JUDGMENT OF THE COURT (Sixth Chamber)

22 January 2004 *

In Case C-271/01,

REFERENCE to the Court under Article 234 EC by the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between

Ministero delle Politiche Agricole e Forestali

and

Consorzio Produttori Pompelmo Italiano Soc. coop. arl (COPPI),

also

Società Concentrati Bevibili Sicilia arl (CBS)

and

Società Impianti Brevetti Servizi arl (Ibiesse), which have taken no part in the proceedings,

on the interpretation of Article 19 of Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which

* Language of the case: Italian.

agricultural products are processed and marketed (OJ 1977 L 51, p. 1), as amended by Council Regulation (EEC) No 1932/84 of 19 June 1984 (OJ 1984 L 180, p. 1), of Article 23 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20), and of Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, 1970(I), p. 218),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

— Consorzio Produttori Pompelmo Italiano Soc. coop. arl (COPPI), by G. Guarino and A. Guarino, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. De Bellis, avvocato dello Stato,

— the Commission of the European Communities, by L. Visaggio, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Consorzio Produttori Pompelmo Italiano Soc. coop. arl (COPPI), represented by A. Guarino, of the Italian Government, represented by G. De Bellis, and of the Commission, represented by C. Cattabriga, acting as Agent, at the hearing on 17 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2002,

gives the following

Judgment

1 By order of 8 May 2001, received at the Court on 9 July 2001, the Consiglio di Stato (Council of State) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 19 of Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and

marketed (OJ 1977 L 51, p. 1), as amended by Council Regulation (EEC) No 1932/84 of 19 June 1984 (OJ 1984 L 180, p. 1, hereinafter 'Regulation No 355/77'), of Article 23 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20, hereinafter 'Regulation No 4253/88'), and of Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, 1970(I), p. 218).

2 That question was raised in the course of proceedings between Consorzio Produttori Pompelmo Italiano Soc. coop. arl (Italian Consortium of Grapefruit Producers, hereinafter 'COPPI') and the Ministero delle Politiche Agricole e Forestali (Ministry of Agriculture and Forestry, hereinafter 'the Ministry') concerning the latter's decision to revoke Ministerial Decree No 485 of 7 August 1993, under which financial aid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) had been granted to COPPI.

Legal Background

Regulation No 355/77

3 Articles 1(3) and 2 of Regulation No 355/77 provide that the Commission of the European Communities may grant aid for common measures by financing, through the EAGGF, projects which are included in the specific programmes previously drawn up by the Member States and approved by the Commission and

which are designed to develop or rationalise the treatment, processing or marketing of agricultural products.

4 Article 19(2) of Regulation No 355/77 provides:

'Throughout the period during which aid is granted from the [EAGGF], the authority or agency appointed for that purpose by the Member State concerned shall, at the request of the Commission, forward to it all supporting documents which are of relevance in proving that the financial or other conditions laid down for each project have been fulfilled. The Commission may, if necessary, carry out an on-the-spot check.

After it has consulted the committee of the [EAGGF] on the financial aspects, the Commission may decide to suspend, reduce or discontinue aid from the [EAGGF]...:

...

— if the beneficiary sells equipment or buildings having received aid from the [EAGGF] within 6 or 10 years respectively of the date of their acquisition or of the completion of the work, without prior authorisation from the Commission.

The Member State concerned and the beneficiary shall be notified of the decision.

The Commission shall recover any sums the payment of which was or is no longer justified.'

Regulation (EEC) No 2052/88

5 Under Article 4(1) of Council Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), as amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5, hereinafter 'Regulation No 2052/88'):

'Community operations shall be such as to complement or contribute to corresponding national operations. They shall be established through close consultations between the Commission, the Member State concerned and the competent authorities and bodies — including, within the framework of each Member State's national rules and current practices, the economic and social partner, designated by the Member State at national, regional, local or other level, with all parties acting as partners in pursuit of a common goal. These consultations shall hereinafter be referred to as the "partnership". The partnership shall cover the preparation and financing, as well as the ex ante appraisal, monitoring and ex post evaluation of operations.

The partnership will be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners.'

6 Article 5 of Regulation No 2052/88 is entitled 'Forms of assistance' and paragraph 2 thereof reads as follows:

'In the case of the Structural Funds..., financial assistance may be provided principally in one of the following forms:

(a) part-financing of operational programmes;

(b) part-financing of a national aid scheme including repayments;

(c) provision of global grants, as a general rule managed by an intermediary designated by the Member State in agreement with the Commission and allocated by the intermediary in the form of individual grants to final beneficiaries;

(d) part-financing of suitable projects;

(e) support for technical assistance, including the measures to prepare, appraise, monitor and evaluate operations, and pilot and demonstration projects.

