Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 December 2013 *

(Action for annulment — State aid — Article 108(1) and (2) TFEU — Aid granted by the Republic of Latvia for the purchase of agricultural land — Competence of the Council of the European Union — Existing aid scheme — Accession of the Republic of Latvia to the European Union — Aid granted before accession — Appropriate measures — Two indissolubly connected aid schemes — Change of circumstances — Exceptional circumstances — Economic crisis — Manifest error of assessment — Principle of proportionality)

In Case C-118/10,

ACTION for annulment under Article 263 TFEU, brought on 26 February 2010,

European Commission, represented by V. Di Bucci, L. Flynn, K. Walkerová and A. Stobiecka-Kuik, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by É. Sitbon and F. Florindo Gijón, acting as Agents,

defendant,

supported by:

Republic of Lithuania, represented by D. Kriaučiūnas and L. Liubertaitė, acting as Agents,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, L. Bay Larsen (Rapporteur), E. Juhász, A. Borg Barthet, C.G. Fernlund and J.L. da Cruz Vilaça, Presidents of Chambers, A. Rosas, G. Arestis, J. Malenovský, A. Prechal, E. Jarašiūnas and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2013,

* Language of the case: English.

gives the following

Judgment

1 By its action, the European Commission requests the Court to annul Council Decision 2009/991/EU of 16 December 2009 on the granting of State aid by the authorities of the Republic of Latvia for the purchase of agricultural land between 1 January 2010 and 31 December 2013 (OJ 2009 L 339, p. 34) ('the contested decision').

Legal context

The Act of Accession

2 Chapter 4 of Annex IV to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) ('the Act of Accession') states:

'...

Without prejudice to the procedures concerning existing aid provided for in Article 88 [EC], aid schemes and individual aid granted to activities linked to the production … of products listed in Annex I to the EC Treaty … put into effect in a new Member State before the date of accession and still applicable after that date, shall be regarded as existing aid within the meaning of Article 88(1) [EC], subject to the following conditions:

— the aid measures shall be communicated to the Commission within four months of the date of accession. ... The Commission shall publish a list of such aids.

These aid measures shall be regarded as "existing" aid within the meaning of Article 88(1) of the EC Treaty until the end of [the] third year from the date of accession.

The new Member States shall, where necessary, amend these aid measures in order to comply with the guidelines applied by the Commission by the end of the third year from the date of accession at the latest. After that date, any aid found to be incompatible with those guidelines shall be considered as new aid.'

Regulation (EC) No 659/1999

3 Article 1 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), provides:

'For the purpose of this Regulation:

...

(c) "new aid" shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

...'

4 Article 17(2) of Regulation No 659/1999 provides:

'Where the Commission considers that an existing aid scheme is not, or is no longer, compatible with the common market, it shall inform the Member State concerned of its preliminary view and give the Member State concerned the opportunity to submit its comments within a period of one month. ...'

5 Article 18 of Regulation No 659/1999 states:

'Where the Commission, in the light of the information submitted by the Member State pursuant to Article 17, concludes that the existing aid scheme is not, or is no longer, compatible with the common market, it shall issue a recommendation proposing appropriate measures to the Member State concerned. …'

6 Article 19(1) of Regulation No 659/1999 is worded as follows:

'Where the Member State concerned accepts the proposed measures and informs the Commission thereof, the Commission shall record that finding and inform the Member State thereof. The Member State shall be bound by its acceptance to implement the appropriate measures.'

Regulation (EC) No 1857/2006

7 Article 4 of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles [107 TFEU] and [108 TFEU] to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ 2006 L 358, p. 3) provides:

'1. Aid for investments in agricultural holdings within the [European Union] for primary production of agricultural products, shall be compatible with the common market within the meaning of Article [107(3)(c) TFEU] and shall be exempt from the notification requirement of Article [108(3) TFEU] if it fulfils the conditions set out in paragraphs 2 to 10 of this Article.

...

8. Aid may be granted for a purchase of land other than land for construction purposes costing up to 10% of the eligible expenses of the investment.

...'

Regulation (EC) No 1535/2007

8 Article 3(1) of Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles [107 TFEU] and [108 TFEU] to *de minimis* aid in the sector of agricultural production (OJ 2007 L 337, p. 35) provides:

'Aid measures shall be deemed not to meet all the criteria of Article [107(1) TFEU] and shall therefore not fall under the notification requirement of Article [108(3) TFEU] where they fulfil the conditions laid down in paragraphs 2 to 7 of this Article.'

The agricultural guidelines

9 Point 29 of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (OJ 2006 C 319, p. 1) ('the agricultural guidelines') states:

'Aid for investment in agricultural holdings shall be declared compatible with Article [107(3)(c) TFEU] if it fulfils all the conditions of Article 4 of Regulation (EC) No 1857/2006 …'

10 Point 195 of the agricultural guidelines is worded as follows:

'For the assessment of the aid schemes and individual aids that are regarded as existing aid in accordance with Point 4, Chapter 4 of Annex IV to the 2003 Act of Accession, the Community guidelines for State aid in the agriculture sector applicable on 31 December 2006 will remain applicable until 31 December 2007 without prejudice of point 196, provided that such aid complies with those guidelines by 30 April 2007 at the latest.'

11 Under the heading 'Proposals for appropriate measures', point 196 of the agricultural guidelines states:

'In accordance with Article [108(1) TFEU] the Commission proposes that Member States amend their existing aid schemes to conform with these guidelines by 31 December 2007 at the latest, except for existing aid schemes … for investments concerning land purchase in agricultural holdings, that have to be amended to conform with these guidelines by 31 December 2009.'

12 Point 197 of the agricultural guidelines stipulates that the Member States are invited to confirm that they accept these proposals for appropriate measures in writing by 28 February 2007 at the latest.

