D. Triantafyllou and J. Aquilina, acting as Agents,

defendant at first instance,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, D. Šváby (Rapporteur) and K. Jürimäe, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

* Language of the case: Greek.

Judgment

1 By its appeal, the Hellenic Republic asks the Court to set aside the judgment of the General Court of the European Union of 4 October 2018, *Greece* v *Commission* (T-272/16, not published, 'the judgment under appeal', EU:T:2018:651), by which the General Court dismissed its action challenging Commission Implementing Decision (EU) 2016/417 of 17 March 2016 on excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2016 L 75, p. 16; 'the contested decision').

Legal context

Regulation (EC) 2988/95

2 Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), ('Regulation No 2988/95'), contains a Title II entitled 'Administrative measures and penalties', which includes Article 5 of that regulation. Paragraph 1 of that article provides:

'Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

…

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;

(d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;

…'

Regulation (EC) 1782/2003

3 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'), contained a Title III, entitled 'Single Payment Scheme', which contained a Chapter 3 on 'Payment Entitlements'. Section 1 of that chapter, relating to 'payment entitlements based on areas', included Article 43 of that regulation, on the 'determination of the payment entitlements'. That article provided:

'1. Without prejudice to Article 48, a farmer shall receive a payment entitlement per hectare which is calculated by dividing the reference amount by the three-year average number of all hectares which in the reference period gave right to direct payments listed in Annex VI.

The total number of payment entitlements shall be equal to the abovementioned average number of hectares.

…

2. The number of hectares referred to in paragraph 1 shall further include:

…

(b) all forage area in the reference period.

3. For the purpose of paragraph 2(b) of this Article, "forage area" shall mean the area of the holding that was available throughout the calendar year, in accordance with Article 5 of Commission Regulation (EC) No 2419/2001 [of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11)] for rearing animals including areas in shared use and areas which were subject to mixed cultivation. The forage area shall not include:

– buildings, woods, ponds, paths,

– …'

4 Article 44 of Regulation No 1782/2003, relating to the 'use of payment entitlements', stated, in paragraph 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.'

Regulation (EC) 796/2004

5 The first paragraph of Article 2 of 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 Regulations No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross-compliance provided for in Council Regulation (EC) No 479/2008 (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 380/2009 of 8 May 2009 (OJ 2009 L 116, p. 9) ('Regulation No 796/2004') was worded as follows:

'For the purposes of this Regulation, the following definitions shall apply:

…

(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 pursuant to Article 107(6) of Regulation [No 1782/2003], areas set aside in accordance with Council Regulation (EEC) No 2078/92 [of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85)], areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 [of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing

certain Regulations (OJ 1999 L 160, p. 80)] and areas set aside in accordance with Article 39 of Council Regulation (EC) No 1698/2005 [of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1)];

2(a) "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). Member States may include crops listed in Annex IX to Regulation [No 1782/2003].'

6 In that regard, recital 1 of Commission Regulation No 239/2005 of 11 February 2005 (OJ 2005 L 42, p. 3), which amended Regulation No 796/2004 as originally adopted, stated:

'Article 2 of Commission Regulation [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.'

7 Article 8 of Regulation No 796/2004, entitled 'General principles in respect of agricultural parcels', provided in paragraph 1:

'Without prejudice to Article 34(2) of [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) ('Regulation No 73/2009)], an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.'

8 Title III of Regulation No 796/2004, relating to 'controls', included Article 30 thereof, entitled 'Determination of areas'. Article 30(2) provided:

'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.

…'

Regulation (EC) 1290/2005

9 Title IV, headed 'Clearance of accounts and Commission monitoring', of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), contained Article 31 of the regulation, headed 'Conformity clearance'. Article 31(2) to (4) were worded as follows:

'2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature and gravity of the infringement and of the financial damage caused to the Community.

3. Before any decision to refuse financing is taken, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

If agreement is not reached, the Member State may request opening of a procedure aimed at reconciling each party's position within four months. A report of the outcome of the procedure shall be given to the Commission, which shall examine it before deciding on any refusal of financing.

4. Financing may not be refused for:

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

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

(c) expenditure on measures in programmes, as indicated in Article 4, other than those referred to in point (b), for which the payment or, as the case may be, the payment of the balance, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its inspection findings.'

Regulation (EC) 817/2004

10 Article 73 of Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation No 1257/1999 on support for rural development from the EAGGF (OJ 2004 L 153, p. 30 and corrigendum OJ 2004 L 231, p. 24), stated:

'Member States shall lay down the provisions on penalties applicable to infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.'

Regulation (EC) No 1698/2005

11 Recitals 61 and 64 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development from the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) ('Regulation No 1698/2005'), stated:

'61 In accordance with the principle of subsidiarity and subject to exceptions, there should be national rules on the eligibility of expenditure.

…

64 Member States should take measures to guarantee sound functioning of management and control systems. To this end, it is necessary to establish the general principles and the basic functions which any management and control system should ensure. It is therefore necessary to maintain the designation of a single Managing Authority and to specify its responsibilities.'

12 Title V of that regulation, entitled 'EAFRD contribution', contained Article 71 of that regulation, relating to the 'eligibility of expenditure'. Article 71(2) and (3) provided:

'2. Expenditure shall be eligible for a [European Agricultural Fund for Rural Development (EAFRD)] contribution only where incurred for operations decided on by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body.

3. The rules on eligibility of expenditure shall be set at national level, subject to the special conditions laid down by this Regulation for certain rural development measures.

…'

Regulation (EC) 1974/2006

13 Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Regulation No 1698/2005 (OJ 2006 L 368, p. 15) included a Chapter III, entitled 'Rural development measures', which included Section 2 relating to 'common provisions for several measures'. Article 43 of that regulation appeared in that section and provided:

'For investment measures, Member States shall ensure that support is targeted on clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages.'

14 Under the heading 'Verifiability and controllability of measures and eligibility rules', Section 1 of Chapter IV of that regulation, entitled 'Eligibility and administrative provisions', contained Article 48 thereof, which provides:

'1. For the purposes of Article 74(1) of Regulation (EC) No 1698/2005 Member States shall ensure that all the rural development measures they intend to implement are verifiable and controllable. To this end, Member States shall define control arrangements that give them reasonable assurance that eligibility criteria and other commitments are respected.

2. In order to substantiate and confirm the adequacy and accuracy of the calculations of payments under Articles 31, 38, 39, 40 and 43 to 47 of Regulation (EC) No 1698/2005, Member States shall ensure that appropriate expertise is provided by bodies or services functionally independent from those responsible for those calculations. Provision of such expertise shall be evidenced in the rural development programme.'

Regulation No 73/2009

15 Chapter 1, concerning 'general implementation', of Title III, entitled 'Single payment scheme', of Regulation No 73/2009 included an Article 34 relating to 'activation of payment entitlements per eligible hectare'. Paragraph 34(1) provides:

'Support under the single payment scheme shall be granted to farmers upon activation of a payment entitlement per eligible hectare. Activated payment entitlements give a right to the payment of the amounts fixed therein.'

16 Article 36 of that regulation, entitled 'Modification of payment entitlements', also appeared in that chapter and provided:

'The payment entitlements per hectare shall not be modified, save as otherwise provided for in this Regulation.

The Commission, in accordance with the procedure referred to in Article 141(2), shall lay down detailed rules for the modification, from 2010, of payment entitlements, in particular in the case of fractions of entitlements.'

17 Article 137 of that regulation, entitled 'Confirmation of payment entitlements', appeared in Title VII thereof, relating to 'implementing, transitional and final provisions'. Article 137(1) was worded as follows:

'Payment entitlements allocated to farmers before 1 January 2009 shall be deemed legal and regular as from 1 January 2010.'

Regulation (EC) 1120/2009

18 Under Article 2 of Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Regulation No 73/2009 (OJ 2009 L 316, p. 1) ('Regulation No 1120/2009'):

'For the purposes of Title III of Regulation [No 73/2009] and of this Regulation, the following definitions shall apply:

…

(c) "permanent pasture" 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 longer, excluding areas set aside in accordance with Council Regulation (EEC) No 2078/92 [of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85)], areas set aside in accordance with Articles 22, 23 and 24 of Regulation [No 1257/1999] and areas set aside in accordance with Article 39 of Regulation [No 1698/2005]; and to this end, "grasses or other herbaceous forage" means 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). Member States may include arable crops listed in Annex I;

…'

Regulation (EC) No 1122/2009

19 Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65) ('Regulation No 1122/2009'), contained an Article 34, relating to 'determination of areas'. That article, which appeared in Title III of that regulation, entitled 'Controls', provided in paragraphs 2 and 4:

'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.

