Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 March 2016*

(Appeal — State aid — Compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009 — Decision declaring aid incompatible with the internal market and ordering its recovery — Concept of 'State aid' — Article 107(3)(b) TFEU — Guidelines for State aid in the agricultural sector — Obligation to state reasons — Distortion of evidence)

In Case C-431/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 September 2014,

Hellenic Republic, represented by I. Chalkias and A. Vasilopoulou, acting as Agents,

appellant,

the other party to the proceedings being:

European Commission, represented by A. Bouchagiar, R. Sauer and D. Triantafyllou, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

composed of A. Tizzano, Vice-President, acting as President of the Grand Chamber, L. Bay Larsen, T. von Danwitz, A. Arabadjiev (Rapporteur), C. Toader, D. Šváby and C. Lycourgos, Presidents of Chambers, A. Rosas, E. Juhász, M. Safjan, M. Berger, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 6 October 2015,

after hearing the Opinion of the Advocate General at the sitting on 15 October 2015,

gives the following

* Language of the case: Greek.

Judgment

1 By its appeal, the Hellenic Republic seeks to have set aside the judgment of the General Court of the European Union of 16 July 2014 in *Greece* v *Commission* (T-52/12, EU:T:2014:677, 'the judgment under appeal'), by which the General Court dismissed its action for annulment of Commission Decision 2012/157/EU of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009 (OJ 2012 L 78, p. 21, 'the decision at issue').

Legal context

EU law

2 Point 4.1 of the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis, as set out in the Communication from the European Commission of 17 December 2008 (OJ 2009 C 16, p. 1, 'the TCF'), states:

'...

In the light of the seriousness of the current financial crisis and its impact on the overall economy of the Member States, the Commission considers that certain categories of State aid are justified, for a limited period, to remedy those difficulties and that they may be declared compatible with the [internal] market on the basis of Article [107(3)(b) TFEU].'

3 Under the third subparagraph of point 4.2.2 of the TCF:

'The Commission will consider such State aid compatible with the common market on the basis of Article [107(3)(b) TFEU], provided all the following conditions are met:

...

(h) the aid scheme does not apply to undertakings active in the primary production of agricultural products ...'

4 Point 7 of the TCF states:

'…

In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [OJ 2002 C 119, p. 22], the Commission applies the following in respect of non-notified aid:

(a) this Communication, if the aid was granted after 17 December 2008;

(b) the guidelines applicable when the aid was granted in all other cases.

…'

5 The TCF was amended by the Communication from the Commission published in the *Official Journal of the European Union* on 31 October 2009 (C 261, p. 2, 'the amended TCF'). Point 1 of that communication states:

'...

The possibility under point 4.2 [of the TCF] to grant a compatible limited amount of aid does not apply to undertakings active in the primary production of agricultural products. Farmers, however, encounter increased difficulties to obtain credit as a consequence of the financial crisis.

... it is appropriate to introduce a separate compatible limited amount of aid for undertakings active in the primary production of agricultural products.'

6 Subparagraph 3 of point 4.2.2 of the amended TCF provides:

'The Commission will consider such State aid compatible with the common market on the basis of Article [107(3)(b) TFEU], provided all the following conditions are met:

...

(h) ... Where 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 ...'

7 The amended TCF took effect on 28 October 2009.

Greek law

8 Law 1790/1988 on the organisation and operation of the Greek Agricultural Insurance Organisation and other provisions (FEK A' 134/20.6.1988, 'Law 1790/1988') established a body operating in the public interest called the 'Greek Agricultural Insurance Organisation' (ELGA). ELGA is a legal person governed by private law wholly owned by the State, the main task of which is to insure the crop and animal production and crop and animal assets of agricultural holdings against damage due to natural risks.

9 Under Article 3a of Law 1790/1988, in the version applicable to the dispute, the ELGA insurance scheme is compulsory and covers natural risks.

10 Under Article 5a of Law 1790/1988, in the version applicable to the dispute, a special insurance contribution to ELGA is imposed on agricultural producers who are beneficiaries of that insurance scheme. That provision is worded as follows:

'1. The following domestically-produced agricultural products and by-products shall be subject to the special insurance contribution in favour of ELGA:

(a) products of vegetable or animal origin ...