13 Point 198 of the agricultural guidelines is worded as follows:

'In the event that a Member State fails to confirm its acceptance in writing before that date, the Commission will apply Article 19(2) of Regulation (EC) No 659/1999 and, if necessary, initiate the proceedings referred to in that provision.'

The temporary framework

14 Point 4.2.2 of the temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis, laid down in the Commission Communication of 17 December 2008 (OJ 2009 C 83, p. 1), as amended by the Commission Communication published in the *Official Journal of the European Union* of 31 October 2009 (OJ 2009 C 261, p. 2) ('the temporary framework') stipulates that, in view of the economic situation, it is considered necessary to temporarily allow the granting of a limited amount of aid under certain conditions.

15 Point 4.2.2(h) of the temporary framework stipulates, inter alia, that, '[w]here the aid is granted to undertakings active in the primary production of agricultural products …, the cash grant (or gross grant equivalent) does not exceed EUR 15 000 per undertaking'.

16 Point 7 of the temporary framework states, inter alia, that '[t]his Communication … will not be applied after 31 December 2010'.

Background to the dispute

17 In 2002, the Republic of Latvia introduced aid for the purchase of agricultural land.

18 Pursuant to the procedure laid down in Chapter 4 of Annex IV to the Act of Accession, the Republic of Latvia communicated to the Commission that existing aid scheme entitled 'Programme for granting loans for the purchase of agricultural land'. The Commission, consequently, included that aid scheme in the list of existing State aid measures in the new Member States, in the sector of agriculture, which was published in the *Official Journal of the European Union* (OJ 2005 C 147, p. 2).

19 In point 196 of the agricultural guidelines, the Commission proposed that Member States amend their existing aid schemes for the purchase of agricultural land to conform to those guidelines by 31 December 2009 at the latest.

20 On 20 February 2007, the Republic of Latvia communicated its acceptance of the proposals for appropriate measures contained in point 196 of those guidelines. As provided for in Article 19(1) of Regulation No 659/1999, the Commission recorded that agreement by a communication published in the *Official Journal of the European Union* (OJ 2008 C 70, p. 11).

21 On 17 November 2009, the Republic of Latvia requested the Council of the European Union, on the basis of Article 88(2) EC, to declare compatible with the internal market, until 31 December 2013, aid for the purchase of agricultural land.

22 By the contested decision, the Council agreed to that request on the basis of the third subparagraph of Article 108(2) TFEU. Article 1 of that decision is worded as follows:

'Exceptional State aid by the Latvian authorities for loans for the purchase of agricultural land, amounting to a maximum of LVL [Latvian lati] 8 million and granted between 1 January 2010 and 31 December 2013, shall be considered to be compatible with the internal market.'

23 The Council's reasoning for the decision refers, inter alia, in recitals 2 to 8 in the preamble thereto, to the unfavourable area structure of Latvian agricultural holdings, farmers' low incomes, the fact that a substantial part of agricultural land is held by non-farmers, the rise in the price of agricultural inputs, the fall in incomes and in agricultural prices, the increased unemployment and the considerable reduction in the number of transactions on the market of agricultural land caused, in Latvia, by the economic and financial crisis. It also referred to Latvian farmers' lack of capital and their problems in obtaining loans.

24 According to recitals 11 and 12 in the preamble to the contested decision:

'(11) The Commission has not at this stage initiated any procedure nor taken a position on the nature and compatibility of the aid.

(12) Exceptional circumstances therefore exist, making it possible to consider such aid, by way of derogation and to the extent strictly necessary to limit the extent of rural poverty in Latvia, to be compatible with the internal market.'

Procedure before the Court and the form of order sought by the parties

25 The Commission claims that the Court of Justice should:

— annul the contested decision; and

— order the Council to pay the costs.

26 The Council contends that the Court should:

— dismiss the action as unfounded; and

— order the Commission to pay the costs.

27 By order of the President of the Court of 16 September 2010, the Republic of Lithuania was granted leave to intervene in support of the form of order sought by the Council.

The action

28 The Commission relies on four pleas in law in support of its action, respectively alleging lack of competence of the Council, misuse of powers, breach of the obligation of sincere cooperation, manifest error of assessment as to the presence of exceptional circumstances and breach of the principle of proportionality.

The first plea in law, alleging that the Council lacked competence

Arguments of the parties

29 By its first plea in law, the Commission claims that the Council lacked the competence to adopt the contested decision.

30 According to the Commission, it is settled case-law that the power of the Council under the third subparagraph of Article 108(2) TFEU is exceptional in character and that the Council does not therefore enjoy the competence to contradict a Commission decision finding an aid to be incompatible with the internal market or to attempt to circumvent such a decision.

31 The Commission takes the view that it adopted, in point 196 of the agricultural guidelines, a final position on the compatibility with the internal market of the aid scheme introduced by the Republic of Latvia for the purchase of agricultural land. The fact that that position was adopted in the form of agricultural guidelines is of no consequence since the judicature of the European Union has held that a Member State which accepts guidelines is bound to apply them.

32 In the present case, the Republic of Latvia notified its acceptance of the proposals for appropriate measures contained in point 196 of the agricultural guidelines. It was therefore bound, in the Commission's view, to end the aid scheme by 31 December 2009 at the latest and not to reintroduce it before 31 December 2013. Consequently, by authorising that aid scheme as from 1 January 2010, the Council thwarted the effectiveness of the Commission decision, thus exceeding its competence.

33 The Council submits, on the contrary, that the aid scheme authorised by the contested decision constitutes a new aid scheme. Thus, it considers that, under Chapter 4 of Annex IV to the Act of Accession, the aid scheme for the purchase of agricultural land introduced by the Republic of Latvia before its accession to the European Union could be classified as an existing aid scheme only until 30 April 2007.

