OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 6 February 2003 [1]

1. In the present case, Ireland is seeking, pursuant to Article 230 EC, the partial annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). [2] In particular, annulment is sought of that part of it which, with reference to the 1997 and 1998 financial years, the decision not to charge to the EAGGF the global amount of EUR 4 844 345.35, which corresponds to the share of Community part-funding of afforestation aid paid by Ireland to Coillte Teoranta (the Irish Forestry Board Limited, hereinafter 'Coillte Teoranta').

I — Legal framework

A — *Legislation governing clearance of the EAGGF accounts*

2. Articles 1(2)(b) and 3(1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, [3] provide that the Guarantee Section of the EAGGF finances intervention intended to stabilise the agricultural markets, undertaken according to Community rules within the framework of the common organisation of agricultural markets.

3. Article 5(2)(c) of that regulation, as amended by Council Regulation (EC) No 1287/95 of 22 May 1995, [4] lays down the procedure which the Commission must follow where it finds that expenditure has not been effected in compliance with the Community rules (checks on conformity). That provision confers on the Commission,

1 — Original language: Italian.
2 — OJ 2000 L 180, p. 49.
3 — OJ, English Special Edition 1970 (I), p. 218.
4 — OJ 1995 L 125, p. 1.

subject to prior consultation with the EAGGF committee, the power to refuse where appropriate Community funding for the expenditure in question. However, such a decision must be preceded by a bilateral discussion between the Commission and the Member State concerned regarding the results of the checks on conformity carried out by the institution with the purpose of endeavouring to reach agreement between the two parties on the action to be taken. If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions. The outcome of such mediation is to be set out in a report which must be examined by the Commission before deciding whether to refuse financing.

4. Regulation No 729/70 was subsequently repealed and replaced by Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy.[5] The latter regulation, by virtue of Article 20 thereof, entered into force on 13 July 1999, but it applies 'to expenditure effected as from 1 January 2000'.

5. The mediation procedure referred to in Article 5(2)(c) of Regulation No 729/70 is governed by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section.[6] According to Article 1(1) of that decision, the procedure in question is conducted by a body (the Conciliation Body) set up in the Commission, whose task it is to try to reconcile the divergent positions of the parties and to draw up a report on the outcome of its efforts at reconciliation, making any remarks it deems useful with regard to the dispute should the attempt not produce the hoped-for outcome. Article 1(2)(a) provides in that regard that the position of the Conciliation Body is to be 'without prejudice to the Commission's final decision on the clearance of the accounts...'.

B — *Legislation regarding aid for forestry measures*

6. Council Regulation (EEC) No 2080/92 of 30 June 1992[7] instituted a Community aid scheme for forestry measures in agriculture, part-financed by the Guarantee Section of the EAGGF. According to Article 1(2)(a) of that regulation, the purpose of the scheme in question is in particular to promote 'afforestation as an alternative use of agricultural land'.

7. Article 2 of Regulation No 2080/92 lists the aid measures which the aid scheme may

5 — OJ 1999 L 160, p. 103.

6 — OJ 1994 L 182, p. 45.
7 — OJ 1992 L 215, p. 96.

comprise and specifies the potential beneficiaries of such measures. It provides, in particular, that:

'1. The aid scheme may comprise:

(a) aid for afforestation costs;

(b) an annual premium per hectare afforested to cover maintenance costs in the first five years;

(c) an annual premium per hectare to cover losses of income resulting from afforestation of agricultural land;

...

2. (a) Aid as referred to in paragraph 1(a) and (b) may be granted to any natural or legal person undertaking afforestation of agricultural land.

(b) Aid as referred to in paragraph 1(c) shall be eligible only if it is granted to:

— farmers not participating in the early-retirement scheme introduced by Council Regulation (EEC) No 2079/92 of 30 June 1992 instituting a Community aid scheme for early retirement from farming;

— any other private-law, natural or legal person.

...

3. The scheme may also comprise a Community contribution to the costs of afforestation of agricultural land undertaken by the competent public authorities of the Member States.'

8. Under Article 4(1) of Regulation No 2080/92:

'1. Member States shall implement the aid scheme referred to in Article 2 by means of

national or regional multiannual programmes covering the objectives laid down in Article 1 and which set out in particular:

— the amounts and duration of the aid referred to in Article 2 on the basis of actual expenditure on afforestation and the maintenance of species or types of trees used for afforestation or on the basis of loss of income.