However, where Member States notified to the Commission, in conformity with third subparagraph of Article 30(2) of Regulation [No 796/2004], prior to the entry into force of this Regulation, a width greater than 2 metres, this width may still be applied.

…

4. Without prejudice to Article 34(2) of Regulation [No 73/2009], an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.'

Regulation (EU) No 1306/2013

20 Article 52, relating to 'conformity clearance', of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, No 1290/2005, and (EC) No 485/2008' (OJ 2013 L 347, p. 549, and corrigendum OJ 2016 L 130, p. 13), is set out in Section II, entitled 'Clearance', of Chapter IV, itself entitled 'Clearance of accounts'. Paragraphs 2 and 3 of that article provide:

'2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature of the infringement and of the financial damage caused to the Union. It shall base the exclusion on the identification of amounts unduly spent and, where these cannot be identified with proportionate effort, may apply extrapolated or flat-rate corrections. Flat-rate corrections shall only be applied where, due to the nature of the case or because the Member State has not provided the Commission with the necessary information, it is not possible with proportionate effort to identify more precisely the financial damage caused to the Union.

3. Before the adoption of any decision to refuse financing, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken. At that point in the procedure the Member States shall be given the opportunity to demonstrate that the actual extent of the non-compliance is less than in the Commission's assessment.

If agreement is not reached, the Member State may request the opening of a procedure aimed at reconciling, within a period of four months, each party's position. A report of the outcome of the procedure shall be submitted to the Commission. The Commission shall take into account the recommendations in the report before deciding on any refusal of financing and shall give reasons if it decides not to follow those recommendations.'

Regulation (EU) No 1307/2013

21 Article 4(1)(h) of 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 Regulation No 73/2009 (OJ 2013 L 347, p. 608), in its initial version ('Regulation No 1307/2013'), set out the following definition:

'"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 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.'

22 That provision, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ 2017 L 350, p. 15), is worded as follows:

'"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, as well as, where Member States so decide, that has not been ploughed up for five years or more; it may include other species such as shrubs and/or trees which can be grazed and, where Member States so decide, other species such as shrubs and/or trees which produce animal feed, provided that the grasses and other herbaceous forage remain predominant. Member States may also decide to consider as permanent grassland:

(ii) 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; and/or

(ii) land which can be grazed where grasses and other herbaceous forage are not predominant or are absent in grazing areas.'

Implementing Regulation (EU) No 809/2014

23 Under the heading 'Partial or full withdrawal of the support and administrative penalties', Article 63 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation No 1306/2013 with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69) ('Regulation No 809/2014') provides:

'1. Payments shall be calculated on the basis of amounts found to be eligible during the administrative checks referred to in Article 48.

The competent authority shall examine the payment claim received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

(a) the amount that is payable to the beneficiary based on the payment claim and the grant decision;

(b) the amount that is payable to the beneficiary after an examination of the eligibility of the expenditure in the payment claim.

If the amount established pursuant to point (a) of the second subparagraph exceeds the amount established pursuant to point (b) of that subparagraph by more than 10%, an administrative penalty shall be applied to the amount established pursuant to that point (b). The amount of the penalty shall be the difference between those two amounts but shall not go beyond full withdrawal of the support.

However, no penalties shall be applied if the beneficiary can demonstrate to the satisfaction of the competent authority that he is not at fault for the inclusion of the ineligible amount or if the competent authority is otherwise satisfied that the beneficiary concerned is not at fault.

2. The administrative penalty referred to in paragraph 1 shall be applied *mutatis mutandis* to non-eligible expenditure identified during on-the-spot checks referred to in Article 49. In that case, the expenditure examined shall be the cumulative expenditure incurred for the operation concerned. This is without prejudice to the results of the previous on-the-spot checks of the operations concerned.'

Implementing Regulation (EU) No 908/2014

24 Article 34(2) and (3) of Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down detailed rules for the application of Regulation No 1306/2013 as regards paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ 2014 L 255, p. 59) ('Regulation No 908/2014') provides:

'2. When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Union rules, it shall communicate its findings to the Member State concerned, specifying the corrective measures needed to ensure future compliance with those rules, and indicating the provisional level of financial correction which at that stage of the procedure it considers corresponds to its findings. That communication shall also schedule a bilateral meeting within four months after expiry of the period for reply by the Member State. The communication shall make reference to this Article.

The Member State shall reply within two months of receipt of the communication. In its reply the Member State shall have the opportunity, in particular, to:

(a) demonstrate to the Commission that the actual extent of the non-compliance or the risk for [EAFRD or the European Agricultural Guarantee Fund (EAGF)] is less than what was indicated by the Commission;

(b) inform the Commission of the corrective measures it has undertaken to ensure compliance with Union rules and the effective date of their implementation.

In justified cases, the Commission may, upon reasoned request of the Member State, authorise an extension of the two-month period by a maximum of two months. The request shall be addressed to the Commission before the expiry of that period.

If the Member State considers that a bilateral meeting is not required, it shall inform the Commission accordingly in its reply to the communication mentioned above.

3. In the bilateral meeting both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Union budget.

…'

Document No VI/5330/97

25 The guidelines for the application of flat-rate corrections had been laid down in Commission Document No VI/5330/97 of 23 December 1997, entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of the EAGGF Guarantee' ('Document No VI/5330/97'). Where the information provided by the inquiry did not permit assessment of the losses suffered by the Community on the basis of an extrapolation of those losses, by statistical means or by reference to other verifiable data, a flat-rate correction could be considered. The level of correction applied depended on the seriousness of the deficiencies identified in the performance of the controls. That document stated:

'When one or more key controls are not applied or applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, then a correction of 10% is justified, as it can reasonably be concluded that there was a high risk of wide-spread loss to the [European Agricultural Guidance and Guarantee Fund (EAGGF)].

…

However, where implementation of the checking system by a Member State has been non-existent or seriously inadequate and there are indications of very frequent irregularities and negligence in combating irregular or fraudulent practices, an adjustment of 25% is justified in so far as it may reasonably be considered that the freedom to submit claims with impunity where there is no entitlement will result in extremely high losses for the EAGGF.'

…

[Correction flat rates] are to be applied to the remaining expenditure after deduction of excluded amounts in respect of individual files or pursuant to Regulation No 296/96 …'

Background to the dispute

26 The background to the dispute was set out by the General Court in paragraphs 1 to 22 of the judgment under appeal and may be summarised as follows.

27 In September 2012, the Commission carried out an investigation concerning the expenditure incurred by the Hellenic Republic by way of EAFRD rural development measures (2007 to 2013) in respect of the financial years 2010 to 2013. In November 2013, the Commission then carried out an inquiry into the expenditure incurred by the Hellenic Republic by way of area payments in respect of claim years 2012 and 2013.

28 As regards area payments, following a letter of 15 January 2014, the Commission submitted its observations to the Hellenic Republic. The Hellenic Republic replied on 17 March 2014 and the Commission then once again forwarded its observations to the Hellenic Republic on 28 May 2014.

29 A bilateral meeting took place on 23 June 2014 and the Hellenic Republic responded to it by sending a letter on 18 September 2014.

30 Subsequently, the Commission proposed that a total, flat-rate and one-off amount of EUR 167 399 260.04 be charged to the Hellenic Republic on account of the fact that, according to that institution, the application of the system for granting direct area payments in Greece did not comply with EU rules for claim years 2012 and 2013.

31 A conciliation procedure was initiated and an opinion of the Conciliation Body was delivered on 13 July 2015.

32 On 23 November 2015, the Commission adopted its final position, maintaining its initial position and proposing to exclude from financing the gross final amount of the correction imposed on the Hellenic Republic in the sector of direct aid, which amounted to EUR 167 399 260.04.

33 As regards the rural development measures, following a letter of 9 January 2013, the Commission submitted its observations to the Hellenic Republic. The Hellenic Republic replied to it on 6 March 2013.

34 A bilateral meeting was held on 5 September 2013, following which the Hellenic Republic submitted its observations on 27 December 2013.

35 On 27 May 2014, the Commission notified the Hellenic Republic of its intention to exclude an amount of EUR 4 106 349.91 from EU financing. The Commission took the view that weaknesses had been detected in the application, in Greece, of the scheme of measures under the EAFRD Rural Development programme (2007-2013) in the financial years 2010 to 2013.

36 Following a request for conciliation made by the Hellenic Republic on 1 July 2014, the Conciliation Body issued its opinion in a final report of 28 January 2015.

37 On 29 September 2015, the Commission set out its final position by limiting the proposed correction to EUR 3 880 460.50, that is to say, EUR 3 107 504.18 in respect of Measure 125 forming part of the EAFRD Rural Development programme referred to in paragraph 35 of the present judgment ('Measure 125'), to which was added EUR 772 956.32 in respect of Measure 121 of that programme ('Measure 121').