34 Furthermore, the aid scheme authorised by the contested decision is distinct, according to the Council, from the aid scheme referred to in paragraph 18 above, inter alia because it is based on new elements of law and fact. Moreover, even supposing that appropriate measures were applicable to the aid scheme put in place by the Republic of Latvia and that that scheme had not been rendered compatible with

those measures, it follows from Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125 that that scheme simply became a new aid scheme. The Commission never therefore assessed the compatibility of the aid scheme authorised by the contested decision with the internal market.

35 The Council adds that point 196 of the agricultural guidelines is not applicable to the aid scheme approved by it, since the appropriate measures provided for under Article 108(1) TFEU apply only to existing aid.

36 Finally, the Council considers that points 29 and 196 of the agricultural guidelines do not imply that State aid which does not fulfil the conditions laid down in Article 4 of Regulation No 1857/2006 is systematically incompatible with the internal market. Since that regulation is a block exemption regulation, such aid could be notified to the Commission in accordance with Article 108(3) TFEU. By requiring that existing aid schemes conform to those guidelines, point 196 thereof merely recalls the obligation to comply with Articles 107 TFEU and 108 TFEU, which require an individual assessment of the compatibility of the new aid scheme by the Commission or by the Council.

37 In its reply, the Commission maintains that according to Chapter 4 of Annex IV to the Act of Accession, since the aid scheme in question and the guidelines applicable on 1 May 2007 are not incompatible, that scheme has retained its status as existing aid. It also submits that the differences referred to by the Council between the existing aid scheme and the aid scheme authorised by the contested decision are not relevant because those schemes are so indissolubly linked that it is largely artificial to claim to make a distinction between those two schemes for the purposes of applying Article 108(2) TFEU.

38 The Republic of Lithuania essentially shares the analysis of the Council.

Findings of the Court

39 In order to assess whether the Commission's first plea in law in support of its action is well founded, it must be established whether the Council had the power, under the third subparagraph of Article 108(2) TFEU, to hold compatible with the internal market the aid scheme covered by the contested decision, when the Republic of Latvia had accepted the appropriate measures proposed under point 196 of the agricultural guidelines.

40 Under the third subparagraph of Article 108(2) TFEU, the Council, on application by a Member State, may, acting unanimously, decide that aid which that State is granting or intends to grant is to be considered to be compatible with the internal market, in derogation from the provisions of Article 107 TFEU or from the regulations provided for in Article 109 TFEU, if such a decision is justified by exceptional circumstances.

41 A Member State may therefore, in well-defined cases, notify an aid not to the Commission, which would have ruled within the framework set out in Article 108(3) TFEU, but to the Council, which will rule within the framework set out in the third subparagraph of Article 108(2) TFEU, in derogation from the provisions of Article 107 TFEU or from the regulations provided for in Article 109 TFEU.

42 The Court has already had the opportunity to clarify certain aspects of the interpretation of that provision.

43 Thus, it first held, after recalling the central role which the FEU Treaty reserves for the Commission in determining whether aid is incompatible with the internal market, that the third subparagraph of Article 108(2) TFEU covers an exceptional and specific case, meaning that the power conferred upon the Council by that provision is clearly exceptional in character (see, to that effect, Case C-110/02 *Commission* v *Council* [2004] ECR I-6333, paragraphs 29 to 31) and, accordingly, that the third

subparagraph of Article 108(2) TFEU must necessarily be interpreted strictly (see, by analogy, Case C-510/08 *Mattner* [2010] ECR I-3553, paragraph 32, and Case C-419/11 *Česká spořitelna* [2013] ECR, paragraph 26).

44 Second, with regard to the provisions in the third and fourth subparagraphs of Article 108(2) TFEU, whereby, on the one hand, an application to the Council by a Member State suspends the examination in progress at the Commission for a period of three months and, on the other, in the absence of a decision by the Council within that period, the Commission is to give a ruling, the Court has held that those provisions must be interpreted as meaning that, where that period has expired, the Council is no longer competent to adopt a decision under that third subparagraph in relation to the aid concerned (see, to that effect, Case C-110/02 *Commission* v *Council*, paragraph 32).

45 The Court has held, in that regard, that the enactment of a temporal limitation of that kind on the Council's competence also shows that, if the Member State concerned has not made an application to the Council under the third subparagraph of Article 108(2) TFEU before the Commission declares the aid in question incompatible with the internal market and thereby closes the procedure referred to in the first subparagraph of Article 108(2) TFEU, the Council is no longer authorised to exercise the exceptional power conferred upon it by the third subparagraph of Article 108(2) TFEU in order to declare such aid compatible with the internal market (Case C-110/02 *Commission* v *Council*, paragraph 33, and Case C-399/03 *Commission* v *Council* [2006] ECR I-5629, paragraph 24).

46 The Court has observed, in that context, that that interpretation makes it possible to avoid the taking of decisions the operative parts of which might prove contradictory and contributes accordingly to legal certainty by preserving the definitive nature of an administrative decision which is acquired on the expiry of reasonable time-limits for bringing an action or by the exhaustion of remedies (see, to that effect, Case C-110/02 *Commission* v *Council*, paragraphs 32 and 35, and Case C-399/03 *Commission* v *Council*, paragraph 25).

47 Finally, the Court has also ruled on whether the fact that the Council does not have the power to rule on the compatibility with the internal market of an aid on which the Commission has already definitively ruled implies that the Council also lacks the power to rule on an aid measure whose aim is to allocate to beneficiaries of the illegal aid previously declared incompatible by a Commission decision an amount designed to compensate for the repayments which those beneficiaries are obliged to make pursuant to that decision.