...'

9. Article 5 of the regulation lays down rules for the programme appraisal procedure. In particular, Article 5(1) to (3) provide that:

'1. Member States shall communicate to the Commission, by 30 July 1993, the draft national or regional programmes referred to in Article 4 and any existing or proposed laws, regulations or administrative provisions by which they intend to apply this Regulation, together with an estimate of the annual cost of implementing the programmes.

2. The Commission shall examine the texts communicated by the Member States in order to determine:

— their compliance with this Regulation, taking account of its objectives and the links between the various measures,

— the nature of the measures eligible for part-financing,

— the total amount of expenditure eligible for part-financing.

3. The Commission shall decide on the approval of national or regional programmes on the basis of the factors listed in paragraph 2.

...'.

II — Facts and procedure

10. Following checks carried out in Ireland from 30 March to 3 April 1998, the

Commission examined whether the aid granted to Coillte Teoranta as compensation for loss of income caused by the afforestation of agricultural land within the meaning of Article 2(1)(c) of Regulation No 2080/92 complied with Community law.

11. In that connection, on 3 August 1999, [8] at the conclusion of the procedure provided for in Article 5(2)(c) of Regulation No 729/70, the Commission informed Ireland that it intended to refuse Community part-financing of the compensatory aid paid to Coillte Teoranta from 1 August 1996 in view of the fact that the latter was a public-law entity and was therefore not entitled to such aid within the meaning of Article 2(2)(b) of Regulation no 2080/92. At the same time, the Commission informed the Irish authorities — which claimed legitimate expectations that the disputed payments were lawful — that there was no evidence to show that the Commission had previously agreed to the payment of the aid in question to Coillte Teoranta.

12. On 11 October 1999, Ireland therefore requested the initiation of the conciliation procedure under Decision 94/442. In the final report of 30 March 2000, the Conciliation Body, without taking a position on Coillte Teoranta's legal status or on whether Ireland had legitimate expectations, merely stated that it was impossible to reconcile the divergent positions of the parties. [9] The Commission's services took formal note of that report and proposed the financial adjustment previously mentioned in the letter of 3 August 1999. On 5 July 2000, the Commission decided to adopt the proposal.

13. It is precisely against that decision that Ireland has brought the present action.

III — Legal analysis

14. Ireland puts forward two pleas in law in support of its application:

— lack of competence of the Commission to adopt the contested decision inasmuch as at the time of its adoption neither Regulation No 729/70 nor the subsequent regulation, No 1258/1999, had conferred on the Commission the necessary powers;

8 — Letter from the Directorate General for Agriculture No 3907 of 3 August 1999 (Annex 8 to the application).

9 — See the Final Report of the Conciliation Body on Case 99/IRL/147 (paragraphs 6 and 7 and the conclusions), sent to the Irish authorities under cover of letter No 8902 of 30 March 2000 (annex 10 to the application).

— infringement of rules of law relating to the application of the Treaty, inasmuch as the Commission wrongly considered Coillte Teoranta to be a 'public authority' rather than a 'private-law, natural or legal person' for the purposes of Regulation No 2080/92 and inasmuch as the Commission itself failed in its duties relating to cooperation in good faith, legal certainty and sound administration and breached the principle of legitimate expectations.

15. I shall examine the two pleas in law in order.

A — *The alleged lack of competence of the Commission to adopt the contested decision*

Arguments of the parties

16. The Irish Government contends that as at 5 July 2000 no Community provision conferred on the Commission the powers necessary to adopt the contested decision. Article 5(2)(c) of Regulation No 729/70 could not, as purported, constitute an appropriate legal basis for that decision, since that provision had already been repealed by Article 16(1) of Regulation No 1258/1999 by 3 July 1999, the date on which the latter regulation entered into force. Nor was Regulation No 1258/1999 capable of serving as a legal basis for the contested decision, since under Article 20 thereof it applies only to expenditure effected as from 1 January 2000, whereas the contested decision is concerned with expenditure in respect of the financial years 1997 and 1998.