...

3. The special insurance contribution is set at 2% for products of vegetable origin and 0.5% for products of animal origin ... Those rates shall be calculated on the value of those products.

...

7. ... the special contribution shall be paid to the competent tax authority by the persons statutorily liable thereto ...

8. The persons liable to pay the special insurance contribution [to the competent tax authority] are … those who ... are obliged to issue purchase or sales invoices for agricultural products and by-products ...

...

15. Where agricultural products are purchased directly from a producer and their price is paid to that producer by [a] bank by means of a payment order, the special insurance contribution shall be withheld by that bank and paid to ELGA ...

16. ELGA's revenue from the special insurance contribution collected by the public finance services shall be included in the State budget as State revenue and shall be entered under a specific revenue heading. That revenue shall be paid to ELGA from the budget of the Ministry of Agriculture by a transfer of funds in the same amount each year following a proposal to that Ministry by ELGA. The State shall withhold two percent (2%) of the special insurance contribution amounts collected by the public finance services for ELGA for the collection thereof. In addition, the State shall withhold three percent (3%) of the amounts collected by the public finance services, on the basis of the yield declarations made by the persons liable to pay that contribution and other collection documents, for the accounting thereof.'

Background to the dispute and the decision at issue

11 Following protests in January 2009 by a large number of Greek agricultural producers about the losses suffered by them in 2008 as a result of adverse weather conditions, by Inter-ministerial decree 262037 of the Minister for Economic Affairs and the Minister for Rural Development and Food of 30 January 2009 on exceptional compensation for damage to agricultural production (FEK B' 155/2.2.2009, 'the Inter-ministerial decree'), the Hellenic Republic provided that compensation aid of EUR 425 million would be paid to producers on an exceptional basis by ELGA. It was clear from that decree that the expenditure incurred as a result of its implementation chargeable to ELGA's budget would be financed by means of a loan contracted by ELGA from banks and guaranteed by the State.

12 By letter of 20 March 2009, sent in response to a request for information from the Commission, the Hellenic Republic informed the Commission that, in 2008, ELGA had paid compensation to farmers, for damage covered by insurance, amounting to EUR 386 986 648. That sum came partly from insurance contributions paid by producers of EUR 88 353 000, and partly from funds obtained as a result of a loan of EUR 444 million repayable over 10 years, guaranteed by the State, contracted by ELGA from a bank.

13 By decision of 27 January 2010 (OJ 2010 C 72, p. 12), the Commission opened the formal investigation procedure provided for by Article 108(2) TFEU in Case C 3/10 (ex NN 39/09), concerning compensation payments made by ELGA in 2008 and 2009 ('the aid at issue'). On 7 December 2011, the Commission adopted the decision at issue.

14 The operative part of the decision at issue is worded as follows:

'*Article 1*

1. The compensation paid by [ELGA] to producers of agricultural products in 2008 and 2009 constitutes State aid.

2. The compensation aid granted in 2008 under the special compulsory insurance scheme is compatible with the internal market as regards the aid amounting to EUR 349493652.03 which ELGA granted to producers to make good their crop losses and as regards the aid relating to crop losses caused by bears amounting to EUR 91 500 and the corrective action taken within the framework of the abovementioned aid. The compensation aid represented by the remaining amount paid in 2008 under the special insurance scheme is incompatible with the internal market.

3. The compensation aid of EUR 27 614 905 granted in 2009 under [the Inter-ministerial decree] is compatible with the internal market.

The compensation aid of EUR 387 404 547 granted to producers on dates before 28 October 2009 is incompatible with the internal market. This conclusion shall be without prejudice to aid which, at the time it was granted, met all the conditions laid down in [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)].

Article 2

1. [The Hellenic Republic] shall take all measures necessary to recover from its beneficiaries the incompatible aid referred to in Article 1, which was granted unlawfully.

...'