48 In that regard, the Court has consistently held that to hold that a Member State may grant to beneficiaries of such unlawful aid new aid in an amount equivalent to that of the unlawful aid, intended to neutralise the impact of the repayments which the beneficiaries are obliged to make pursuant to that decision, would clearly amount to thwarting the effectiveness of decisions taken by the Commission under Articles 107 TFEU and 108 TFEU (Case C-110/02 *Commission* v *Council*, paragraph 43, and Case C-399/03 *Commission* v *Council*, paragraph 27).

49 The Court has thus held that the Council, which may not counter a decision of the Commission finding aid incompatible with the internal market by itself declaring that aid compatible with that market, is also not permitted to thwart the effectiveness of such a decision by declaring compatible with the internal market, in accordance with the third subparagraph of Article 108(2) TFEU, an aid designed to compensate the beneficiaries of the unlawful aid declared incompatible with that market for the repayments they are required to make pursuant to that decision (see, to that effect, Case C-110/02 *Commission* v *Council*, paragraphs 44 and 45, and Case C-399/03 *Commission* v *Council*, paragraph 28).

50 It follows from that case-law that, for the purposes of the application of Article 108(2) TFEU, the respective powers of the Council and the Commission are allocated in such a way that, first, the primary competence to act lies with the Commission, the Council having power to act only in

exceptional circumstances. Second, the Council's competence, which enables it to derogate, in its decision, from certain Treaty provisions on State aid, must be exercised within a specific time frame. Third, as soon as the Commission or the Council has adopted a final ruling on the compatibility of the aid in question, the other of those two institutions may no longer adopt a contrary decision.

51 That interpretation seeks to maintain the coherence and effectiveness of European Union action, first by ruling out contradictory decisions and second by ensuring that a decision of one European Union institution which has become final cannot be contradicted by that of another institution outwith any time frame, including the period laid down in the sixth paragraph of Article 263 TFEU, and in breach of the principle of legal certainty.

52 The considerations underlying that interpretation also make clear that it does not matter whether the Council decision relates to an existing aid or to new aid. As is apparent from the Court's case-law, the effectiveness of the Commission decision is undermined not only where the Council adopts a decision declaring compatible with the internal market an aid on which the Commission has already ruled but also where the aid which is the subject of the Council decision aims to compensate the beneficiaries of the unlawful aid declared incompatible with the internal market for the repayments they are required to make pursuant to the decision of the Commission. In such circumstances, the second aid is so indissolubly linked to that previously found by the Commission to be incompatible with the internal market that it appears largely artificial to claim to make a distinction between those aids for the purposes of applying Article 108(2) TFEU (see, to that effect, Case C-110/02 *Commission* v *Council*, paragraphs 45 and 46).

53 In the present case, it must therefore be examined whether the aid declared compatible with the internal market by the Council must, irrespective of whether it is existing or new aid, be considered to be aid on which the Commission has already definitively ruled.

54 In that regard, according to settled case-law, the Commission may, in the exercise of the powers conferred on it by Articles 107 TFEU and 108 TFEU, adopt guidelines to indicate how it intends, under those articles, to exercise its discretion in regard to new aid or in regard to existing systems of aid (Case C-242/00 *Germany* v *Commission* [2002] ECR I-5603, paragraph 27).

55 When they are based on Article 108(1) TFEU, those guidelines constitute one element of the regular and periodic cooperation under which the Commission, in conjunction with the Member States, must keep under constant review existing systems of aid and propose to them any appropriate measures required by the progressive development or by the functioning of the common market (see, to that effect, Case C-311/94 *IJssel-Vliet* [1996] ECR I-5023, paragraphs 36 and 37, and Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 64). To the extent that those proposals for appropriate measures are accepted by a Member State, they are binding upon that State (see, to that effect, *IJssel-Vliet*, paragraphs 42 and 43, and Case C-288/96 *Germany* v *Commission*, paragraph 65), which must, as Article 19(1) of Regulation No 659/1999 states, implement them.

56 In the present case, on 20 February 2007, the Republic of Latvia communicated its acceptance of the proposals for appropriate measures contained in point 196 of the agricultural guidelines.

57 Those appropriate measures consist, inter alia, in an amendment of the existing aid schemes for investments concerning land purchase in agricultural holdings in order to make those schemes conform to those guidelines by 31 December 2009 at the latest.

58 Paragraph 29 of those guidelines states that aid for investment in agricultural holdings is to be declared compatible with Article 107(3)(c) TFEU if it fulfils all the conditions of Article 4 of Regulation No 1857/2006.

59 It is therefore evident that, in point 196 of the agricultural guidelines, the Commission proposes, inter alia, to the Member States which have existing aid schemes for the purchase of agricultural land which do not fulfil all the conditions laid down in Article 4 of Regulation No 1857/2006 to amend those schemes to conform to those conditions or, failing such amendment, to eliminate them, by 31 December 2009 at the latest.

60 That conclusion is not called into question by the Council's argument that the reference, in point 29 of the agricultural guidelines, to the conditions laid down in Article 4 of Regulation No 1857/2006 implies that any proposal to grant State aid for investments in agricultural holdings which do not fulfil all the conditions in that article must be notified to the Commission so as to enable it to assess whether that aid is compatible with the internal market.

61 It is thus apparent from the wording of point 196 of the agricultural guidelines read in conjunction with point 29 thereof that the Commission undertook to bind itself to exercise its discretion by using, in certain cases, those conditions as criteria of compatibility and not of exemption from the notification requirement. The scope of those conditions in the context of the application of those guidelines to existing aid schemes differs, therefore, from that which is conferred on them by Article 4(1) of Regulation No 1857/2006.

62 It must however be pointed out that, in accordance with Article 108(1) TFEU, the appropriate measures proposed by the Commission in point 196 of the agricultural guidelines concern only existing aid schemes.