38 On 17 March 2016, the Commission adopted the contested decision, by which it indicated the amounts of the expenditure incurred by the Member States under the EAGF and the EAFRD which were excluded from EU financing. As regards the Hellenic Republic, the Commission applied flat-rate

and one-off corrections in respect of the financial years 2010 to 2013 in the areas relevant to the present case, namely decoupled direct aid and EAFRD rural development. As regards direct aid, the Commission imposed a correction of a total net amount of EUR 167 399 260.04 of which the net amount of EUR 166 797 866.22 related in particular to weaknesses in the definition of eligible permanent pasture, manifest errors and weaknesses in on-the-spot checks by remote sensing. As regards rural development, the Commission imposed a correction in the net amount of EUR 3 880 460.50.

39 In the summary report annexed to the contested decision, referred to in paragraphs 16 to 22 of the judgment under appeal ('the summary report'), the Commission justified the imposition of the flat-rate and one-off corrections at issue on the following grounds.

40 As regards decoupled direct aid, the Commission found that, in claim years 2012 and 2013, the Hellenic Republic had considered as eligible for payment permanent pasture which did not satisfy the criteria of Article 34 of Regulation No 73/2009 and Article 2(c) of Regulation No 1120/2009, because vegetation on those areas could not be regarded as 'grasses or herbaceous forage' within the meaning of those provisions. That incorrect classification on the part of the Greek authorities was also used for cross-checks under Regulation No 1122/2009.

41 In respect of the 2012 claim year, the Greek authorities had assessed the consequences of the error at EUR 40 113 184.84. The Commission considered, however, that that amount had been obtained by applying the eligibility rates defined in October 2013, which did not take account of the finalisation of the revised Action Plan in April 2014. It also found that the amount calculated by the Greek authorities had not taken into account the penalties which should have been imposed for cases of over-declaration. With regard to claim year 2013, the Commission found that the amount calculated by the Greek authorities had not taken into account the penalties which had to be imposed for cases of over-declaration concerning amounts which had not been paid. In addition, as regards those two claim years, the Commission also considered that those amounts had been obtained without taking account of the financial impact of the amendments to the pro rata factors concerning permanent pasture, as completed on 30 April 2014.

42 Moreover, the Commission also found that there were shortcomings in the on-the-spot checks, the conclusions of which were, in some cases, fundamentally different to those of remote sensing, which had led to a re-examination of 9 470 agricultural parcels in claim year 2013 (but not in respect of claim year 2012). Finally, the Commission took the view that, in certain cases and by a broad application of the relevant practice, the Greek authorities had considered that there was a 'manifest error', in order to correct the amount of the payments without, however, applying the penalties provided for.

43 On 4 December 2014, the information provided by the Greek authorities to the Commission indicated that they proposed a correction of EUR 52 225 465.79 in respect of claim year 2012 and of EUR 37 133 161.78 in respect of claim year 2013. However, the Commission considered those corrections to be inadequate because of the high level of errors found during the checks, which showed widespread irregularities that were not yet adequately combated.

44 As regards claim year 2012, the Commission therefore applied a correction of 25% for the population at risk. Taking account of the improvement in the situation, it reduced the correction to 10% in respect of claim year 2013, on a base which was itself reduced by the amount of EUR 37 163 161.78, which the Greek authorities had declared as an known error.

45 As regards rural development, and more particularly Measure 125, mainly relating to irrigation infrastructure, the Commission took the view that the selection of eligible projects did not meet the requirements of Article 71 of Regulation No 1698/2005. The inquiry had revealed that that selection involved a problematic second stage of preselection by the Technical Research and Construction

Directorate of the Greek Ministry of Rural Development ('the DTEC'). During that pre-selection phase, not only was the maturity of the projects checked, but also their suitability in terms of priorities, on the basis of criteria known only to that directorate. Selection criteria which were not those laid down by the competent management authority (OPEKEPE) were thus introduced. Consequently, the Commission decided to apply a flat-rate correction of 5%, corresponding to an amount of EUR 3 107 504.18.

46 As regards Measure 121, essentially designed to modernise undertakings, the inquiry revealed that, in certain cases of declaring ineligible expenditure, the beneficiaries' claims had been reduced without any penalty being imposed on them. According to the Commission, impunity could encourage beneficiaries to declare ineligible expenditure since, in the worst case, they would simply be refused payment of the corresponding amount. It therefore considered that that practice created a risk for the fund concerned and decided to apply, on the basis of an application by analogy of Article 63 of Implementing Regulation No 809/2014, a correction corresponding to an amount of EUR 772 956.32.

The proceedings before the General Court and the judgment under appeal

47 By application lodged at the Registry of the General Court on 25 May 2016, the Hellenic Republic brought an action for annulment of the contested decision, relying, in essence, upon eight pleas in law in support thereof.

48 The first plea concerned the flat-rate correction of 25% in respect of the claim year 2012, the flat-rate correction of 10% in respect of claim year 2013 and the one-off correction of EUR 37 163 161.78, applied due to the weaknesses found in the definition of eligible permanent pasture. That plea alleged erroneous interpretation and application of point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009.

49 The second plea alleged erroneous interpretation and application of Document No VI/5330/97 as regards fulfilment of the conditions for the imposition of a flat-rate correction of 25% in respect of claim year 2012.

50 The third plea concerned the flat-rate correction of 10% and the one-off correction applied for weaknesses and errors in the definition and checking of eligible permanent pasture in respect of claim year 2013 and alleged that they were unlawful, abusive, based on contradictory reasons and on erroneous interpretation and application of Document No VI/5330/97 as regards fulfilment of the conditions for the imposition of a flat-rate correction of 10%, and infringement of the principles of sound administration, proportionality, *ne bis in idem* and of the rights of defence.

51 The fourth and fifth pleas concerned the contested decision, in so far as it provides for a flat-rate correction of 5% for weaknesses in the application of the selection criteria for Measure 125 projects. The fourth plea alleged that there was no legal basis and no statement of reasons for the contested decision and an error of fact as regards that flat-rate correction applied in respect of the financial years 2010 to 2013, while the fifth plea alleged infringement of Article 31 of Regulation No 1290/2005.

52 The sixth and seventh pleas related to a one-off correction applied in respect of the financial years 2011 to 2013 on account of weaknesses found in the application of the policy on penalties in respect of Measure 121. The sixth plea alleged that the method for calculating the correction was unlawful, leading to disproportionate results with regard to the weaknesses found, while the seventh plea alleged that there was no legal basis and no statement of reasons for the contested decision and infringement of Document No VI/5330/97.

53 The Hellenic Republic withdrew the eighth plea in the course of the proceedings before the General Court.

54 By the contested judgment, the General Court dismissed the action.

Forms of order sought by the parties before the Court of Justice

55 The Hellenic Republic claims that the Court should:

– set aside the judgment under appeal;

– annul the contested decision; and

– order the Commission to pay the costs.

56 The Commission contends that the appeal should be dismissed as unfounded. It also claims that the Hellenic Republic should be ordered to pay the costs.

The appeal

57 The Hellenic Republic puts forward six grounds of appeal. The first ground of appeal concerns the contested decision in so far as it applies flat-rate corrections of 25% and 10% to the area payments for pasture in respect of claim years 2012 and 2013 and a one-off correction of EUR 37 163 161.78 in respect of claim year 2013. That ground of appeal alleges that the General Court erroneously interpreted the concept of 'permanent pasture' within the meaning of point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009. The second ground of appeal alleges erroneous interpretation and application by the General Court of Document No VI/5330/97 as regards the fulfilment of the conditions justifying a flat-rate financial correction of 25% applied to area payments for pasture in respect of claim year 2012. The third ground of appeal alleges erroneous interpretation and application by the General Court of Article 31(2) of Regulation No 1290/2005, Article 52(2) of Regulation No 1306/2013 and Article 34 of Implementing Regulation No 908/2014, as referred to in Document No VI/5330/97, infringement of the principle *ne bis in idem* and of the principle of proportionality on account of the combination of the flat-rate financial correction of 10% applied to area payments for pasture in respect of claim year 2013 with a one-off correction. The fourth and fifth grounds of appeal concern the General Court's assessment of the flat-rate financial correction of 5% applied to the Hellenic Republic for weaknesses in the application of the selection criteria for Measure 125 projects in respect of financial years 2010 to 2013. While the fourth ground of appeal alleges erroneous interpretation and application of Article 71(2) and (3) of Regulation No 1698/2005 and an inadequate statement of reasons for the judgment under appeal, the fifth ground of appeal alleges infringement of Article 31(4)(c) of Regulation No 1290/2005 and insufficient and contradictory reasoning in that judgment. The sixth ground of appeal concerns the General Court's assessment of the one-off correction applied to the Hellenic Republic in respect of financial years 2011 to 2013 on account of deficiencies found in the application of the policy on penalties in respect of Measure 121. This ground of appeal is based on an infringement of Article 73 of Regulation No 817/2004 and of Article 63 of Implementing Regulation No 809/2014.