17. What is more, according to the applicant government, the latter regulation contains no transitional provisions making it possible to apply Regulation No 729/70, despite its repeal, beyond 3 July 1999. Even if it may be doubted that such omission was intended to deprive the Commission of powers in matters concerning agricultural expenditure in the period from the entry into force of Regulation No 1258/1999 to 1 January 2000, that does not make it possible to infer an implied provision attributing such powers to the Commission. Nor is it possible to invoke, for such a purpose, any continuity between Regulations No 729/70 and 1258/99 by placing reliance on the wording of the preamble to the latter and on the existence of a table annexed to it setting forth the equivalences with the provisions of the repealed regulation. Such elements, in Ireland's submission, cannot make up for the absence of an express provision.

18. The Commission contends in response that the contested decision does have a proper legal basis in Regulation No 729/70, the repeal of which by Regulation No 1258/1999 does not preclude the applicability to expenditure effected prior to

1 January 2000. According to the defendant, it may clearly be concluded from Regulation No 1258/1999 that it is intended to replace without a hiatus Regulation No 729/70, the provisions of which it sought to amend and recast.

There is, on the other hand, nothing to indicate that, by repealing the latter regulation, the Community legislature intended to deprive the Commission, in the period between 3 July and 31 December 1999, of the power, in the event of irregularities, to refuse financing for agricultural expenditure effected prior to 1 January 2000.

That is not to mention the fact, the Commission adds, that if Regulation No 729/70 had not been applicable between 3 July and 31 December 1999, the measures taken to implement that regulation for the purpose of ensuring the reimbursement of the Member States for agricultural expenditure incurred during that period would also have had no legal basis.

19. While acknowledging, therefore, the silence of the Community legislature with regard to transitional arrangements, the Commission claims that an implicit transitional provision can be identified in Regulation No 1258/1999, which is intended to enable expenditure effected up to 1 January 2000 to continue to be governed by the previous regulation. In support of that interpretation, the Commission cites the Court's judgment in *Netherlands* v *Commission*,[10] in which the Court itself acknowledged that, with regard to the clearance of the EAGGF accounts, some flexibility is called for when determining the period in which a set of rules is applicable, since the process of verifying agricultural expenditure continues for several years after the expenditure itself has been effected.

Assessment

20. Of the two contentions set out above, I find myself in agreement with the second one. I do not believe that the interpretation of Articles 16 and 20 of Regulation No 1258/1999 can lead to the result suggested by Ireland, which, apart from anything else, appears to me to be manifestly at variance with the very purposes of the rules laid down by that regulation and, *a fortiori*, by Regulation No 729/70.

21. It should be borne in mind, in this connection, that those regulations govern not only the Commission's powers in relation to the clearance of the EAGGF accounts — that is, verification of the formal regularity of the accounts of the Member States' paying agencies[11] and the compliance with the Community legislation of the expenditure effected by those agencies[12] — but, more generally, concern

10 — Case C-278/98 [2001] ECR I-1501, paragraphs 77 to 83.

11 — Under the procedure originally laid down by Article 5(2)(b) of Regulation No 729/70, as amended, and subsequently by Article 7(3) of Regulation No 1258/1999.

12 — By means of the procedure referred to in Article 5(2)(c) of Regulation No 729/70, as later amended, substantially reproduced, by Article 7(4) of Regulation No 1258/1999. In this regard, see also paragraph 3 above.

all the financing mechanisms of the common agricultural policy. As the Commission has rightly pointed out, the contention put forward by Ireland would not only imply that, with the entry into force of Regulation No 1258/1999, the Commission could no longer verify compliance with the Community legislation of the agricultural expenditure incurred by the Member States under Regulation No 729/70, since the legal basis for refusing to charge it to the EAGGF would have ceased to apply. It would also have the effect of depriving acts adopted by the Commission after the entry into force of Regulation No 1258/1999, but pursuant to Regulation No 729/70, for the purpose of ensuring financial coverage for agricultural expenditure effected up to 31 December 1999 — primarily the payment of the monthly advances to the Member States [13] — of any legal basis. If that contention were well founded, the operation of the financing mechanisms of the common agricultural policy would have been able to resume only in respect of expenditure effected from 1 January 2000 onwards.