With the exception of those referred to in (e), the forms of assistance undertaken on the Commission's initiative may be only those established by the Member State or the competent authorities designated by the Member State and submitted to the Commission by that Member State or any other body it may, should the need arise, designate to do so.

...'

Regulation No 4253/88

7 Regulation No 4253/88 entered into force, as provided in Article 34 thereof, on 1 January 1989. It contains, in Title IV entitled 'Assistance from the Funds' Articles 14 to 16 relating respectively to the processing of applications for financial assistance from the Structural Funds, the conditions of eligibility for that financial assistance and certain specific provisions.

8 The sixth recital of the preamble to Regulation No 2082/93 states, 'in application of the principle of subsidiarity, and without prejudice to the Commission's powers, particularly its responsibility for the management of the Community's financial resources, implementation of the forms of assistance contained in the Community support frameworks should be primarily the responsibility of the Member States at the appropriate territorial level according to the specific needs of each Member State'.

9 Article 14(1) of Regulation No 4253/88 provides:

'Applications for assistance from the Structural Funds..., with the exception of the technical assistance measures referred to in Article 5(2)(e) of Regulation

(EEC) No 2052/88 and undertaken at the initiative of the Commission, shall be prepared by the Member State or by the competent national, regional, local or other authorities designated by it and shall be submitted to the Commission by the Member State or by any body it may designate to do so. Each application shall relate mainly to the forms of assistance provided for in Article 5 of that Regulation.'

10 Under the first sentence of Article 21(1) of that regulation, payments of financial assistance are to be made in accordance with the corresponding budgetary commitments to the national, regional or local authority or body designated for the purpose in the application submitted through the Member State concerned within, as a general rule, two months from receipt of an acceptable application.

11 Article 23 of Regulation No 4253/88, under the heading 'Financial control', provides:

'1. In order to guarantee completion of operations carried out by public or private promoters, Member States shall take the necessary measures in implementing the operations:

— to verify on a regular basis that operations financed by the Community have been properly carried out,

— to prevent and to take action against irregularities,

— to recover any amounts lost as a result of an irregularity or negligence. Except where the Member State and/or the intermediary and/or the promoter provide proof that they were not responsible for the irregularity or negligence, the Member States shall be liable in the alternative for reimbursement of any sums unduly paid....

Member States shall inform the Commission of the measures taken for those purposes and, in particular, shall notify the Commission of the description of the management and control systems established to ensure the efficient implementation of operations. They shall regularly inform the Commission of the progress of administrative and judicial proceedings.

Member States shall keep and make available to the Commission any appropriate national control reports on the measures included in the programmes or other operations concerned.

...

2. Without prejudice to checks carried out by Member States, in accordance with national laws, regulations and administrative provisions and without prejudice to the provisions of Article 206 of the Treaty or to any inspection arranged on the

basis of Article 209(c) of the Treaty, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural Funds and management and control systems.

Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. If the Commission carries out on-the-spot checks without giving notice, it shall be subject to agreements reached in accordance with the provisions of the Financial Regulation within the framework of the partnership. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the regularity of payment requests. Commission officials or servants may take part in such checks and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.

3. For a period of three years following the last payment in respect of any operation, the responsible body and authorities shall keep available for the Commission all the supporting documents regarding expenditure and checks on the operation.'

12 Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance', reads as follows:

'1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

...'

The main proceedings

13 On 24 June 1991, the Italian Government submitted to the Commission the multi-regional operational programme entitled 'Miglioramento delle produzioni tipiche del Mezzogiorno e sviluppo delle colture alternative' (Improvement of typical products of southern Italy and development of alternative methods of cultivation, hereinafter 'the programme') and applied for part financing by the EAGGF.

14 By Decision No C(91) 2745 of 29 November 1991, as amended by Decision No C(93) 3476 of 29 November 1993 (hereinafter 'the grant decision'), the Commission approved that programme and authorised financial assistance from the EAGGF of ECU 86 240 000. The Commission based the grant decision on Regulations Nos 2052/88 and 4253/88.

15 By Ministerial Decrees No 1905 of 9 November 1992 and No 485, the Ministry granted COPPI, a cooperative society with limited liability consisting of several Italian agricultural producers, assistance for the years 1991 to 1993. Those decrees, which referred to the grant decision and the regulations cited therein, set out the annual instalments and the respective financial contributions made by the Community and the Italian Republic.