The first ground of appeal

Arguments of the parties

58 By its first ground of appeal, the Hellenic Republic complains, in essence, that the General Court erroneously interpreted and applied, in paragraphs 35 to 66 of the judgment under appeal, point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, which set out the definition of 'permanent pasture'.

59 The Hellenic Republic criticises the General Court for having used, in paragraphs 39, 40, 49 and 56 of the judgment under appeal, an incorrect criterion relating to the type of vegetation covering the areas taken into consideration by the Commission in order to determine whether those areas were indeed 'permanent pasture' within the meaning of EU law. The General Court limited the classification of 'permanent pasture' solely to areas covered with grasses or other herbaceous forage, to the exclusion of areas covered with ligneous scrub and vegetation, which characterise so-called 'Mediterranean type' pasture. According to the Hellenic Republic, the General Court should have adopted another criterion under which areas falling within established local practices, which are traditionally used for grazing and on which grass and herbaceous forage are not predominant, constitute 'permanent pasture'. Accordingly, the predominance of ligneous vegetation over the areas at issue cannot serve as an indicator of the abandonment of agricultural activities.

60 According to the Hellenic Republic, that interpretation is permitted by the wording of Article 2 of Regulation No 796/2004 and Article 2 of Regulation No 1120/2009, as well as by the context and objectives pursued by those regulations. It thus points out that that broad interpretation of the concept of 'permanent pasture' is apparent from the guide intended to provide Member States with guidance on how best to comply with the legal provisions in force relating to the common agricultural policy (CAP), published by the Joint Research Centre (JRC) of the Commission on 2 April 2008, and from the action plan drawn up in October 2012 by the Greek authorities together with the Commission, including the assessment of pasture eligibility by photo-interpretation of satellite images at the level of the reference parcel (unit) and the application of a proportional (pro-rata) calculation system in cases where there are diffuse shrubs ('the 2012 Action Plan'). In addition, that broad definition of the concept of 'permanent pasture' is also confirmed by the wording of both Article 4(1)(h) of Regulation No 1307/2013, in its initial version, and that resulting from the amendment of that provision by Article 3 of Regulation 2017/2393.

61 The Commission proposes that that ground of appeal be dismissed as being unfounded. That institution is of the opinion that the General Court correctly interpreted and applied the concept of 'permanent pasture' in point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and in Article 2(c) of Regulation No 1120/2009. It is clear from that definition that the criterion relating to the nature of the vegetation covering the agricultural area concerned is decisive. Furthermore, the guidance referred to in paragraph 60 of the present judgment, the 2012 Action Plan and Regulation No 1307/2013, which is applicable from 1 January 2015 and contains an extended definition of the concept of 'permanent pasture', are not relevant for the purpose of interpreting the law applicable at the material time and assessing the financial correction decided upon by the Commission.

Findings of the Court

62 By its first ground of appeal, the Hellenic Republic complains, in essence, that the General Court erred in law in the interpretation of the concept of 'permanent pasture', within the meaning of point 2 of the first paragraph of Article 2 of Regulation No 796/2004, and Article 2(c) of Regulation No 1120/2009, in finding, in paragraph 40 of the judgment under appeal, that only areas covered with grasses and herbaceous forage, and not including the areas covered with ligneous plants or shrubs, which

characterise so-called 'Mediterranean type' pasture, are included in that concept. According to the Hellenic Republic, the criterion relating to the nature of the vegetation covering the agricultural area concerned is not decisive as regards the classification of 'permanent pasture'.

63 In that regard, it should be noted, first, that Article 2(c) of Regulation No 1120/2009 contains a definition of the concept of 'permanent pasture' in terms very similar to those used in point 2 of the first paragraph of Article 2 of Regulation No 796/2004. Second, it is apparent from the case-law of the Court that the decisive criterion for the definition of 'permanent pasture' is not the type of vegetation covering the agricultural area, but the actual use of that area for a typical agricultural activity of 'permanent pasture'. Consequently, the presence of ligneous plants or shrubs cannot, in itself, prevent the classification of an area as 'permanent pasture', as long as that presence does not compromise the actual use of that area for an agricultural activity (judgments of 15 May 2019, *Greece* v *Commission*, C-341/17 P, EU:C:2019:409, paragraph 54, and of 13 February 2020, *Greece* v *Commission*, C-252/18 P, EU:C:2020:95, paragraph 50).

64 Accordingly, by holding, in paragraph 40 of the judgment under appeal, that the relevant criterion was the type of vegetation present in the area in question and by then conducting its examination in the light of that criterion, the General Court erred in law in the interpretation and application of the concept of 'permanent pasture' as follows from point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009. It follows that the finding of the General Court, in paragraph 46 of the judgment under appeal, that the Hellenic Republic had failed to demonstrate that the Commission's assessments were incorrect, is erroneous.

65 Consequently, the Hellenic Republic's first ground of appeal must be upheld. It follows that point 1 of the operative part of the judgment under appeal must be set aside, in so far as the General Court dismissed the Hellenic Republic's action relating to the flat-rate corrections of 25% and 10% applied to the area payments for pasture in respect of claim years 2012 and 2013 and the one-off correction of EUR 37 163 161.78 in respect of claim year 2013, imposed due to weaknesses in the definition and checking of eligible permanent pasture for claim years 2012 and 2013.

The second ground of appeal

Arguments of the parties

66 By its second ground of appeal, the Hellenic Republic claims, in essence, that the General Court erroneously interpreted and applied Document No VI/5330/97, in paragraphs 78, 93, 96, 101, 104, 106 and 107 of the judgment under appeal, as regards the fulfilment of the conditions necessary for the application of a correction rate of 25% in respect of claim year 2012. That ground of appeal consists of nine parts.

67 By the first part of its second ground of appeal, the Hellenic Republic claims that, in paragraph 85 of the judgment under appeal, the General Court considered that the final payments for claim year 2012 were made on 30 June 2013 after a review of the claims on the basis of the 2012 Action Plan, as implemented on that date. Therefore, that review excludes the risk of particularly high losses justifying a flat-rate correction of 25% and contradicts the existence of a recurrent weakness, negligence or repeated infringement committed by the Hellenic Republic. Accordingly, paragraphs 78, 93, 96, 101, 104, 106 and 107 of the judgment under appeal have no basis in law.

68 The second part of the second ground of appeal alleges distortion by the General Court of the content of the summary report and a change in the subject matter of the proceedings, in that it held, in paragraph 79 of the judgment under appeal, that the limits of the reference parcels and their

maximum eligible area for aid had to be precisely defined. However, the subject matter of the proceedings is not the precise delimitation of the parcels, but concerns their eligibility in the light of the definition of 'permanent pasture'.

69 The third part of the Hellenic Republic's second ground of appeal alleges contradictory reasoning, in that the General Court held, in paragraph 88 of the judgment under appeal, that, despite the gradual implementation of the 2012 Action Plan, the risk for the EAGF had increased and that extremely high losses were probable, which justified the rate of 25%.

70 By the fourth part in support of its second ground of appeal, the Hellenic Republic claims that the General Court infringed Document No VI/5330/97 by requiring, in paragraph 88 of the judgment under appeal, that, in order to reduce the rate of financial correction, the Member State concerned must have eliminated all risk to the EAGF.

71 By the fifth part of that ground of appeal, the Hellenic Republic claims that, in paragraph 89 of the judgment under appeal, the General Court infringed Articles 34 and 36 of Regulation No 73/2009 and Articles 43 and 44 of Regulation No 1782/2003 by finding that the error of which that Member State is accused concerning the eligibility of pasture had affected the calculation of the farmers' payment entitlements and, therefore, the number of those entitlements, which gave rise to a very high risk for the EAGF. Moreover, such an assessment is unlawful because it retroactively applies Article 2 of Regulations No 796/2004 and No 73/2009 to the reference period for the calculation of payment entitlements (2000-2002).

72 By the sixth part of its second ground of appeal, the Hellenic Republic submits that the General Court distorted the content of the final report of the Conciliation Body referred to in paragraph 36 of the present judgment by holding, in paragraph 92 of the judgment under appeal, that some of the areas for which aid was granted were not eligible for that aid. It is apparent from that report that, following the 2012 Action Plan, an area of 1.6 million hectares of pasture remained eligible for aid.