22. In other words, if the interpretation advocated by the Irish Government were upheld, it would have to be conceded that, by repealing Regulation No 729/70, Regulation No 1258/1999 not only abolished, in the period from 3 July to 31 December 1999, the possibility of verifying the regularity of the agricultural expenditure incurred by the Member States during the period in which Regulation No 729/70 was in force, but temporarily suspended Community financing of the common agricultural policy, contrary to the principle enshrined in Article 2(2) of Regulation No 25 of the Council, [14] under which the financial consequences of the implementation of that policy are to devolve specifically upon the Community. I can only concur with the defendant on the fact that such a radical choice would at least have had to have received a degree of legislative endorsement, at least at the level of the preamble to Regulation No 1258/1999. However, that regulation confines itself, in the 16th recital, to stating that the repeal of Regulation No 729/70 is dictated merely by the need to clarify matters in view of the numerous amendments made to it up to that time.

23. It is in the light of those considerations, in my opinion, that Article 16(1) of Regulation No 1258/1999 must be read. From that point of view, it should be observed that, whilst not expressly providing for the applicability of Regulation 729/70 beyond the date of 3 June 1999, that provision does not preclude it either. On the contrary, such a result seems to be fully consistent with the intention expressly stated by the

13 — The system of financing agricultural expenditure outlined by Articles 4(5) and 5(2)(a) of Regulation No 729/70, as amended (and subsequently reproduced in Articles 5 and 7(2) of Regulation No 1258/1999), provides that the financial resources intended to cover EAGGF expenditure are to be mobilised by the Member States on the basis of the requirements of the respective disbursing authorities and subsequently reimbursed by the Community by the payment of monthly advances on the provision for that expenditure. The level of those advances, which are calculated on the basis of the expenditure already effected in a reference period, is to be decided by the Commission after consulting the Committee for the EAGGF.

14 — OJ, English Special Edition 1959-1962 (II), p. 126.

legislature to repeal Regulation No 729/70 with the sole purpose of recasting its provisions for greater clarity. At the same time, it appears to me to be in harmony with the Court's judgment in *Klomp*, [15] in which it held that 'in accordance with a principle common to the legal systems of the Member States... when legislation is amended, unless the legislature expresses a contrary intention, continuity of the legal system must be ensured'. [16]

24. In my opinion, therefore, pursuant to the combined provisions of Regulations Nos 1258/1999 and 729/70 and in the light of the principles referred to above, the Commission was competent to adopt the contested decision. For those reasons, I therefore take the view that the first plea in law is unfounded and should be rejected.

B — *Alleged infringement of rules of law relating to the application of the Treaty*

25. Ireland subdivides the second plea in law into four parts. In the first and second parts, which merit combined consideration, it submits that Coillte Teoranta cannot be described as a 'public authority' for the purposes of Article 2(3) of Regulation No 2080/92, but is a 'private-law legal person' for the purposes of Article 2(2)(b) of the same regulation, and therefore entitled to receive the aid provided for by Article 2(1)(c).

26. In the third and fourth parts, which likewise merit combined consideration, Ireland then alleges failure by the Commission to comply with the obligations of cooperation in good faith and sound administration and with the principles of legal certainty and legitimate expectations.

1. Classification of Coillte Teoranta as a 'private-law legal person' for the purposes of Regulation No 2080/92

Arguments of the parties

27. With regard to the first and second parts of the second plea in law, the Irish Government explains that Coillte Teoranta was established in 1988 as a 'private limited company' governed by Irish company law, in order to attain the objectives laid down in the Irish Forestry Act (hereinafter 'the Forestry Act') of the same year. That act made provision for the establishment of a company to which the tasks of undertaking, on a commercial basis, forestry and related activities, creating and

15 — Case 23/68 [1969] ECR 43.
16 — Paragraph 13.

maintaining a forestry industry and participating together with others in forestry activities compatible with those objectives would be assigned. At the same time as establishing Coillte Teoranta, the Irish Government transferred to it the ownership of approximately 400 000 hectares of forest and other assets necessary for engaging in the activities assigned to it by the act, and as consideration received all of its shares.

28. That having been said, Ireland maintains that the Commission made an error in excluding Coillte Teoranta from the category of beneficiaries of the premium provided for in Article 2(1)(c) of Regulation No 2080/92. That is because, in the submission of the applicant government, that category includes any person classifiable as a 'private-law legal person' for the purposes of Article 2(2)(b) of Regulation No 2080/92, irrespective of the fact that that person may also act as a 'public authority' for the purposes of Article 2(3) of the same regulation. There is no specific provision in the regulation which is intended to exclude public authorities from the benefit of the premium provided for by Article 2(1)(c).