Procedure before the General Court and the judgment under appeal

15 By application lodged at the Registry of the General Court on 8 February 2012, the Hellenic Republic brought an action for annulment of the decision at issue. By a separate document lodged at the Registry of the General Court on the same date, the Hellenic Republic applied for interim measures under Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of that decision. By order of the President of the General Court in *Greece* v *Commission* (T-52/12 R, EU:T:2012:447), the operation of that decision was suspended, in so far as it required the Hellenic Republic to recover from the beneficiaries the incompatible aid referred to in Article 1 of that decision.

16 In support of its application for annulment of the decision at issue, the Hellenic Republic put forward seven pleas in law. By the judgment under appeal, the General Court dismissed the action in its entirety.

Procedure before the Court and forms of order sought

17 By application lodged at the Court Registry on 30 September 2014, the Hellenic Republic applied for interim measures under Articles 278 TFEU and 279 TFEU seeking, inter alia, suspension of the operation of the judgment under appeal until judgment in the appeal proceedings is given.

18 That application for interim measures was rejected by order of the Vice-President of the Court in *Greece* v *Commission* (C-431/14 P-R, EU:C:2014:2418), on the ground that the condition relating to a prima facie case was not satisfied.

19 By letter lodged at the Court Registry on 2 March 2015, the Greek Government requested, pursuant to the third subparagraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court sit as a Grand Chamber. That request was granted.

20 By its appeal, the Hellenic Republic claims that the Court should:

— set aside the judgment under appeal and annul the decision at issue, and

— order the Commission to pay the costs.

21 The Commission contends that the Court should:

— dismiss the appeal as inadmissible or unfounded, and

— order the Hellenic Republic to pay the costs.

The appeal

First ground of appeal, relating to the concept of State aid, the obligation to state reasons and distortion of evidence

Arguments of the parties

22 By the first part of the first ground of appeal, the Hellenic Republic complains that the General Court infringed Article 107(1) TFEU by distorting the facts and describing them incorrectly, when it held that the compulsory insurance contributions paid in 2008 and 2009 by farmers who received compensation aid paid by ELGA in those years constituted State resources.

23 First, the Hellenic Republic submits that the General Court relied on the judgment in *Freskot* (C-355/00, EU:C:2003:298) in concluding that that aid constituted State aid; yet, in paragraph 87 of that judgment, the Court held, on the contrary, that it was not — in the case that gave rise to that judgment — sufficiently apprised of the relevant points of fact and law needed in order to rule on the classification of the benefits granted by ELGA as State aid.

24 Secondly, the General Court was wrong in finding that the contributions paid by farmers were not 'private resources' because they were accounted for as State revenue under Article 5a of Law 1790/1988. The Hellenic Republic observes that it is clear from that provision that the special insurance contribution for ELGA was collected by the State or by banks before being paid to ELGA.

25 The fact that the legislature lays down detailed rules under which the special insurance contribution collected by the State is to be paid to ELGA does not make that contribution a State resource. If such an interpretation were accepted, the classification of that contribution as a private resource or a public resource would turn on its method of collection, and it would therefore be necessary to distinguish the contributions collected by the State from those collected through banks and paid to ELGA. Moreover, if the State collected the funds in question without being required to pay them out in full, it would not have provided, in Article 5a(16) of Law 1790/1988, for the levying of a commission.

26 Consequently, the State or the banks are merely intermediaries with regard to, or remunerated collectors of, the special insurance contribution. It constitutes ELGA revenue exclusively and is not subject to public control, but is merely collected by banking institutions and by the State in order to be paid to ELGA without ever having been available to the competent authority.

27 By the second part of the first ground of appeal, the Hellenic Republic complains that the General Court infringed its obligation to state reasons by not responding to the argument that the special insurance contributions ought to have been deducted from the amount of State aid to be recovered

because, in the light of the fact that they were paid in 2008 and 2009 by farmers who were beneficiaries of the alleged aid, they did not satisfy the condition relating to the existence of an economic advantage.

28 In the alternative, the Hellenic Republic submits that the General Court applied that condition incorrectly to the facts of the present case, since, because of the existence of those contributions, the payment of compensation aid had only a limited effect on competition, if indeed any impact at all. In its assessment, the General Court even upheld an interpretation of the decision at issue that is contrary to the principle prohibiting *reformatio in peius*.