73 By the seventh part of this ground of appeal, the Hellenic Republic claims that, in paragraph 100 of the judgment under appeal, the General Court infringed the second subparagraph of Article 52(3) of Regulation No 1306/2013 by simply finding that the Commission is not bound by the reports of the Conciliation Body without verifying whether the Commission had stated reasons for its decision to depart from the conclusions of those reports.

74 The eighth part of the second ground of appeal alleges a contradiction between the grounds set out, respectively, in paragraphs 85 and 104 of the judgment under appeal, in so far as the conditions establishing the existence of an 'exceptional circumstance' within the meaning of Document No VI/5330/97 are not satisfied.

75 By the ninth part in support of its second ground of appeal, the Hellenic Republic claims that, in paragraphs 114 to 116 of the judgment under appeal, the General Court erred in its interpretation and application of the guidelines in Document No VI/5330/97 by failing to take account of the retroactive implementation of the 2012 Action Plan. That would have addressed the weaknesses arising from the incorrect identification of the pasture areas in the Land Parcel Identification System ('the LPIS'), so that, even if a flat-rate correction could be applied, the correction rate of 25% would not be justified.

76 The Commission contends that this ground of appeal should be rejected as unfounded, since none of the complaints put forward by the Hellenic Republic in support of it is capable of calling into question the General Court's assessment concerning the legality of the application of a flat-rate correction of 25%.

77 Accordingly, in response to the first part of the second ground of appeal, the Commission replies that, in its appeal, the Hellenic Republic isolates the element of the re-examination of the claims on the basis of the 2012 Action Plan but makes no reference to the numerous other serious irregularities and deficiencies in the control system which the General Court recalled in paragraph 77 of the judgment under appeal and which, taken together, justified the existence of a risk of extremely high losses for the EAGF.

78 In response to the second part of that ground of appeal, the Commission submits that, in paragraph 77 of the judgment under appeal, the General Court drew attention to numerous serious deficiencies in the control system which justify the flat-rate correction of 25%. The question of the delimitation of parcels, addressed in paragraph 79 of the judgment under appeal, is merely a general statement of reasons in addition to the grounds stated by the General Court and is intended to emphasise the importance of an effective control system.

79 As regards the third part of that ground of appeal, alleging contradictory reasoning, the Commission replies that, in paragraph 85 of the judgment under appeal, the General Court merely found that the gradual implementation of the 2012 Action Plan contained measures which were not all intended to produce immediate effects, so that the gradual implementation of that action plan proved insufficient to eliminate the risk for claim year 2012.

80 In response to the fourth part of that ground of appeal, the Commission contends that, in paragraph 88 of the judgment under appeal, the General Court did not make the reduction of the flat-rate correction subject to proof that there was no risk, but merely found that the implementation of the 2012 Action Plan had had no specific impact on the risk incurred by the EAGF in 2012.

81 The Commission contends that the fifth part of the second ground of appeal, directed against paragraph 89 of the judgment under appeal, is ineffective in so far as that part of the ground of appeal relates to secondary reasoning. In any event, the Hellenic Republic does not effectively challenge the finding made by the General Court, in that paragraph of the judgment under appeal, that the calculation error relating to available hectares gave rise to a very high risk for the EAGF.

82 In response to the sixth part of that ground of appeal, which refers to paragraph 92 of the judgment under appeal, the Commission claims that the Hellenic Republic does not call into question the fact that numerous areas to which the aid had been granted were not, in general, eligible for that aid because they did not meet the conditions required to be regarded as permanent pasture.

83 As regards the seventh part of that ground of appeal, relating to paragraph 100 of the judgment under appeal, the Commission contends that the Hellenic Republic did not raise before the General Court any plea alleging failure to state reasons for the contested decision on the ground that, by that decision, the Commission departed from the recommendations of the Conciliation Body. Therefore, the General Court responded to the Hellenic Republic's claims to the requisite legal standard.

84 In response to the eighth part of that ground of appeal, directed against paragraph 104 of the judgment under appeal, the Commission replies that, for the sake of completeness, the General Court considered that, even if it were necessary to establish an 'exceptional circumstance' in order to justify the application of a flat-rate correction of 25%, such a circumstance is established in the present case.

85 Finally, as regards the ninth part of the second ground of appeal, alleging failure to take account of the 2012 Action Plan and referring to paragraphs 114 to 116 of the judgment under appeal, the Commission reiterates its position that that action plan is irrelevant to the question whether the financial extent of the irregularity can be established accurately or whether a financial correction must be imposed.

Findings of the Court

86 It is apparent from Document No VI/5330/97 that a flat-rate correction of 25% is justified where the cumulative conditions which it lays down are met, namely where the implementation of the checking system by a Member State is completely absent or seriously inadequate and there are indications of very frequent irregularities and negligence in combating irregular or fraudulent practices, in so far as it may reasonably be considered that the freedom to submit claims with impunity where there is no entitlement will result in extremely high losses for the EAGF.

87 In paragraphs 78 to 82 of the judgment under appeal, the General Court held that the Commission was entitled to consider that, in the present case, the Hellenic Republic could be criticised for seriously inadequate implementation of the checking system in the light of the combination of recurrent irregularities, including, as stated in paragraph 77 of the judgment under appeal, the weaknesses relating to the definition of eligible permanent pasture which had led to that Member State incorrectly applying cross-checks and on-the-spot checks.

88 Since, first, the General Court's assessment of the weaknesses in the definition and control of permanent pasture is, by definition, based on the interpretation of the concept of 'permanent pasture' and, second, as has been found in paragraph 65 of the present judgment, the General Court erroneously interpreted that concept, that error necessarily affects its assessment, carried out in paragraph 78 of the judgment under appeal, of the condition relating to the seriously inadequate implementation of the checking system in the light of combined irregularities.

89 Consequently, in the light of the fact that the complaints raised by the Hellenic Republic in respect of the checking of eligible permanent pasture all relate to the erroneous interpretation of the concept of 'permanent pasture' adopted by the General Court, the second ground of appeal must be upheld in its entirety.

The third ground of appeal

Arguments of the parties

90 By its third ground of appeal, the Hellenic Republic claims, in essence, that, in paragraphs 138 to 141 of the judgment under appeal, the General Court erroneously interpreted and applied Article 31(2) of Regulation No 1290/2005, Article 52(2) of Regulation No 1306/2013, Article 34 of Implementing Regulation No 908/2014 and Document No VI/5330/97 as regards the method for calculating the flat-rate correction in respect of claim year 2013, with the result that it regarded as lawful, in accordance with the principle *ne bis in idem* and the principle of proportionality, the combination of a flat-rate correction of 10% with a one-off correction for the same irregularities. According to the Hellenic Republic, it is clear from the case-law of the Court that the combination of a flat-rate correction with a one-off correction is possible only in the event of multiple findings.

91 The Commission contends that the third ground of appeal should be rejected as unfounded.

Findings of the Court

92 It should be borne in mind, first, that Article 31(2) of Regulation No 1290/2005 and Article 52(2) of Regulation No 1306/2013 do not prohibit the Commission from combining a one-off correction and a flat-rate correction.

93 Accordingly, the Court has already accepted the possibility of combining flat-rate financial corrections with other corrections. If it appears that the risk incurred by the EAGF cannot be covered by one-off corrections alone, other flat-rate corrections must also be possible. It would be contrary to the system of EAGF financing if, in the event of there being grounds to apply a one-off correction, other less clearly determinable damage or risk were chargeable to the EAGF. There is therefore no reason in principle why a one-off correction should not be applied concurrently with a flat-rate correction (see, to that effect, judgments of 28 October 1999, *Italy* v *Commission*, C-253/97, EU:C:1999:527, paragraphs 72 to 74, and of 15 June 2017, *Spain* v *Commission*, C-279/16 P, not published, EU:C:2017:461, paragraph 72).

94 Second, it is apparent from Document No VI/5330/97 that it is possible to combine a one-off correction and a flat-rate correction, as the General Court pointed out in paragraph 136 of the judgment under appeal, in so far as that document provides for flat rates to be applied to what remains of the expenditure after deduction of the amounts excluded in respect of individual files.

95 In the present case, it should be noted that, in support of its third ground of appeal, the Hellenic Republic merely complains that the General Court, in paragraphs 138 to 141 of the judgment under appeal, infringed Article 31(2) of Regulation No 1290/2005, Article 52(2) of Regulation No 1306/2013 and Document No VI/5330/97 by rejecting its arguments alleging double correction for the same irregularities and for the same claim year 2013.