16 By Ministerial Decree No 8649 of 16 December 1997, the Ministry partly revoked Ministerial Decree No 485 and demanded partial repayment of the assistance by COPPI on the ground of breach of Article 19(2) of Regulation No 355/77, which provides that assistance may be suspended, reduced or cancelled if the beneficiary, without prior authorisation from the Commission, sells equipment or buildings having received aid from the EAGGF within 6 or 10 years respectively of the date of their acquisition or of the completion of the work. In the case of the main proceedings, COPPI had transferred part of the aid to Società Concentrati Bevibili Sicilia arl, which was provided for in a sub-programme. However, that company had, in its turn, without the Commission's prior authorisation, sold a branch of its business, including the plant and machinery financed through the programme, to Società Impianti Brevetti Servizi srl.

17 COPPI brought an action for annulment of Ministerial Decree No 8649 before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court, Lazio, Italy). By order of 14 April 2000, that court annulled the decree on the ground that the Commission alone, and not the Ministry, had power, under Regulation No 355/77, to require repayment of the aid.

18 The Ministry appealed against that order to the Consiglio di Stato on the ground that Article 23 of Regulation No 4253/88 conferred power on the Ministry to claim repayment of the aid.

19 In its order for reference, that court observes that the Community legislation, particularly Article 19(2) of Regulation No 355/77, seems to reserve to the Commission the power both to prevent and to sanction abuses. However, it points out, in essence, that Article 8 of Regulation No 729/70 and Article 23(1) and (2) of Regulation No 4253/88 can be interpreted in such a way that the Community legislation bears out the Member State's power to take action, on its own initiative, in respect of irregularities committed in the receipt of Community aid as well as the power to recover sums improperly paid as a result of those irregularities. In particular, the wording of Article 23(2) of Regulation No 4253/88 seems to confirm the subsidiary and reinforcing nature of direct intervention by the Commission in order to prevent and sanction irregularities, without prejudice to the power and duty of the national authorities to adopt the sanctions deemed necessary where such irregularities are found to exist.

20 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Article 19 of Council Regulation (EEC) No 355/77 of 15 February 1977 — which provides that the Commission, after consulting the Fund Committee on the financial aspects, may decide, in accordance with the procedure laid down in Article 22, to suspend, reduce or discontinue aid from the Fund, and to recover sums paid, if, inter alia, prior to expiry of the period laid down therein, the beneficiary, without prior authorisation from the Commission, sells equipment or buildings having received aid from the Fund — constitute a specific procedure

which excludes the Member State's competence to adopt such measures to discontinue aid and recover sums paid, or are the principles laid down in Article 8 of Regulation No 729/70 and Article 23 of Regulation No 4253/88, under which the Member State can and must take the measures necessary to prevent and take action against irregularities and recover amounts lost as a result of an irregularity or negligence, applicable in this context as well?'

The question referred

Preliminary observations

21 The national court is asking whether, in the circumstances of the main proceedings, a Member State may, under Article 8 of Regulation No 729/70 and Article 23 of Regulation No 4253/88, revoke and itself claim the repayment of financial assistance from the EAGGF lost as a result of abuse or negligence, or whether Article 19(2) of Regulation No 355/77, which provides that it is for the Commission to decide whether to suspend, reduce or cancel such assistance when irregularities are found, precludes the Member State from taking such measures.

22 In that regard, it must be noted that the application for financial assistance for the programme was submitted by the Italian Government on 24 June 1991. Ministerial Decree No 485, which granted COPPI the aid which it applied for, was adopted on 7 August 1993 and partially revoked by Ministerial Decree No 8649 of 16 December 1997.

23 However, under Article 11 of Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25), Article 8 of Regulation No 729/70 ceased to apply from 1 January 1989 and therefore could not apply to the programme or to the decrees mentioned in the preceding paragraph.

24 Likewise, under Article 10(2) of Regulation No 4256/88, Regulation No 355/77 was repealed with effect from 1 January 1990.

25 It is true that Article 10(3) provided for a transitional regime under which Articles 6 to 15 and 17 to 23 of Regulation No 355/77 continued to apply to projects commenced prior to 31 December 1989.