63 The scheme authorised by the contested decision is a new aid scheme.

64 Thus, even on the assumption that the aid scheme referred to in paragraph 18 of this judgment retained its status as an existing aid scheme after 30 April 2007, it is common ground that that aid scheme did not satisfy the conditions laid down in Article 4 of Regulation No 1857/2006, to which point 29 of the agricultural guidelines refers.

65 Given that, according to Article 1(c) of Regulation No 659/1999, any aid scheme which is not an existing aid scheme is a new aid scheme and that the aid scheme authorised by the contested decision was applicable from 1 January 2010, the latter was necessarily a new aid scheme.

66 The obligations on the Republic of Latvia following its acceptance of the proposals for appropriate measures do not therefore relate to the scheme regarded as compatible with the internal market by the contested decision, which is a new aid scheme and which is not to be mistaken for an existing aid scheme covered by the appropriate measures accepted by that Member State.

67 The Council cannot however rely on the mere fact that the aid scheme is a new one in order to reassess a situation in respect of which the Commission has already made a final assessment, thereby contradicting that assessment. The Council does not therefore have power to decide that a new aid scheme must be regarded as compatible with the internal market where it is so indissolubly linked to an existing aid scheme that a Member State has undertaken to modify or abolish, in the framework of Article 108 (1) TFEU, that it appears largely artificial to claim to make a distinction between those two schemes for the purposes of applying Article 108(2) TFEU (see, by analogy, Case C-110/02 *Commission* v *Council*, paragraph 46).

68 However, that is not so in the instant case.

69 In that regard, a significant period of time elapsed between the Commission's assessment and that made by the Council, the contested decision having been adopted almost three years after the proposals for the appropriate measures in question.

70 In addition, that decision is specifically based on the occurrence of new circumstances, considered to be exceptional by the Council, which could not be taken into account by the Commission in its assessment of the compatibility with the internal market of the existing aid scheme for the purchase of agricultural land implemented by the Republic of Latvia.

71 Thus, while the agricultural guidelines were adopted in 2006, the contested decision largely refers to the effects on Latvian agriculture in 2008 and 2009 of the economic and financial crisis. The Council refers inter alia to the fall in incomes and in agricultural prices which occurred in 2009 on account of the recession, high interest rates and the significant increase in unemployment recorded that year. It also refers to the fact that the number of transactions on the market of agricultural land fell considerably between 2007 and 2009.

72 The position adopted by the Commission, in support of its proposal for appropriate measures, in relation to the compatibility with the internal market of the aid scheme referred to in paragraph 18 of this judgment, could be based only on the assessment it made in the light of the economic data in its possession in 2006 of the consequences which the application of those schemes could have for the progressive development or the functioning of the internal market.

73 Owing to the substantial change in circumstances referred to in paragraph 71 above, the assessment by the Commission of those aid schemes cannot therefore be considered as prejudicing the assessment which would have been carried out of an aid scheme, containing similar measures, but which would have fallen to be implemented in economic circumstances radically different from those which the Commission took into account in its assessment. It follows that the compatibility with the internal market of the new aid scheme which was the subject of an application addressed to the Council by the Republic of Latvia under the third subparagraph of Article 108(2) TFEU must be evaluated following an individual assessment distinct from that of the scheme referred to in paragraph 18 above, which takes into consideration the relevant economic circumstances at the time when the aid is granted (see, to that effect, Case C-261/89 *Italy* v *Commission* [1991] ECR I-4437, paragraph 21, and Case C-459/10 P *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission* [2011] ECR I-109, paragraph 48).

74 Thus, the situation at issue in the present case can be distinguished from that which the Court examined in its judgments in Cases C-110/02 *Commission* v *Council* and C-399/03 *Commission* v *Council*.

75 In contrast to the Council decisions annulled in those two judgments, the contested decision is, in the present case, indeed based on new factors resulting from a substantial change in circumstances which occurred between the time when the Commission examined the existing aid scheme applied by the Republic of Latvia and the time when the Council assessed the new aid scheme which was the subject of the application that Member State had addressed to it.

76 Consequently, the factors which justified a finding that the Council lacked competence in the two judgments mentioned in paragraph 74 above are not present in this case.

77 Besides, recognition of the competence of the Council cannot justify circumvention of the appropriate measures accepted by the Member States.

78 First, the Council has power to authorise a new aid scheme similar to an existing aid scheme which a Member State was obliged to amend or eliminate, following acceptance of proposals for appropriate measures, only where, after those proposals, new circumstances have arisen.

79 Second, the power granted to the Council under the third subparagraph of Article 108(2) TFEU applies only within the limits indicated by that provision, namely where exceptional circumstances exist (see, to that effect, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 13).

80 Finally, with regard to the Commission's argument that the Council is not competent to authorise aid contrary to the policy set out in the agricultural guidelines, it should be observed that, of those guidelines, only the proposals for appropriate measures in point 196 which have been accepted by the Member States are capable of amounting to the adoption of a final position of the Commission on the compatibility of an aid scheme with the internal market.

81 Only those proposals for appropriate measures are submitted to the Member States for their approval, as point 197 of the agricultural guidelines makes clear, whereas the other stipulations of those guidelines are merely general policy rules to be followed by the Commission (see, to that effect, Case C-382/99 *Netherlands* v *Commission* [2002] ECR I-5163, paragraph 24 and the case-law cited), without binding the Member States. *A fortiori* they cannot bind the Council in so far as the third subparagraph of Article 108(2) TFEU gives it the power to derogate, in exceptional circumstances, from the provisions of Article 107 TFEU or from the regulations provided for in Article 109 TFEU.

82 It follows from point 196 of those guidelines that, in so far as the existing aid schemes for the purchase of agricultural land are concerned, the Member States undertook only to amend those schemes to conform to those guidelines or, failing amendment, to eliminate them, by 31 December 2009 at the latest.