29 The Commission disputes the admissibility of the argument alleging distortion of the facts as well as the merits of both parts of the present ground of appeal.

Findings of the Court

30 With regard to the first part of the first ground of appeal, it should be recalled, in the first place, as regards the argument that the General Court distorted the facts, that it follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents in the file submitted to it, and, second, to assess those facts (judgments in *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraph 51, and *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 179).

31 Therefore, the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgments in *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission*, C-397/03 P, EU:C:2006:328, paragraph 85, and *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 180).

32 Where an appellant alleges distortion of the evidence by the General Court, he must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in his view, led to such distortion. In addition, it is settled case-law of the Court that distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgments in *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 16 and the case-law cited, and *Austria* v *Scheucher-Fleisch and Others*, C-47/10 P, EU:C:2011:698, paragraph 59 and the case-law cited).

33 In the present case, the General Court found as follows in paragraphs 122 to 128 and 130 to 132 of the judgment under appeal:

'122 The Commission recalled in the contested decision, that the Court had already held in the judgment in *Freskot* [(C-355/00, EU:C:2003:298)] that "the national legislation at issue clearly establishe[d] that the benefits provided by ELGA [were] granted through State resources and [were] imputable to the State within the meaning of the Court's case-law (see, in particular, *France* v *Commission*, [C-482/99, EU:C:2002:294], paragraph 24)" (recital 58).

123 The Commission found that:

"... under Article 5(a) of Law … 1790/1988 ... and other provisions of Greek legislation in force, ELGA's income from the special contribution was collected by the tax authorities, entered in the State budget as State revenue and paid to ELGA from the budget of the Ministry of Agriculture

(now the Ministry of Rural Development and Food). Consequently, the fact that the contributions in question are entered into the accounts as State revenue is sufficient to consider that the payments made by ELGA were financed by State resources" (recital 58).

124 Those findings, which are not disputed by the Hellenic Republic, suffice to conclude that the compensation payments that correspond to the contributions by farmers are State resources and are imputable to the State.

125 Therefore, contrary to what the Hellenic Republic claims, the part of the payments corresponding to the contributions by farmers may not be regarded as being private funds. Accordingly, the fact that a part of the payments made in 2008 was financed by contributions by farmers does not preclude these being State aid financed by resources imputable to the State.

126 Moreover, contrary to what the Hellenic Republic claims, the classification as State aid does not apply to the contributions paid by farmers but to the payments made in 2008. In that regard, it must be recalled that it has been held in the context of the first and second pleas in law that neither the compensatory nature of the measures, nor the fact that they are justified by a social objective, precludes the payments made by ELGA being classified as an advantage.

127 Furthermore, the Hellenic Republic concedes that the contributions paid by farmers are not proportionate to risk and that it is possible that certain farmers pay a contribution without receiving compensation payments from ELGA. The payments made in 2008 were therefore independent of the contributions paid by the farmers and constituted an advantage that the beneficiary undertaking could not have obtained under normal market conditions.

128 It follows from the foregoing that the Commission was fully entitled to find that the payments made by ELGA in 2008 were advantages financed by State resources, even if they were financed in part by contributions by farmers. The Hellenic Republic has not shown that the Commission erred in classifying those payments as State aid.

...

130 The contested decision states that the compensation payments made by ELGA in 2009, of EUR 415 019 452 in total, were made on the basis of the Inter-ministerial decree. The Inter-ministerial decree provided for compensation of EUR 425 million, on an exceptional basis, for damage in 2008 and stated that, for the purpose of paying that compensation, ELGA would take out a loan, guaranteed by the State, with a bank, for the total amount ...

131 It follows that the Commission was correct in finding that the compensation payments made in 2009 were not financed by the contributions paid under the ELGA compulsory insurance scheme ... .

132 Therefore, contrary to what the Hellenic Republic claims, the contributions paid by farmers in 2009 under the compulsory insurance scheme may not be regarded as financing part of the aid paid in 2009.'

34 In the light of the General Court's findings set out above, the argument alleging distortion of the facts must be rejected at the outset, since, by its line of argument, the Hellenic Republic has not shown that the General Court distorted the facts in a manner obvious from the documents in the file.