29. That conclusion is also consistent, the applicant government asserts, with the purpose of Regulation 2080/92, which is to promote afforestation of the maximum possible proportion of agricultural land. A restrictive interpretation of Article 2(2)(b), to the effect that Coillte Teoranta is excluded from the category of beneficiaries of the premium provided for in Article 2(1)(c), would inevitably imply a limitation of the scope of the regulation itself, to the detriment of the pursuit in full of the stated objectives.

30. However, Ireland continues, such an interpretation would conflict with the letter of Article 2(2)(b) and with the concept of 'private-law legal person' which stems from it. According to the applicant government, by that expression the Community legislature intended essentially to refer to joint stock companies which cannot invite the public to subscribe to their own shares, as is the case, in the Irish system, with a 'private limited company', that is to say, the legal form in which Coillte Teoranta was incorporated.

31. According to the applicant government, moreover, the concept of 'private-law legal person' for the purposes of Regulation No 2080/92 could derive by converse implication from the concept of 'body governed by public law' used in the Community legislation concerning public contracts. Under that legislation, in order to be deemed to be 'governed by public law', a body must be established for the specific purpose of meeting non-industrial and non-commercial needs in the public interest. Coillte Teoranta, which carries out its own activities on a purely industrial and commercial basis, does not satisfy that condition.

32. Ireland acknowledges that, since the Irish State holds almost all the shares of Coillte Teoranta, the latter falls within the Community concept of 'public undertaking'. However, that has no relevance in this case since, according to the applicant government, Regulation No 2080/92 classifies the categories of beneficiaries of the aid measures provided for by it solely on the basis of their legal status, irrespective of who owns them.

33. As a secondary point in relation to the foregoing considerations, Ireland then submits that, even if Coillte Teoranta were not a 'private-law, natural or legal person' within the meaning of Regulation No 2080/92, it could still not be regarded as a 'public authority' for the purposes of the Article 2(3) of the same regulation.
In that regard, Ireland disputes the reference made by the Commission to the judgments in *Commission* v *Ireland*[17] and *Connemara Machine Turf*,[18] which regarded Coillte Teoranta as a 'contracting authority' within the meaning of the legislation on public supply contracts (Directive 77/62/EEC). In the first place, according to the Irish Government, those judgments are irrelevant in this case since no uniform concept of 'public authority' exists in Community law. In the second place, those judgments were given *per incuriam*, since the Court erred both in applying the 'functional' approach to the assessment of the legal status of Coillte Teoranta and in holding that the Irish State exercises at least indirect control over the award of public supply contracts by Coillte Teoranta.

34. For its part, the Commission points out first, and in general, that Regulation No 2080/92 draws a clear distinction between aid for 'private-law, natural or legal persons' within the meaning of Article 2(1)(c) and aid for 'public authorities' under Article 2(3). The sixth and seventh recitals in the preamble to the regulation clearly state that the aid referred to in Article 2(1)(c) is intended for farmers and for private persons other than farmers; the eighth recital, on the other hand, places afforestation schemes undertaken by public authorities in a different context. The Commission states that if the Community legislature had not intended to exclude public authorities from the benefit of the aid at issue, the distinction drawn by it in Article 2(2)(a) and (b) between the beneficiaries of the various aid measures provided for by Regulation No 2080/92 would make no sense.

35. Having said that, and turning to this particular case, the Commission points out, with specific references to Irish legislation and practice, that, contrary to what is maintained by the applicant, Coillte Teoranta is subject, in the exercise of its own activities, to far-reaching supervisory

17 — Case C-353/96 [1998] ECR I-8565.
18 — Case C-306/97 [1998] ECR I-8761.

powers wielded by the Irish State and cannot be regarded as an ordinary private company.

36. Finally, the Commission submits that it is to be inferred from the judgments in *Commission* v *Ireland* and *Connemara Machine Turf* that Coillte Teoranta is responsible for performing a public service. Not only is it the owner of 12 national parks, access to which is free of charge, but its objects also include the provision of recreation, sporting, educational, scientific and cultural facilities.

Assessment

37. In my view, in order to establish whether Coillte Teoranta was entitled to benefit from the premium in compensation for loss of income, provided for by Article 2(1)(c) of Regulation No 2080/92, it is first necessary to understand the meaning of the concept of 'private-law legal person' used by Article 2(2)(b) of that regulation. Only when the meaning of that concept is understood will it be possible to establish whether Coillte Teoranta falls within it and therefore whether it benefited lawfully from the abovementioned premium.