26 However, since the financial aid for the programme was sought on 24 June 1991, as the Commission pointed out in its written observations to the Court, Article 19(2) of Regulation No 355/77 did not apply to the programme. In any event, before Ministerial Decrees Nos 485 and 8649 had even been adopted, the transitional regime had come to an end on the entry into force, on 3 August 1993, of Council Regulation (EEC) No 2085/93 of 20 July 1993 amending Regulation No 4256/88 (OJ 1993 L 193, p. 44).

27 In order to provide a satisfactory answer to the national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of Community law to which the national court has not referred in its question (Case C-315/88 *Bagli Pennacchiotti* [1990] ECR I-1323, paragraph 10, and Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 39).

28 In that regard, COPPI, the Italian Government and the Commission correctly maintain that the provisions which enable a satisfactory answer to be given to the question referred are not only Article 23 of Regulation No 4253/88, but also Article 24 thereof.

29 It follows from the preceding considerations that the national court is asking, in essence, by the question referred, whether the first subparagraph of Article 23(1) of Regulation No 4253/88 is to be interpreted as meaning that, in the context of an action programme financed by the EAGGF, a Member State which has granted financial assistance from the EAGGF can revoke that assistance and require partial repayment thereof from the final beneficiaries or whether Article 24 of that regulation precludes such measures.

Observations submitted to the Court

30 COPPI submits, in essence, that the principal idea which underlies Articles 23 and 24 of Regulation No 4253/88 is set out in Article 4 of Regulation No 2052/88, which provides for the establishment of close cooperation between the Commission and the national authorities, called 'partnership'. That means that the parties concerned must consult and take decisions together and that each partner must take, in agreement with the others, the decisions which come within its own area of competence.

31 According to COPPI, those articles of Regulation No 4253/88 provide for a clear and exact division of the tasks. First, under Article 24(2) of that regulation, it is for the Commission alone, vested with a discretionary power, to decide upon the suspension, reduction or cancellation of assistance and it can neither delegate nor

transfer that task. Secondly, the Member States have power, under Article 23 of that regulation, to ensure that proper changes in relation to the implementation of transactions financed by the Commission are properly carried out and that sums wrongly paid are recovered.

32 On the other hand, the Italian Government and the Commission contend that, in circumstances such as those in the main proceedings, in terms of the partnership between the Member State and the Commission, the latter authorises, first of all, a national framework programme to which the Member State itself is subject. The Member State then carries out that programme under its own financial responsibility, through the bodies which it has designated for the implementation of the various measures. There is no direct relationship between the Commission and the aid recipients.

33 For that reason, the Italian Government and the Commission point out that the Member States are required, in accordance with Article 23(1) of Regulation No 4253/88, to prevent and to take action against irregularities and, if appropriate, to recover the sums paid from the economic operators concerned. In that regard, no consultation with the Commission is necessary, since it has absolutely no knowledge of the various relationships with the final recipients of the financial assistance.

34 In addition, the Commission argues that Article 24 of Regulation No 4253/88 arranges the financial relations between the Commission and the Member State and entitles it to alter the Community's financial participation in the case of irregularities and after giving the parties the opportunity to be heard. The Commission requires the repayment of grants directly from recipients only if such aid has been granted to them by the Commission itself (see Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867).

Reply of the Court

35 The second subparagraph of Article 5(2) of Regulation No 2052/88 provides, with regard to the Structural Funds, that, with the exception of support for technical assistance referred to in the first subparagraph of Article 5(2)(e) undertaken on the Commission's initiative, the forms of assistance may be only those established by the Member State or the competent authorities designated by the Member State and submitted to the Commission by that Member State or any other body it may, should the need arise, designate to do so.

36 In that regard, under Article 14(1) of Regulation No 4253/88 relating to the processing of applications for financial assistance from the Structural Funds, such applications, with the exception of the technical assistance measures referred to in the first subparagraph of Article 5(2)(e) of Regulation No 2052/88 undertaken at the initiative of the Commission, are to be prepared by the Member State or by the competent national, regional, local or other authorities designated by it and are to be submitted to the Commission by the Member State or by any body it may designate to do so.

37 In addition, under the first sentence of Article 21(1) of Regulation No 4253/88, payments of financial assistance are to be made to the national, regional or local authority or body designated for the purpose in the application submitted through the Member State concerned. In its turn, the said authority or body concerned grants the said assistance to the final recipients, as in the main proceedings.

38 Moreover, in certain other circumstances, the financial assistance is granted directly by the Commission to the final recipients, particularly where the forms of assistance mentioned in the first subparagraph of Article 5(2)(e) of Regulation No 2052/88 are undertaken on the Commission's initiative.