35 In the second place, with regard to the argument that the General Court described the facts incorrectly, it should be stated that, having first of all pointed out, in paragraph 126 of the judgment under appeal, that the classification as State aid did not apply to the special insurance contribution paid by farmers but to the payment of compensation aid by ELGA; having then found, in

paragraph 127 of that judgment, that the payments made in 2008 were independent of those contributions; and, lastly, having pointed out, in paragraphs 130 to 132 of that judgment, that the payments made in 2009 were financed not by the contributions but by means of a loan, guaranteed by the State, taken out to that end with a bank, the General Court was entitled to conclude, without erring in law, that those payments were advantages financed by State resources.

36 Nor did the General Court err in law, in the third place, in relying, in paragraph 122 of the judgment under appeal, on paragraph 81 of the judgment in *Freskot* (C-355/00, EU:C:2003:298), since the Court held in that paragraph, with regard to a previous version of Article 5a of Law 1790/1988 but a version in essence identical to that applicable to the present dispute, that that legislation 'clearly establishe[d] that the benefits provided by ELGA [were] granted through State resources and [were] imputable to the State within the meaning of the Court's case-law'.

37 Moreover, it should be pointed out that the Hellenic Republic does not dispute that the contributions to the special insurance contribution, in so far as they were collected by the tax authorities, were included in the State budget.

38 As regards the second part of the first ground of appeal, it must be recalled that, according to the settled case-law of the Court, the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (see, inter alia, judgment in *A2A* v *Commission*, C-320/09 P, EU:C:2011:858, paragraph 97).

39 In the present case, in paragraph 126 of the judgment under appeal, the General Court pointed out that, contrary to what the Hellenic Republic claimed, the classification as State aid did not apply to the contributions paid by farmers but to the payments made in 2008 by ELGA.

40 Furthermore, in that same paragraph, the General Court referred to its findings made in the context of the examination of the first and second pleas in law in the action for annulment. In the context of that examination, the General Court stated, in paragraph 70 of the judgment under appeal, 'that the fact that the payments made by ELGA in 2009 were intended to compensate for damage caused to agricultural production because of adverse weather conditions d[id] not preclude the existence of an advantage and the classification as State aid' and, in paragraph 102 of that judgment, 'that, according to settled case-law, competition is distorted where a measure mitigates the burden imposed on a beneficiary undertaking and thereby strengthens its position as regards competing undertakings'.

41 In those circumstances, it must be held that the statement of reasons in the judgment under appeal meets the requirements referred to in paragraph 38 of this judgment.

42 Moreover, having found that the payments of compensation aid made in 2008 and 2009 were independent of the contributions paid by the farmers, the General Court was entitled to conclude, without erring in law, that those payments constituted an advantage that the beneficiary undertaking could not have obtained under normal market conditions, and therefore affected competition.

43 In view of the independence of the contributions paid by the farmers in relation to the compensation aid received by them, those contributions cannot be regarded as specific charges imposed on the advantage consisting, in the present case, of the payment of that aid; nor can those contributions be regarded as connected with the introduction of that advantage. Accordingly, the General Court was

fully entitled to conclude that, in the present case, the Commission was justified, under Article 107(1) TFEU, in refusing to offset the advantage and those same contributions (see, to that effect, judgment in *France Télécom* v *Commission*, C-81/10 P, EU:C:2011:811, paragraphs 43 and 48).

44 It follows that the first ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Second ground of appeal, relating to the concept of State aid and the obligation to state reasons

Arguments of the parties

45 The Hellenic Republic complains that the General Court rejected its first and second pleas in law in the action by relying on the settled case-law of the Court that measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or which are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are to be regarded as State aid (judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 84 and the case-law cited). In so doing, the General Court failed to have regard to the fact that those principles are valid only under normal market and economic conditions and not under the exceptional conditions experienced by the Greek economy in 2009.

46 The Hellenic Republic submits that, against that exceptional background, the General Court ought to have interpreted and applied Article 107 TFEU differently and, in particular, ought to have assessed whether the compensation aid paid to Greek farmers in 2009 had in fact conferred an advantage on them and placed them in a more advantageous position as regards their commercial transactions within the European Union.