38. With that in mind, I would observe, first, that the concept in question cannot be reconstructed by reference to the individual legal systems of the Member States. That is so not only because it may have a different meaning from one system to another, but also because, as the Irish Government itself has pointed out, it may be completely unknown in others, such as, for example, the Irish and British system and common law systems generally.

39. In an attempt nevertheless to find a point of reference for the definition of the concept in its own system, the Irish Government maintains that it can be inferred from some language versions of Regulation No 2080/92 that the concept in question coincides with that of a 'private limited company' existing in Irish company law. However, it is clear that if that interpretation were accepted, Article 2(2)(b) of Regulation No 2080/92 would be liable not to apply in Member States where there are no forms of company similar to the Irish 'private limited company'. That would be contrary to the principles of effectiveness and uniform application of provisions of Community law.

40. It is true that, as happens in many other cases, the concept of 'private-law legal person' can only, in my opinion, be a concept of Community law, which must be interpreted by reference to the context in which it is used, namely, in the light of the purpose of Regulation No 2080/92 and the provisions contained in that regulation.

Only if it were not possible to interpret the meaning of the concept in that way could recourse be had to similar expressions contained in other provisions of Community law.

41. From that point of view, I find that it is possible to agree with the Commission's interpretation of the concept of 'private-law legal person' referred to in Article 2(2)(b) of Regulation 2080/92. As the Commission has explained, that expression reflects the Community legislature's intention to restrict the benefit of the premium in compensation for loss of income as a result of afforestation of agricultural land to farmers and natural or legal persons who are not an emanation of the State, thus excluding from the category of beneficiaries not only 'public authorities' as referred to in Article 2(3) of the regulation, but also any other entity in public ownership.

42. That exclusion, as explained by the Commission, is justified by the fact that the premium in question was one of the initiatives designed to encourage the abandonment of cultivation of agricultural land. In order to increase its effectiveness, the Council allowed not only farmers but also other private persons to benefit from that measure. However, the Council did not consider it appropriate to extend that possibility either to public authorities, which can in any case benefit from the aid for the costs of afforestation provided for by Article 2(3) of the regulation, or to public undertakings, which can benefit from the aid for afforestation costs and costs of maintaining afforested land provided for by Article 2(1)(a) and (b) of the regulation.

43. Moreover, that such was the legislature's intention, as the Commission rightly observes, is clear from the sixth and seventh recitals in the preamble to the regulation, which explain the reasons which led the Council to introduce the premium for loss of income referred to in Article 2(1)(c) of the regulation.

44. The sixth recital mentions that it is appropriate '... to introduce premiums to compensate for the income loss incurred by farmers during the non-productive period of afforested agricultural land'. The seventh recital adds that, since '... *private persons* other than farmers are in a position to undertake afforestation of agricultural land... provisions should be made for incentives to be offered to such persons [by introducing] a premium per hectare... for the benefit of *private persons* other than farmers who undertake afforestation of agricultural land'. [19] It seems clear to me that here the term 'private persons' cannot refer either to public authorities or to

19 — Italics added.

'public undertakings', that is, to undertakings the management of which is characterised, even if only potentially, by the exercise of State influence. [20]

45. Interpreted from that point of view, therefore, the concept of 'private-law legal person' used in Article 2(2)(b) of the regulation cannot, in my view, refer to any legal person which does not form part or is not subject to the influence, even only potentially, of the public authorities, and that is the case irrespective of the legal form on the basis of which it was established.

46. In this latter regard, I must point out that it would not be plausible to hold, as the Irish Government maintains, that the Community legislature intended the grant of the premium in question to depend solely on the legal form adopted by the legal person which owns the agricultural land. Apart from the fact that Ireland does not provide any explanation as to why the Community legislature would have made such a choice, a system of selecting beneficiaries of aid purely on the basis of the legal form adopted by them would not be of much use since, as the Commission rightly observes, such a system would be too easy to circumvent. I therefore take the view that the attribute 'private-law legal person' should be unrelated to the legal status of the persons to which it refers.

47. Now that the meaning of the concept of 'private-law legal person' referred to in Article 2(2)(b) of the regulation has been established, it is not difficult to exclude from it, in this case, Coillte Teoranta, given that the applicant government itself has admitted that Coillte Teoranta falls within the Community concept of 'public undertaking'. [21] As I have sought to explain above, public undertakings are not covered by the concept of 'private-law legal person' referred to in the abovementioned article.