83 By contrast, it follows from the considerations in paragraphs 67 to 76 above that the Member States, by accepting the proposals for appropriate measures contained in point 196 of the agricultural guidelines, are not deprived of any right to seek authorisation to reintroduce similar or identical schemes throughout the period of application of those guidelines.

84 It follows that the first plea in law relied on by the Commission, alleging the Council's lack of competence, is unfounded and must be rejected.

The second plea in law, alleging misuse of powers

Arguments of the parties

85 By its second plea in law, the Commission submits that the Council misused its power by seeking to neutralise the effects of the assessment which the Commission had made of the aid scheme for the purchase of agricultural land introduced by the Republic of Latvia.

86 The Council contends that it did not seek, when adopting the contested decision, to cancel the effects of an assessment by the Commission, given that the Commission had not adopted any decision declaring the aid scheme authorised by the contested decision incompatible with the internal market. The objective pursued by the Council is in reality to assist Latvian farmers affected by the economic and financial crisis to purchase agricultural land.

Findings of the Court

87 As the Court has repeatedly held, an act is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see, to that effect, inter alia, Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52, and Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 69).

88 It is clear that the Commission has not furnished such evidence.

89 With regard to the objectives pursued by the Council when adopting the contested decision, nothing in the file before the Court makes it possible to assert that the Council pursued an exclusive or main purpose other than that of assisting Latvian farmers to purchase agricultural land more easily in order to limit poverty in rural areas in Latvia.

90 With regard to the Commission's argument that it follows from the sequence of events and from correspondence exchanged that the contested decision sought to undermine the position it had adopted, the Council was entitled to consider that the Commission had not adopted a position on the compatibility of the aid scheme in question, as stated in recital 11 in the preamble to the contested decision.

91 Thus, the second plea in law, alleging misuse of powers, must be rejected as unfounded.

The third plea in law, alleging a breach of the principle of sincere cooperation

Arguments of the parties

92 By its third plea in law, the Commission submits that the contested decision was adopted in breach of the principle of sincere cooperation between the institutions in so far as, by adopting that decision, the Council relieved the Republic of Latvia of the obligation of cooperation with the Commission, to which that Member State is subject under Article 108(1) TFEU.

93 By authorising the extension of an existing aid scheme which the Republic of Latvia had undertaken to abolish, it is alleged that the Council undermined the results of the dialogue previously held between the Commission and that Member State.

94 The Council takes the view that it is not bound by the obligation of cooperation based on Article 108(1) TFEU. In addition, it reaffirms that the Republic of Latvia did not make any commitment concerning the aid scheme approved by the contested decision.

Findings of the Court

95 Article 108(1) TFEU imposes on the Commission and the Member States a duty of regular and periodic cooperation under which the Commission, in conjunction with the Member States, must keep under constant review existing aid schemes and propose to them any appropriate measures required by the progressive development or by the functioning of the internal market (see, to that effect, Case C-242/00 *Germany* v *Commission*, paragraph 28 and the case-law cited).

96 In that regard, it follows from paragraph 76 above that the Republic of Latvia did not make any specific commitment concerning the aid scheme authorised by the contested decision. Thus, that decision cannot be regarded as having relieved the Republic of Latvia of a specific obligation of cooperation in so far as it has not in any way undermined the results of the previous dialogue between the Commission and that Member State.

97 In the light of those considerations, the third plea in law of the Commission, alleging a breach of the principle of sincere cooperation, must be rejected as unfounded.

The fourth plea in law, alleging a manifest error of assessment and a breach of the principle of proportionality

98 By the first part of its fourth plea in law, the Commission argues that the Council committed a manifest error of assessment by considering that there were exceptional circumstances which justified the authorised measures. In the second part of that plea, the Commission claims that the contested decision infringes the principle of proportionality in so far as the measures in question are not suitable to attain the objectives pursued by that decision and are not restricted to the minimum necessary to attain those objectives.

The first part of the fourth plea in law, alleging a manifest error of assessment with regard to the presence of exceptional circumstances

– Arguments of the parties

99 The Commission takes the view that circumstances can be considered as exceptional, within the meaning of the third subparagraph of Article 108(2) TFEU, only if they were not foreseeable before they occurred and only if, in the present case, they particularly affect the Republic of Latvia. Thus, that could not be the case for a pre-existing structural hindrance or a problem faced by the majority of Member States.

100 The Commission considers that the unfavourable area structure of agricultural holdings and the fact that a substantial part of agricultural land is held by non-farmers are long-standing structural problems of the Latvian agrarian economy. Equally, there is no evidence to indicate that Latvian farmers' lack of capital is other than a structural problem which can by definition not be exceptional. With regard to the rise in the price of agricultural inputs, that was no greater in Latvia than in the other Member States. The Commission also rejects the notion that the low level of direct payments, provided for since the Act of Accession, can be described as an exceptional circumstance.

101 Furthermore, while acknowledging that the economic crisis can be an exceptional circumstance, the Commission nevertheless considers that that crisis can justify the contested decision only if the crisis interacted with the pre-existing structural problems in such a way as to give rise to exceptional circumstances in Latvia, which the Council has not proved. The Commission also argues that the effect of that crisis on the fall in agricultural incomes and on the reduction of the number of transactions on the market of agricultural land in Latvia is not exceptional having regard to the context of the European Union as a whole. With regard to the increase in unemployment mentioned by the Council, that is merely one aspect of the economic crisis, which must not be looked at in isolation.

102 The Council is of the opinion that the definition of the concept of exceptional circumstances proposed by the Commission is too narrow in the light of the case-law since such circumstances need only be unforeseen and may affect other Member States or sectors other than agriculture.