96 In that ground of appeal, the Hellenic Republic does not dispute the General Court's assessments in paragraphs 120 to 125 and 131 of the judgment under appeal, in which it clearly identifies the grounds which led the Commission to impose the flat-rate correction of 10% and the one-off correction.

97 Accordingly, it is apparent from paragraph 123 of the judgment under appeal that the flat-rate correction of 10% imposed for claim year 2013 was justified in the light, first, of an accumulation of errors found by the Commission concerning the elements relating to the eligibility of pasture areas and the system of checks established by the Hellenic Republic and, secondly, of the improvement in the situation as compared to claim year 2012. In paragraph 124 of the judgment under appeal, the General Court noted that the calculation of the risk for the EAGF of EUR 37 163 161.78, made by the Greek authorities on the basis of new data resulting from the updating of the LPIS, did not make it possible to determine the total amount of the risk to which that fund had been exposed due in particular to the failure to take into account the penalties which should have been applied and the fact that an inspection visit carried out in November 2014 had revealed that errors concerning the LPIS were continuing. The General Court inferred from this, in paragraph 125 of the judgment under appeal, that, in view of those shortcomings, the Commission had been unable to determine precisely the total amount of the risk incurred by that fund, so that, first, the imposition of a flat-rate correction was justified and, second, the calculations made by the Greek authorities relating to areas which had been checked did not make it possible to determine the total amount of the risk to which that fund had been exposed.

98 It follows that it was by means of a correct application of Article 31(2) of Regulation No 1290/2005, Article 52(2) of Regulation No 1306/2013 and Document No VI/5330/97 that the General Court held that, by deducting the amount calculated by the Greek authorities from the amount on the basis of which the Commission calculated the flat-rate correction of 10%, the Commission had satisfied itself that it did not impose double corrections on individual beneficiaries who had already been taken into consideration in the amount calculated by the Greek authorities. The flat-rate correction of 10% did not cover the areas which had been checked by the Greek authorities and on the basis of which those authorities had calculated the amount of EUR 37 163 161.78.

99 Thus, the General Court did not err in law in holding, in paragraphs 138 and 141 of the judgment under appeal, that the calculation method adopted by the Commission did not lead to a double correction for the same irregularities and for the same claim year.

100 In view of the foregoing, the third ground of appeal must be rejected as unfounded.

The fourth ground of appeal

Arguments of the parties

101 The fourth ground of appeal raised by the Hellenic Republic alleges erroneous interpretation and application of Article 71(2) and (3) of Regulation No 1698/2005 and several breaches by the General Court of its obligation to state reasons.

102 By the first part of its fourth ground of appeal, directed against paragraphs 158 to 160 of the judgment under appeal, the Hellenic Republic claims that the General Court erroneously interpreted and applied Article 71(2) and (3) of Regulation No 1698/2005 when criticising the Hellenic Republic for the fact that, prior to the selection made by the managing authority, the DTEC carried out a pre-selection of projects on the basis of criteria specific to that national body, thus entailing not just a simple formal assessment of the projects, but a genuine substantive control, even though, under those articles, the managing authority alone was authorised to assess the eligibility of projects that could be covered by Measure 125. According to the Hellenic Republic, Article 71(3) of Regulation No 1698/2005 confers on the Member States the power in principle to lay down the rules on eligibility of expenditure in order to ensure a more efficient allocation of EAFRD resources and, therefore, does not preclude them from providing for the assistance of a national body such as the DTEC which applies the eligibility criteria for projects likely to be covered by Measure 125, within the limits of the objectives in the rural development programme validated by the Commission.

103 The second part of the Hellenic Republic's ground of appeal alleges a failure to state reasons, in so far as, in paragraph 158 of the judgment under appeal, the General Court held that the DTEC carried out a genuine substantive assessment of the projects submitted to it on the basis of three criteria specific to it. However, the General Court did not specify what those criteria were.

104 By the third part of that ground of appeal, that Member State claims that, in paragraph 160 of the judgment under appeal, the General Court supplemented the content of the summary report and, therefore, the statement of reasons for the contested decision by holding that, following the preliminary check carried out by the DTEC, a number of projects were not sent to the managing authority.

105 The fourth part of that ground of appeal alleges infringement of the obligation to state reasons, in that the General Court failed to respond to the Hellenic Republic's argument that the preliminary check carried out by the DTEC had been institutionalised for decades without the Commission ever having commented on the subject or that such intervention could have given rise to any irregularity.

106 By the fifth part of its fourth ground of appeal, the Hellenic Republic claims that the General Court also failed to respond to the argument that all the operations under Measure 125 concerned major public infrastructure works and that, in that context, the DTEC intervened only in the course of preparatory operations having no bearing on the selection itself.

107 The Commission contends that this ground of appeal should be rejected as partly inadmissible and partly unfounded.

Findings of the Court

108 As regards the first part, alleging infringement of Article 71 of Regulation No 1698/2005, referring to paragraphs 158 to 160 of the judgment under appeal, it should be noted that it is apparent from the wording of paragraph 3 of that article, read in the light of recital 61 of that regulation, that, within the framework of the principle of subsidiarity, the rules on eligibility of expenditure are as a rule laid down at national level (see, to that effect, judgment of 7 July 2016, *Občina Gorje* (C-111/15, EU:C:2016:532, paragraphs 37 and 47).

109 However, the fact that the Member States lay down those rules on eligibility of expenditure does not mean that the Member States may entrust the power to select projects to a body distinct from the managing authority of the programme or to a body which is not under the latter's responsibility.

110 Article 71(3) of that regulation, read in the light of recital 64 thereof, confers that decision-making power solely on the managing authority or on a body operating under its responsibility, which exercises that power in the light of the selection criteria laid down by the competent body.

111 Accordingly, the General Court did not err in law in holding, in paragraphs 158 to 160 of the judgment under appeal, that the DTEC pre-selection check of projects that may fall within the scope of Measure 125 infringed Article 71 of that regulation in so far as it constituted a substantive control of the eligibility of projects in the light of its own criteria which were not determined by the competent body.

112 It follows that this part of the Hellenic Republic's fourth ground of appeal must be rejected as unfounded.

113 As regards the second part of that ground of appeal, alleging a failure to state reasons for the judgment under appeal, in that the General Court did not specify, in paragraph 158 of that judgment, the criteria which the DTEC assessed in the context of its substantive examination of the projects, it suffices to note that that part of the ground of appeal is based on a misreading of that judgment, in so far as, in that paragraph, the General Court refers to three criteria and weighting coefficients which were specific to the DTEC and which differed from those applied by the managing authority.

114 It follows that, in its second part, the Hellenic Republic's fourth ground of appeal is unfounded.

115 As regards the third part of that ground of appeal, alleging infringement of the obligation to state reasons by the General Court, in that it supplemented the reasoning of the summary report by holding, in paragraph 160 of the judgment under appeal, that the application of those criteria had led to the non-transmission of a certain number of projects to the managing authority, although it is true that such an assessment is not expressly included in the summary report, it is merely a logical inference from the application of pre-selection criteria. Therefore, it cannot be held that the General Court failed in its obligation to state reasons.

116 It follows that the third part of the Hellenic Republic's fourth ground of appeal is unfounded.

117 As regards the fourth part of that ground of appeal, alleging that the General Court failed to respond to the Hellenic Republic's argument that the preliminary check carried out by the DTEC had been institutionalised for decades, it suffices to note that, in paragraph 161 of the judgment under appeal, the General Court rejected that argument as irrelevant to the procedure in question.

118 Therefore, contrary to what the Hellenic Republic claims, the General Court responded to that argument by rejecting it and, therefore, did not fail in its duty to state reasons.

119 It follows that the fourth part of the Hellenic Republic's fourth ground of appeal is unfounded.

120 As regards the fifth part of that ground of appeal, alleging a failure by the General Court to respond to the Hellenic Republic's argument that the operations under Measure 125 concerned major infrastructure works, it should be noted that that argument was not raised at first instance.

121 Paragraph 69 of the application at first instance, to which the Hellenic Republic refers in its appeal, is purely descriptive and merely emphasises the fact that the operations forming part of Measure 125 concerned large public infrastructure works and represented significant public investment for the national economy, without the Hellenic Republic drawing any legal conclusions from that general declaration.

122 Accordingly, that argument must be rejected as inadmissible on account of its novelty at the appeal stage. According to settled case-law, since, in an appeal, the jurisdiction of the Court of Justice is confined to a review of the findings of law on the pleas and arguments debated before the General Court, a party cannot raise for the first time before the Court of Justice an argument that it did not put forward before the General Court (judgment of 28 November 2019, *ABB* v *Commission*, C-593/18 P, not published, EU:C:2019:1027, paragraph 63 and the case-law cited).