47 In view of the fact that, during that period, the Greek economy had to face a series of budgetary measures aimed at stabilising the economy, such as the over-taxation of farmers, the introduction of exceptional and solidarity contributions, the dismantling of the welfare state, increased value added tax, higher heating oil prices, and cuts in wages and pensions, any 'economic advantage' that the farmers might have received from ELGA would automatically have been wiped out.

48 The General Court failed to examine whether, in such exceptional circumstances, the financial impact of the measures adopted by the Inter-ministerial decree could in fact affect trade between Member States and threaten to distort competition. In particular, it ought to have determined whether those exceptional circumstances were such as to alter the conditions for the application of the *de minimis* scheme relating to aid which does not have a significant impact on trade and competition between the Member States.

49 Lastly, the Hellenic Republic submits, in the alternative, that the General Court failed to examine its arguments fully.

50 The Commission disputes the admissibility as well as the merits of the present ground of appeal.

Findings of the Court

51 The documents of the proceedings at first instance show that the argument put forward by the Hellenic Republic before the Court to the effect that the settled case-law of the Court relating to the concept of State aid, referred to in paragraph 45 of this judgment, is inapplicable to the present case because of the exceptional economic conditions experienced by the Hellenic Republic in 2009, was not put forward before the General Court.

52 At first instance, the Hellenic Republic complained that the Commission did not adequately explain, in the decision at issue, in what respect the compensation payments had conferred on the farmers concerned a competitive advantage affecting trade between Member States, and could, therefore, be classified as State aid, notwithstanding the serious crisis affecting the Greek economy at that time.

53 However, in raising such an argument, the Hellenic Republic cannot be regarded as having set out a complaint other than one alleging that the decision at issue failed to state reasons.

54 Therefore, the argument that the General Court infringed Article 107(1) TFEU by failing to find — in the context of the serious crisis affecting the Greek economy in 2009 — that the payment of compensation aid neither conferred any competitive advantage on the farmers concerned nor affected trade between Member States, is new in character.

55 Consequently, that argument must be rejected as inadmissible. According to the settled case-law of the Court of Justice, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court, would in effect allow that party to bring before the Court of Justice a wider case than that heard by the General Court (see, to that effect, judgments in *Alliance One International and Standard Commercial Tobacco* v *Commission* and *Commission* v *Alliance One International and Others*, C-628/10 P and C-14/11 P, EU:C:2012:479, paragraph 111, and *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 35).

56 It follows that the second ground of appeal is admissible only in so far as, by that ground, the Hellenic Republic in essence complains that the General Court did not respond to the complaint that the decision at issue was inadequately reasoned.

57 As stated in paragraph 38 of this judgment, the duty incumbent upon the General Court to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (judgment in *Isdin* v *Bial-Portela*, C-597/12 P, EU:C:2013:672, paragraph 21).

58 It has already been held in paragraph 41 of this judgment that the statement of reasons in the judgment under appeal enabled the parties, and the Hellenic Republic in particular, to understand the grounds on which the General Court found that there was an economic advantage liable to distort competition.

59 It should be added that, in its response to the complaint that the statement of reasons concerning the condition as to there being an adverse effect on competition and an effect on trade was inadequate, the General Court stated, in paragraph 108 of the judgment under appeal, that 'the economic crisis in the European Union from 2008 does not constitute a circumstance that is capable of calling in question the fact that the agricultural sector is exposed to strong competition within the European Union' and that 'the Commission has moreover adopted specific rules aimed at authorising certain State aid during the economic crisis, in particular, the [TCF], which precluded aid granted in the primary agricultural sector being declared compatible with the internal market'.

60 It follows that the second ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Third ground of appeal, relating to misinterpretation and misapplication of Article 107(3)(b) TFEU and the obligation to state reasons

First part of the third ground of appeal, relating to misinterpretation and misapplication of Article 107(3)(b) TFEU

– Arguments of the parties

61 The Hellenic Republic complains that the General Court infringed Article 107(3)(b) TFEU by failing to examine whether the Commission had made a manifest error of assessment, at the very least, on account of its refusal to apply that provision notwithstanding the serious disturbances in the Greek economy.