103 In the present case, there were exceptional circumstances consisting in extraordinary events relating to the economic crisis, which had serious repercussions on Latvian farmers and which, therefore, further aggravated the existing structural problems of Latvian agricultural holdings. Thus, the decline in agricultural incomes, high interest rates and greater difficulty in accessing loans as a result of the crisis, more marked in Latvia than in other Member States, made it extremely difficult or even impossible for Latvian farmers to buy agricultural land. With regard to the low level of direct payments or the rise in the price of agricultural inputs, the Council considers that they contribute to limiting the capacity of Latvian farmers to overcome the recession.

– Findings of the Court

104 According to the case-law of the Court, in the application of the third subparagraph of Article 108(2) TFEU the Council enjoys wide discretion, the exercise of which involves complex economic and social assessments which must be made in a European Union context. In that context, judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with and to verifying the accuracy of the facts relied on and ascertaining that there has been no error of law, manifest error in the assessment of the facts or misuse of powers (see, to that effect, Case C-122/94 *Commission* v *Council*, paragraphs 18 and 19, and, by analogy, Case C-333/07 *Régie Networks* [2008] ECR I-10807, paragraph 78).

105 In the light of its unusual and unforeseeable character and the extent of the effects of the economic and financial crisis on Latvian agriculture, the Council cannot be regarded as having made a manifest error of assessment by considering that those effects constituted exceptional circumstances within the meaning of the third subparagraph of Article 108(2) TFEU. The Commission moreover acknowledged in its reply that the occurrence of that crisis could amount to such an exceptional circumstance.

106 The fact that the economic and financial crisis also gave rise to considerable effects in other Member States is not decisive, in so far as that fact does not affect the exceptional character of the effects of that crisis on the development of the economic situation of Latvian farmers.

107 Equally, to hold that the unfavourable area structure of the agricultural holdings, the large part of agricultural land held by non-farmers and the fact that farmers lack capital are structural problems in Latvia does not make it possible to establish that the Council committed a manifest error of assessment by considering that the decline in agricultural incomes, the high interest rates and greater difficulty in accessing loans as a result of the crisis led to a significant deterioration in the situation of Latvian farmers, which therefore prevented those structural problems from being resolved and, thus, precluded poverty in rural areas from being limited by improving the competitiveness of Latvian agricultural holdings (see, by analogy, Case C-122/94 *Commission* v *Council*, paragraph 21).

108 It follows that the first part of the fourth plea in law must be rejected as unfounded.

The second part of the fourth plea in law, alleging breach of the principle of proportionality

– Arguments of the parties

109 According to the Commission, the Council breached the principle of proportionality when adopting the contested decision.

110 The Commission considers that the aid scheme in question is not capable of attaining the objectives stated in that decision. Thus, despite the existence of an aid scheme for the purchase of agricultural land, the average size of an agricultural holding in Latvia has altered only slightly over recent years. In addition, that average size increased in a similar manner in the periods when that scheme was applied and in those in which it was not applied. It is not established that the aid scheme authorised by the contested decision is capable of obtaining better results. The aid for the purchase of agricultural land contributes in reality to an increase in the price of agricultural land rather than to changing the structure of ownership of that land.

111 Furthermore, compliance with the principle of proportionality requires, according to the Commission, that the measures in force which can address the needs which the Council regards as exceptional circumstances be taken fully into account. The contested decision does not take any account of the measures previously authorised by the Commission or permitted under its guidelines or its block

exemptions. In particular, the temporary framework permits Member States to grant aid to farmers. Equally, recourse can be had to the *de minimis* aid authorised under Regulation No 1535/2007 to resolve, inter alia, the problem posed by the high prices of agricultural inputs.

112 In addition, with regard to the growth in unemployment, the Council also failed to take into consideration the fact that the Rural Development Programme for the Republic of Latvia for 2007-2013 foresees a number of actions to limit that growth in rural areas, in particular the transfer of the agricultural labour surplus to other sectors of the economy.

113 Finally, the Commission submits that the measures authorised by the contested decision are not restricted to the minimum necessary because their duration goes beyond the date fixed by the Commission in the temporary framework for the use of State aid specifically designed to address the effects of the economic crisis.

114 The Council states that, with regard to observance of the principle of proportionality, the lawfulness of measures adopted on the basis of the third subparagraph of Article 108(2) TFEU can be affected only if those measures are manifestly inappropriate in the light of the objective which the Council is seeking to pursue.

115 The Council considers that the Commission has failed to prove that the evaluation of the complex economic facts carried out by the Council was affected by manifest error. The Council takes the view, inter alia, that the aid scheme for the purchase of agricultural land applied by the Republic of Latvia led to an improvement in the area structure of Latvian agricultural holdings. The Council also contends that the Commission has failed to show that such an aid scheme contributes to an increase in agricultural prices. Furthermore, it considers that the increase in the area of agricultural holdings permits an improvement in competitiveness and in the income of the farmers concerned.

116 Also, the Council takes the view that it was not bound to take into account measures already approved by the Commission in so far as the power conferred upon it by the third subparagraph of Article 108(2) TFEU is precisely intended to allow it to approve State aid which the Commission would have been legally unable to approve, as in the present case. Moreover, the aid scheme authorised by the contested decision is not covered by the temporary framework.

117 The Council also states that unemployment should be combated using a combination of different methods, including that aid scheme.

118 With regard to the duration of that aid scheme, it does not in the Council's view have to be limited to the period covered by the temporary framework and it corresponds to the estimated time needed to reduce the effects of the crisis.

– Findings of the Court

119 With regard to compliance with the principle of proportionality, it follows from the considerations in paragraph 104 above that the lawfulness of a measure adopted under the third subparagraph of Article 108(2) TFEU can be affected only if the measure is manifestly inappropriate, having regard to the objective which the Council is seeking to pursue (see, by analogy, Case C-343/09 *Afton Chemical* [2010] ECR I-7027, paragraph 46, and Case C-59/11 *Association Kokopelli* [2012] ECR, paragraph 39).