123 It follows from the foregoing that the fourth ground of appeal must be rejected in its entirety as in part inadmissible and in part unfounded.

The fifth ground of appeal

Arguments of the parties

124 The fifth ground of appeal consists of two parts.

125 By the first part of its fifth ground of appeal, the Hellenic Republic complains that the General Court infringed Article 31(4)(c) of Regulation No 1290/2005 and adopted defective and contradictory grounds in paragraphs 183, 185, 186, 189 and 193 of the judgment under appeal.

126 More specifically, it disputes the General Court's interpretation of Article 31 of that regulation in those paragraphs of the judgment under appeal, according to which, as regards measures relating to rural development programmes, where payment of the balance of the aid is preceded by interim and provisional payments, only the final payment of that balance is to be taken into account for the purposes of applying the period of 24 months laid down in that article in order to exclude from financing all expenditure under the rural development programmes concerned. First, that interpretation is contradicted by the wording of Article 31(4)(c) of that regulation, under which that period of 24 months applies, without distinction, both to final payments of the balance and to interim payments or advances. In that regard, the case-law cited by the General Court in support of its interpretation is not relevant because it concerns interim payments subject to the lodging of a security in the context of the EAGGF. Second, the interpretation proposed by the Hellenic Republic is supported by the objective of setting a time limit on the Commission's power to refuse the financing of certain expenditure.

127 By the second part of its fifth ground of appeal, the Hellenic Republic claims that the General Court adopted a deficient and contradictory statement of reasons in paragraph 189 of the judgment under appeal by failing to ascertain whether payment of the balance for the projects at issue under Measure 125 had been made during that 24-month period.

128 The Commission submits that this ground of appeal should be rejected in its entirety.

Findings of the Court

129 As regards the first part of the fifth ground of appeal, it is clear from the wording of Article 31(4)(c) of Regulation No 1290/2005 that financing may not be refused for expenditure on measures in the programmes as indicated in Article 4 of that regulation other than those referred to in Article 31(4)(b) thereof, for which the payment or payment of the balance by the paying agency is made more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

130 It is thus expressly apparent from the wording of Article 31(4)(c) of that regulation that the period of 24 months preceding the written notification of the results of the Commission's findings is to be calculated from the date of payment or payment of the balance, that is to say, of the final payment.

131 Consequently, contrary to what the Hellenic Republic claims, the General Court did not err in law when it held, on the basis of that provision, in paragraphs 183, 185 and 186 of the judgment under appeal, that when intermediate and provisional payments are made followed by a payment of balances, only the final date was to be taken into account for the purposes of calculating that 24-month period.

132 As regards the second part of the fifth ground of appeal, alleging a failure to state reasons, in that the General Court failed to examine whether payment of the balance for the projects in question had been made during that period, it should be noted that, in paragraphs 189 to 191 of the judgment under appeal, which are in part not disputed by the Hellenic Republic, the General Court gave ample reasons for its assessment of that condition.

133 In paragraph 189 of the judgment under appeal, the General Court held that the financial correction in respect of Measure 125 had been applied to all the expenditure incurred in respect of the years 2010 to 2013 since, at that time, none of those projects had been completed and none of the payments made in respect of the 2010 financial year constituted a final payment.

134 Furthermore, in paragraphs 190 and 191 of the judgment under appeal, the General Court identified, in the context of its factual assessment of a summary table of expenditure for 2010 and following years paid under Measure 125 in the context of the 2007-2013 Rural Development programme, that, first, for the project bearing the reference 109464, the payments introduced during 2010 had not continued beyond 2012, whereas the Hellenic Republic did not establish that those payments could not be considered as final, within the meaning of Article 31(4)(c) of Regulation No 1290/2005. Secondly, for the other projects mentioned in that table, for which payments were made for the years 2010 to 2013, the General Court found that the Hellenic Republic had not adduced evidence to show that those projects had not yet been completed and that no final payment had been made.

135 It follows that the second part of this ground of appeal must be rejected and, accordingly, the fifth ground of appeal must be rejected in its entirety as unfounded.

The sixth ground of appeal

Arguments of the parties

136 The sixth ground of appeal raised by the Hellenic Republic is divided into two parts.

137 By the first part of that ground of appeal, which comprises three heads of complaint, the Hellenic Republic contests, in essence, the General Court's assessment that that Member State did not have an effective, proportionate and dissuasive system of penalties, in accordance with the requirements of Article 73 of Regulation No 817/2004.

138 By its first complaint, the Hellenic Republic complains that the General Court erred in law in paragraphs 207 to 209 of the judgment under appeal by failing to regard the measures reducing the amount of the aid and exclusion from the benefit of aid as constituting 'penalties', within the meaning of Article 73 of Regulation No 817/2004, in the same way as the measure excluding any EAFRD support for a period of two years. According to the Hellenic Republic, it follows both from Article 5(1)(c) and (d) of Regulation No 2988/95 and from the case-law of the Court of Justice that total or partial removal of an advantage granted by EU law and the exclusion or withdrawal of that advantage for a period subsequent to the period of the irregularity constitute administrative penalties. Therefore, the obligation to repay in the event of an irregularity found, either by means of a reduction or by excluding the beneficiary of the aid, constitutes a penalty in itself. In finding the contrary, the General Court committed an error of law.

139 By its second complaint, the Hellenic Republic claims that paragraph 208 of the judgment under appeal is vitiated by an error of law. In that paragraph, the General Court held that only a measure excluding a project on the ground of irregularity relating to a condition of its eligibility may be regarded as a penalty. According to the Hellenic Republic, the concept of irregularity is broader and covers any failure to comply with a provision of Regulation No 817/2004.

140 By its third complaint, the Hellenic Republic claims that, in paragraph 206 of the judgment under appeal, the General Court clearly distorted the summary report. In that paragraph of the judgment under appeal, the General Court referred to two findings of fact made by the Commission, even though they did not appear in the summary report and the Commission expressly withdrew one of those findings during the administrative procedure.

141 By the second part of its sixth ground of appeal, the Hellenic Republic claims, in essence, that the application by analogy of Article 63 of Implementing Regulation No 809/2014, which entered into force after the facts of the dispute, for the purposes of the Commission's calculation of the financial correction to be applied, constitutes an error of law and does not state the reasons on which it is based. More specifically, in order to justify the imposition of a financial correction of EUR 772 956.32, which was lower than that which should have been imposed under the rules applicable *ratione temporis*, the General Court referred, in paragraphs 224 to 229 of the judgment under appeal, to case-law relating to the retroactive application of the more lenient penalty and referred to Regulation No 2988/95 on the protection of the European Communities financial interests. Those considerations are irrelevant to the determination of the basis for the financial correction applied under Article 52 of Regulation No 1306/2013. According to the Hellenic Republic, the fact that the General Court thus rejected the complaint by which it contested the application by analogy of Article 63 of Implementing Regulation No 809/2014 on the basis of those considerations should be deemed equivalent to a failure to state reasons in the judgment under appeal on that point.

142 The Commission contends that the first part of this ground of appeal must be rejected in its entirety as unfounded. In response to the second part of that ground of appeal, it contends, principally, that that part must be rejected because it is based on an ineffective line of argument and, in the alternative, that that part of the ground of appeal must be rejected as unfounded.

Findings of the Court

143 As regards the first complaint in support of the first part of the sixth ground of appeal, it should be noted that Article 73 of Regulation No 817/2004 requires the Member States to lay down rules on penalties applicable to infringements of the provisions of that regulation and to ensure that those penalties are effective, proportionate and dissuasive.

144 It follows that, although that article does not precisely identify the system of penalties to be established by a Member State, it nonetheless requires that Member State to lay down a set of measures that is sufficiently effective, proportionate and dissuasive to prevent any infringement of the provisions of that regulation.

145 In holding, in paragraphs 207 and 208 of the judgment under appeal, that the measures to verify the eligibility of payment claims and expenditure, the lack of tolerance in the event of eligible expenditure being exceeded, the required reimbursement of any irregularities found or the recovery of amounts unduly paid do not amount to penalties, but to a necessary step in verifying the conditions of eligibility of projects for the grant of aid, the General Court did not err in law. Such measures do not act as a deterrent, but are limited to ensuring the legality of the application for financing and excluding from EAFRD support expenditure which is partly or totally ineligible, that is, in other words, preventing any undue advantage.

146 At the end of its analysis of the measures which the Hellenic Republic considers to constitute a system of penalties within the meaning of Article 73 of Regulation No 817/2004, the General Court identified, in paragraph 209 of the judgment under appeal, only the sole measure excluding for two years any support from the EAFRD as amounting to a genuine penalty.