62 Furthermore, the General Court did not examine its arguments relating to the Commission's incorrect restriction of the scope of Article 107(3)(b) TFEU, in view of the exceptional conditions in the Greek economy in 2009, which were different from those contemplated in the TCF. By relying on the amended TCF, the General Court refused to apply that provision directly, even though it had pointed out that the validity of communications issued by the Commission is conditional on their being consistent with the provisions of the TFEU.

63 The Commission contends that the Hellenic Republic has put forward out of time the exceptional circumstances of the economic crisis in Greece at the material time, which circumstances were not established before the General Court. Consequently, the Hellenic Republic may not legitimately claim before the Court that those unproven circumstances ought to have led the General Court to reach a different conclusion as regards the application of Article 107(3)(b) TFEU. The Commission also disputes the merits of that line of argument.

– Findings of the Court

64 As regards the admissibility of the first part of the third ground of appeal, the documents of the proceedings at first instance show that, in support of the fourth plea in law in the action for annulment, by which the Hellenic Republic complained that the Commission misused its discretion and misinterpreted and misapplied Article 107(3)(b) TFEU, the Hellenic Republic put forward evidence, which — in its view — was such as to establish, inter alia, the existence of a very serious disturbance in the Greek economy as a whole in 2009.

65 Consequently, as the Advocate General observed in points 32 and 34 of her Opinion, even if it is apparent from paragraphs 185 to 188 of the judgment under appeal that, in its response to the fourth plea in law in the action for annulment, the General Court did not rule on the existence in 2009 of a very serious disturbance in the Greek economy, the Hellenic Republic is entitled to claim before the Court that the General Court erred in law in rejecting its argument that such a disturbance justified the application of Article 107(3)(b) TFEU to the facts of the present case.

66 As regards the substance, the General Court held as follows in paragraphs 185 to 188 of the judgment under appeal:

> '185 With regard to the arguments raised in the fourth plea, it is clear that, contrary to what the Hellenic Republic claims, the Commission had to base its decision on the [TCF] and not directly apply Article 107(3)(b) TFEU in order to assess the compatibility of the payments made by ELGA in 2009 on account of the economic crisis experienced in Greece.

186 It is clear from the case-law that, in adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and cannot depart from those rules without being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (see judgment[s] in *Germany and Others* v *Kronofrance*, [C-75/05 P and C-80/05 P, EU:C:2008:482], paragraph 60 and the case-law cited, and … *Holland Malt* v *Commission*, C-464/09 P, [EU:C:2010:733], paragraph 46).

187 Accordingly, in the specific area of State aid, the Commission is bound by the guidelines and notices that it issues, to the extent that they do not depart from the rules in the Treaty (see judgment in *Holland Malt* v *Commission*, [C-464/09 P, EU:C:2010:733], paragraph 47 and the case-law cited).

188 Therefore, it is necessary to reject the arguments of the Hellenic Republic to the effect that, on account of the serious disturbance in the Greek economy due to the economic crisis experienced in Greece since the end of 2008 and in 2009, the Commission should have declared the payments made by ELGA in 2009 compatible directly on the basis of Article 107(3)(b) TFEU.'

67 Under Article 107(3)(b) TFEU, 'the following may be considered to be compatible with the internal market: … aid … to remedy a serious disturbance in the economy of a Member State'.

68 As the General Court stated in paragraphs 159 to 161 of the judgment under appeal, it is settled case-law of the Court that, in the application of Article 107(3) TFEU, the Commission enjoys wide discretion, the exercise of which involves complex economic and social assessments (judgments in *Germany and Others* v *Kronofrance*, C-75/05 P and C-80/05 P, EU:C:2008:482, paragraph 59, and *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 67).

69 Furthermore, as the General Court stated in paragraphs 186 and 187 of the judgment under appeal, the Court has also consistently held that, in adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and, in principle, cannot depart from those rules without being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (judgments in *Holland Malt* v *Commission*, C-464/09 P, EU:C:2010:733, paragraph 46, and *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 69).