120 It follows that it must be determined whether the authorisation of the aid scheme covered by the contested decision is manifestly inappropriate for the purposes of attaining the objective stated in recital 12 in the preamble to that decision of limiting rural poverty in Latvia.

121 It is common ground that that objective may be achieved in part by improving the efficiency of Latvian agriculture, which requires an increase in the area of the agricultural holdings by allowing Latvian farmers to buy agricultural land. It is not disputed that those farmers' low incomes and their difficulty in obtaining loans hinder purchases of that sort. Thus, it does not seem manifestly inappropriate for the attainment of the objective sought by the adoption of the contested measure to authorise the aid scheme in question, which seeks to compensate for those problems and the worsening thereof as a consequence of the economic and financial crisis by proposing subsidies in respect of the interest on loans for the purchase of agricultural land.

122 In those circumstances, the fact that the earlier aid scheme for the purchase of agricultural land did not result in a marked and continuous increase in the area of Latvian agricultural holdings is not such as to prove that the contested decision is manifestly inappropriate for the purposes of attaining its objective as set out in paragraph 120 above.

123 The slight increase in the average area of those holdings is not sufficient to prove that the aid scheme authorised by the Council is manifestly ineffective, in so far as that slight increase may result from circumstances unlikely to persist for the whole period covered by the contested decision. That finding may thus be explained, as contended by the Council, by the need for Latvian farmers to give top priority to the implementation of technological upgrading projects.

124 With regard to the Commission's statement that the average size of an agricultural holding increased in a similar manner both when the previous aid scheme for the purchase of agricultural land was applied and when it was not, it must be held that, as maintained by the Council without being contradicted by the Commission, the figures provided by the Commission show on the contrary that there was a significant increase in the average size of a holding, in absolute and relative terms, in the period when that scheme was applied.

125 With regard to the Commission's argument that the aid schemes for the purchase of agricultural land contribute to an increase in the price of agricultural land rather than to changing the structure of ownership of that land, that assertion is not substantiated sufficiently so as to make it possible to establish that the Council chose a measure that was manifestly inappropriate in the light of the objective it pursued.

126 In addition, it should be established whether the authorisation of the aid scheme in question does not go manifestly beyond what is necessary in order to attain the objectives sought by the contested decision. The Commission claims that the Council failed to take sufficient account of the possibilities offered by other instruments for contributing to the attainment of those objectives.

127 In view of the extent of the discretion enjoyed by the Council in this case, the contested decision cannot be regarded as breaching the principle of proportionality only because it would have been possible for the Republic of Latvia to pursue the objective referred to in paragraph 120 above by means of another type of aid scheme. It is settled case-law that, when assessing whether a decision taken on the basis of discretionary power such as that enjoyed by the Council under the third subparagraph of Article 108(2) TFEU complies with the principle of proportionality, what must be ascertained by the Court is not whether the adopted decision was the only measure possible or the best measure possible, but only whether it was manifestly disproportionate (see, by analogy, Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 33 and the case-law cited).

128 None the less, as stated by the Advocate General in point 44 of his Opinion, the broad discretion which the Council enjoys does not relieve it of the obligation to take into consideration, in its assessment, the pre-existing measures specifically designed to remedy the exceptional circumstances which it relied on to justify the authorisation of the aid scheme in question.

129 In that regard, Regulation No 1535/2007 seeks to exempt aid of a low value from the notification requirement under Article 108(3) TFEU and cannot therefore be regarded as seeking specifically to remedy the effects of the economic and financial crisis on Latvian farmers.

130 By contrast, it is true that the temporary framework was established in order to support the access of undertakings to financing in the context of the economic and financial crisis. Nevertheless, the aid foreseen by that temporary framework has a general function of support for investment and is not therefore specifically designed to facilitate the purchase of agricultural land. In addition, on the date when the contested decision was adopted, point 7 of the temporary framework provided that it was not to apply after 31 December 2010. Thus, the Council's decision to authorise an aid scheme specifically designed to limit poverty in rural areas by ensuring an increase in the area of agricultural holdings in Latvia over a longer period cannot be considered as going manifestly beyond what is necessary to attain the objectives pursued by the contested decision.

131 Equally, while some of the measures contained in the Rural Development Programme for the Republic of Latvia for 2007-2013 also seek to combat unemployment in rural areas, they complement the aid scheme authorised by the contested decision in so far as they are principally intended to facilitate the transfer of the agricultural labour surplus to other sectors of the economy and not to improve the profitability of agricultural holdings.

132 With regard, finally, to the duration of the aid scheme authorised by the contested decision, it follows from the very logic of the third subparagraph of Article 108(2) TFEU that the Council cannot be bound by any temporal limitation laid down in a Commission communication. In addition, in the light of the time it takes for structural changes in agricultural holdings to occur and the duration of the effects of the economic and financial crisis, it cannot be held that the Council opted for a measure which was manifestly disproportionate when authorising the aid scheme at issue for the period from 1 January 2010 to 31 December 2013.

133 Therefore, the second part of the fourth plea in law relied on by the Commission must be rejected as unfounded.

134 It follows that that fourth plea in law must be rejected in its entirety.

135 As none of the pleas put forward by the Commission has been upheld, the action must be dismissed.

Costs

136 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs to be awarded against the Commission and the latter has been unsuccessful, the Commission must be ordered to pay the costs.

137 In accordance with Article 140(1) of the Rules of Procedure, the Republic of Lithuania must bear its own costs.

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

1. Dismisses the action;

2. Orders the European Commission to pay the costs;

3. Orders the Republic of Lithuania to bear its own costs.

[Signatures]