147 Therefore, the General Court did not err in law in holding, in paragraphs 207 to 214 of the judgment under appeal, that the variety of measures provided for by Greek legislation could not constitute a system of effective, proportionate and dissuasive penalties within the meaning of Article 73 of Regulation No 817/2004. Although such a temporary exclusion measure may be regarded as a penalty, given its adequate punitive and dissuasive nature, it is insufficient alone to establish the existence of a system of penalties in accordance with Article 73 of Regulation No 817/2004.

148 Accordingly, the first complaint in support of the first part of the sixth ground of appeal must be rejected as unfounded.

149 As regards the second complaint in this part, it suffices to note that the arguments put forward by the Hellenic Republic are based on a misreading of paragraph 208 of the judgment under appeal.

150 In that paragraph of the judgment under appeal, the General Court did not require an irregularity necessarily to relate to a condition relating to eligibility, but merely responded to the Hellenic Republic's argument that the competent authorities of that Member State had adopted exclusion measures in order to penalise projects which did not meet the eligibility conditions.

151 Accordingly, the second complaint put forward in support of that part of the ground of appeal must be rejected.

152 As regards the third complaint, alleging distortion of the summary report, it is true that the General Court refers, in paragraph 206 of the judgment under appeal, to two cases of reduction of aid which are not mentioned in that report. However, those cases are referred to in that paragraph of the judgment under appeal only by way of example, in order to illustrate the implementation of the Hellenic Republic's 'penalties policy', without calling into question the Commission's assessment that that State merely reduced the aid without imposing a penalty.

153 With regard to the second part of the sixth ground of appeal, alleging, in essence, that Article 63 of Implementing Regulation No 809/2014 was applied retroactively and by analogy, and referring to paragraphs 224 to 229 of the judgment under appeal, it should be noted that, in paragraphs 216 to 221 of that judgment, the General Court held, first, that, in accordance with Document No VI/5330/97, the absence of a penalty in connection with Measure 121 should be treated in the same way as a deficiency relating to a key control, which would justify the application of a flat-rate correction of at least 5%.

154 Next, in paragraph 222 of the judgment under appeal, which is not disputed by the Hellenic Republic, the General Court expressly stated that the legal basis for that correction was Article 52 of Regulation No 1306/2013, which replaced Article 31 of Regulation No 1290/2005.

155 Finally, it was only in paragraphs 223 to 229 of the judgment under appeal that the General Court approved the application by analogy of Article 63 of Implementing Regulation No 809/2014, in so far as that later provision, which was more favourable to the Hellenic Republic, led the Commission to reduce the amount of that correction.

156 Therefore, the arguments put forward by the Hellenic Republic are based on a misreading of the judgment under appeal. Contrary to what that Member State maintains, the General Court, in paragraphs 224 to 229 of the judgment under appeal, did not base its reasoning on a legal basis that is not applicable in the present case.

157 In addition, it cannot be held that, by referring, on the one hand, in paragraph 225 of the judgment under appeal, to the principle of retroactivity of the most lenient penalty and, on the other hand, in paragraph 226 of that judgment, to Regulation No 2988/95, the General Court substituted that principle or that regulation for Article 52 of Regulation No 1306/2013 as the legal basis for the financial correction. On the contrary, those references are in line with the case-law of the Court of Justice according to which, as a general principle of EU law, that principle is intended to apply to more lenient administrative penalties (see, to that effect, judgments of 1 July 2004, *Gerken*, C-295/02, EU:C:2004:400, paragraphs 56 and 57; of 8 March 2007, *Campina*, C-45/06, EU:C:2007:154, paragraphs 32, 33 and 60; and of 11 March 2008, *Jager*, C-420/06, EU:C:2008:152, paragraphs 59 and 60).

158 Consequently, contrary to what the Hellenic Republic claims, the General Court's reasoning in paragraphs 224 to 229 of the judgment under appeal is neither inadequate nor incorrect.

159 Accordingly, the sixth ground of appeal must be rejected as unfounded in its entirety.

160 It follows from all the foregoing considerations that, since the first and second grounds of appeal must be upheld, it is appropriate, on the one hand, to set aside point 1 of the operative part of the judgment under appeal, in so far as the General Court dismissed the action brought by the Hellenic Republic concerning the flat-rate corrections of 25% and 10% applied to area payments for pasture in respect of claim years 2012 and 2013 and the one-off correction of EUR 37 163 161.78 in respect of the claim year 2013, imposed by the contested decision in respect of weaknesses in the definition and control of eligible permanent pasture and, on the other hand, to dismiss the appeal in respect of the remainder.

The action before the General Court

161 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, after quashing a decision of the General Court, refer the case back to the General Court for judgment or, where the state of the proceedings so permits, itself give final judgment in the matter.

162 In the present case, the Court should give final judgment in the case, as the state of the proceedings so permits.

163 As is apparent from paragraph 63 of the present judgment, for the purposes of determining whether the area concerned is to be classified as 'permanent pasture' within the meaning of point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, the decisive criterion to be taken into consideration is not the type of vegetation covering that area, but its actual use for an agricultural activity typical of 'permanent pasture'.

164 It should be noted that, as regards area payments for claim year 2012, the Commission justified, in the summary report, the application of a flat-rate correction of 25% in respect of a series of irregularities relating to the definition and control of permanent pasture, which, taken together, enabled it to conclude that the implementation of the control system, which was intended to ensure the accuracy of the expenditure, was seriously deficient and had probably led to extremely high losses for the EAGF.

165 In so far as, first, the flat-rate correction of 25% was based on a set of irregularities, one of which, however, is based on an erroneous interpretation of point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and of Article 2(c) of Regulation No 1120/2009, and, second, since that erroneous interpretation may have had an impact on the Commission's assessment of the other deficiencies found by it, it is for that institution, in that context, to carry out a new overall assessment in order to verify that that rate of correction remains justified.

166 As regards the area payments for claim year 2013, the Commission justified, in the summary report, first, the application of a specific correction in the amount of EUR 37 163 161.78 in respect of a set of irregularities, including weaknesses relating to the definition of permanent pasture and, secondly, the application of a flat-rate correction of 10% due to a set of similar irregularities, including the definition of permanent pasture. With regard to the last flat-rate correction, the Commission considered, however, that the rate of 10% was appropriate in view of the irregularities found for the claim year 2013 and the efforts undertaken by the Hellenic Republic during that claim year to improve the situation.

167 It must also be held that, in so far as, first, the corrections relating to claim year 2013 were based on a set of irregularities, one of which stems from an erroneous interpretation of point 2 of the first paragraph of Article 2 of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, and, second, that that erroneous interpretation could have had an effect on the Commission's assessment of the other specific deficiencies found by it, it is for that institution, in that context, to carry out a new overall assessment in order to verify that the one-off correction and the flat-rate correction of 10% remain justified.

168 It follows that the first ground of appeal brought before the General Court by the Hellenic Republic must be upheld and, consequently, the contested decision must be annulled in so far as it imposes flat-rate corrections of 25% and 10% applied to area payments for pasture in respect of claim years 2012 and 2013, as well as the one-off correction of EUR 37 163 161.78 applied in respect of claim year 2013, in respect of weaknesses in the definition and control of eligible permanent pasture.

Costs

169 As provided for in Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

170 Under Article 138(3) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) of those rules, where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

171 Since the Hellenic Republic and the Commission have both succeeded on some and failed on other heads, they must be ordered to bear their own costs at first instance and on appeal.

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

1. **Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 4 October 2018, *Greece* v *Commission* (T-272/16, not published, EU:T:2018:651), in so far as the General Court dismissed the action brought by the Hellenic Republic concerning the flat-rate corrections of 25% and 10% applied to area payments for pasture in respect of the claim years 2012 and 2013 and the one-off correction of EUR 37 163 161.78 in respect of the claim year 2013, imposed by Commission Implementing Decision (EU) 2016/417 of 17 March 2016 on excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) as a result of weaknesses in the definition and control of eligible permanent pasture.**

2. **Sets aside point 2 of the operative part of the judgment of the General Court of the European Union of 4 October 2018, *Greece* v *Commission* (T-272/16, not published, EU:T:2018:651) in so far as it ruled on costs.**

3. **Dismisses the appeal as to the remainder.**

4. **Annuls Implementing Decision 2016/417 in so far as it imposes on the Hellenic Republic flat-rate corrections of 25% and 10% applied to area payments for pasture in respect of claim years 2012 and 2013, as well as the one-off correction of EUR 37 163 161.78 applied in respect of claim year 2013, in respect of weaknesses in the definition and control of eligible permanent pasture.**

5. **Orders the Hellenic Republic and the European Commission to bear their own costs at first instance and on appeal.**

[Signatures]