70 However, in the specific area of State aid, the Commission is bound by the guidelines that it issues, to the extent that they do not depart from the rules in the TFEU, including, in particular, Article 107(3)(b) TFEU (see, to that effect, judgment in *Holland Malt* v *Commission*, C-464/09 P, EU:C:2010:733, paragraph 47), and to the extent that their application is not in breach of general principles of law, such as equal treatment, in particular where exceptional circumstances, different from those envisaged in those guidelines, distinguish a given sector of the economy of a Member State.

71 Consequently, first, the Commission may not fail to have regard to Article 107(3) TFEU by adopting guidelines vitiated by an error of law or a manifest error of assessment, nor may it waive, by the adoption of guidelines, the exercise of the discretion that that provision confers on it. Further, when, in the exercise of that discretion, it adopts guidelines of that nature, these must be kept under continuous review for the purposes of anticipating any major developments not covered by those measures.

72 Secondly, the adoption of such guidelines does not relieve the Commission of its obligation to examine the specific exceptional circumstances relied on by a Member State, in a particular case, for the purpose of requesting the direct application of Article 107(3)(b) TFEU, and to provide reasons for its refusal to grant such a request, should the case arise.

73 In the present case, it is not in dispute that, precisely because of the effect of the economic crisis experienced by the Member States, and in particular, the Hellenic Republic, on the primary agricultural sector of the European Union, the Commission exercised the discretion conferred on it by Article 107(3)(b) TFEU by adopting the TCF and then the amended TCF, since both the former and the latter expressly mention that sector.

74 However, the fact remains that although the Hellenic Republic claimed before the General Court that Article 107(3)(b) TFEU ought to be applied directly to the facts of the case, notwithstanding the existence of the rules of conduct set out in the TCF and the amended TCF, it did not argue, in support of that claim, that there were, in the present case, specific exceptional circumstances in the primary agricultural sector concerned, such as those referred to in paragraphs 70 and 72 of this judgment.

75 Indeed, it is apparent from the documents in the file that the material that the Hellenic Republic put before the General Court was intended to establish the existence of a very serious disturbance affecting the Greek economy from the end of 2008 and in 2009, but it was not such as to prove to the requisite legal standard that that economy was faced with specific exceptional circumstances that ought, in this case, to have led the Commission to assess the aid at issue directly in the light of Article 107(3)(b) TFEU.

76 Consequently, the first part of the third ground of appeal must be rejected as unfounded.

The second part of the third ground of appeal, relating to the obligation to state reasons

– Arguments of the parties

77 The Hellenic Republic complains that the General Court failed to respond to its argument that the decision at issue was excessive in that it also required the recovery of the compensation aid that constituted compensation for actual damage. Furthermore, the situation in the Greek agricultural sector, already exceptionally difficult when the compensation aid was paid, was even more precarious at the date the decision at issue was adopted.

78 Specifically, the General Court did not examine to what extent the decision at issue, in so far as it ordered the recovery of the contributions paid to farmers, was compatible with the provisions of Article 107(3)(b) TFEU and of Article 14(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).

79 The Commission contends that that line of argument is too vague in that it does not identify precisely the complaint raised at first instance to which — it is claimed — the General Court did not respond, and that it is, in any event, unfounded.

– Findings of the Court

80 First, as the Commission correctly contends, the General Court responded in detail to the complaint relating to an alleged breach of the principle of proportionality, raised in the fifth plea in law in the action for annulment, and to that relating to the calculation of the amount of aid to be recovered, raised in the sixth plea in law in that action.

81 Secondly, the Hellenic Republic has not indicated with sufficient precision the other complaints put forward by it at first instance to which the General Court did not respond.

82 In those circumstances, the second part of this ground of appeal must be rejected as, in part, unfounded and, in part, inadmissible.

83 It follows that the third ground of appeal and, therefore, the appeal must be dismissed as, in part, inadmissible and, in part, unfounded.

Costs

84 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

85 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

86 As the Hellenic Republic has been unsuccessful and the Commission has applied for costs, the Hellenic Republic must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders the Hellenic Republic to pay the costs.

[Signatures]