39 In relation to the use of Community funds forming part, as in the main proceedings, of the implementation of Community policy, the sixth recital of the preamble to Regulation No 2082/93 states that, in application of the principle of subsidiarity, and without prejudice to the Commission's powers, particularly its responsibility for the management of the Community's financial resources, implementation of the forms of assistance should be primarily the responsibility of the Member States at the appropriate territorial level according to the specific needs of each Member State.

40 That principle is enshrined in the first subparagraph of Article 23(1) of Regulation No 4253/88, which provides that, in order to guarantee completion of operations carried out by public or private promoters, Member States are to take the necessary measures in implementing the operations to verify on a regular basis that operations financed by the Community have been properly carried out, to prevent and to take action against irregularities and to recover any amounts lost as a result of an irregularity or negligence.

41 It is clear, admittedly, that the said article does not provide expressly for the revocation by a Member State of financial assistance from the EAGGF. However, that provision would be deprived of useful effect if a Member State could not itself adopt such measures, even though payment of the aid had been made to the final recipients by that Member State, which had knowledge of the programme in question and was in a position to monitor it.

42 In addition, contrary to COPPI's submission, it must be held that the requirement that a Member State's decision to revoke assistance and to require partial repayment thereof from the final recipients be authorised in advance by the Commission follows neither from the wording of the second or third subparagraph of Article 23(1) or of Article 23(2) or (3) of Regulation No 4253/88, nor from the meaning of 'close consultations' as set out in Article 4 of Regulation No 2052/88.

43 First, the second and third subparagraphs of Article 23(1) of Regulation No 4253/88 makes Member States solely responsible for informing the Commission of the measures taken to ensure the efficient implementation of operations and of the progress of administrative and judicial proceedings and for making available to the Commission any appropriate national control reports on the measures included in the programmes or other operations concerned.

44 Secondly, although Article 23(2) of that regulation provides that Commission officials or servants may carry out on-the-spot checks in respect of operations financed by the Structural Funds and of management and control systems, it is clear from the same paragraph that, in essence, Community action is conceived as supplementary to the corresponding national operations or as a contribution to them and that it is established by close consultations between the Commission, the Member State concerned and the competent authorities designated by the latter at the national, regional, local or other level. It follows also from that paragraph, as well as from Article 23(3) of that regulation, that this 'partnership' relates particularly to the preparation, financing, progress and evaluation of those operations.

45 It follows that the partnership does not mean that there is a requirement that a Member State's decision to revoke aid and to require its partial repayment from the final recipients be subject to the prior authorisation of the Commission and that the provisions concerning such partnership do not imply that the Commis-

sion has power to adopt monitoring procedures which would make the Member States responsible for obligations in addition to those set out in Article 23(1) of Regulation No 4253/88.

46 Furthermore, such an interpretation of the first subparagraph of Article 23(1) cannot be undermined by Article 24(2) of the same regulation. In contrast to Article 23, that article enables the Commission to reduce or suspend Community financial assistance in case of irregularity (see, to that effect, Case C-325/94 P *An Taisce and WWF UK* v *Commission* [1996] ECR I-3727, paragraph 22).

47 Admittedly, it follows from the Court's case-law that the Commission also has power, under Article 24(2) of Regulation No 4253/88, to cancel assistance and to require the final recipients to repay that assistance (see, to that effect, *Conserve Italia* v *Commission*, cited above, paragraph 88). However, that fact cannot call in question the power, under the first subparagraph of Article 23(1) of that regulation, of a Member State in a situation such as that in this case, to adopt such measures.

48 In view of the preceding considerations, the answer to the question referred must be that the first subparagraph of Article 23(1) of Regulation No 4253/88 is to be interpreted as meaning that, in the context of an action programme financed by the EAGGF, where an examination reveals a breach of the conditions laid down for the implementation of a programme's operations, a Member State which has granted financial assistance from the EAGGF may, in order to prevent and to take action against irregularities, revoke that assistance and require partial repayment thereof from the final recipients.

Costs

49 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Consiglio di Stato by order of 8 May 2001, hereby rules:

The first subparagraph of Article 23(1) of Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation

(EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments, as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993, is to be interpreted as meaning that, in the context of an action programme financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), where an examination reveals a breach of the conditions laid down for the implementation of a programme's operations, a Member State which has granted financial assistance from the EAGGF may, in order to prevent and to take action against irregularities, revoke that assistance and require partial repayment thereof from the final recipients.

Gulmann Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 22 January 2004.

R. Grass V. Skouris

Registrar President