48. That said, I believe that I can now disregard the question whether Coillte Teoranta also constitutes a 'public authority' for the purposes of Article 2(3) of the same regulation or a 'body governed by public law' within the meaning of the Community legislation concerning public contracts. If it is agreed that Coillte Teoranta is a public undertaking and that, therefore, it cannot benefit, for the purposes of Article 2(2)(b), from the premium provided for by Article 2(1)(c) of Regulation No 2080/92, that question becomes totally irrelevant for the purposes of the present action.

20 — On the concept of public undertaking, see, to the same effect, the Opinions of Advocate General Alber delivered on 16 July 1998 in Case C-353/96 *Commission* v *Ireland*, cited above, paragraph 42, with further references, and Case C-306/97 *Connemara Machine Turf*, cited above, paragraph 34.

21 — To the same effect, see also the Opinions delivered by Advocate General Alber on 16 July 1998 in Cases C-353/96 *Commission* v *Ireland*, cited above, paragraphs 42 and 43, and C-306/97 *Connemara Machine Turf*, cited above, paragraphs 34 and 35.

49. In conclusion, I am of the opinion, in the light of the foregoing, that the first and second parts of the second plea in law are unfounded and should be rejected.

2. Alleged failure by the Commission to comply with the duties relating to cooperation in good faith, legal certainty and sound administration, and with the principle of legitimate expectations

Arguments of the parties

50. These allegations constitute, as I have said, the third and fourth parts of the second plea in law.

51. The Irish Government maintains that, in the course of the contacts maintained between July and October 1992 with a view to drawing up the multiannual afforestation programme for Ireland, the Commission departments had expressed doubts as to the eligibility of Coillte Teoranta, in view of its particular legal status, to benefit from the compensatory aid referred to in Article 2(1)(c) of Regulation No 2080/92, and had therefore requested clarification in that respect. The requested clarification was provided by letter of 26 January 1993 from Mr O'Flaherty of the Irish Department of Agriculture, Food and Forestry to Mr Anz, Head of Division in the Commission's Directorate-General for Agriculture. That letter, according to the applicant government, contained detailed information on the structure and legal status of Coillte Teoranta, and was accompanied by the relevant documentation in that regard, in particular the Forestry Act, 1988.

52. The Commission never replied to that letter. On 27 April 1994, however, it approved the Irish multiannual Afforestation Programme and, on 8 December 1994, the Irish Operational Programme for Agriculture, Rural Development and Forestry for the period 1994-1999. Those programmes, according to the applicant government, contained specific references to Coillte Teoranta. Similar references to Coillte Teoranta as a beneficiary of Community aid under the support measures for the forestry sector also appeared in the Strategic Plan for the Development of the Forestry Sector in Ireland, 1996, which was welcomed by the Commission, so much so that Mr Fischler, the Commissioner responsible for Agriculture, wrote the preface to it himself.

53. Under the programmes referred to, the Irish Government then states, the compensatory aid provided for by Article 2(1)(c) of Regulation No 2080/92 was paid to Coillte Teoranta. Until 1997, the EAGGF had not mentioned any difficulty with regard to reimbursement of the Community's part-financing contribution to the aid in question, and the Commission departments had never raised any objections in that connection during the checks concerning the forestry sector carried out in Ireland.

54. Ireland insists that, in those circumstances, the Commission had a clear obligation to inform it of any doubts which it had concerning the possibility of granting aid to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92. In Ireland's submission, the Commission's conduct of omission in the period preceding the adoption of the contested decision amounts to a breach of the principles of legal certainty and sound administration, by which the Commission is bound in connection with the administration and management of the EAGGF. Such conduct, Ireland submits, also constitutes a breach of the duty to cooperate in good faith imposed by Article 10 EC, as the Court held in the *Zwartveld* case, [22] not only on the Member States *vis-à-vis* the Community institutions, but also on the latter *vis-à-vis* the Member States.

55. Finally, according to the applicant government, it follows from the circumstances outlined above that the contested decision also offends against the principle of legitimate expectations. Even though the Commission had been informed of the legal status of Coillte Teoranta and of the intention of the Irish authorities to grant it aid in compensation for losses of income, it had never raised any objections in that regard and in fact approved the afforestation programmes submitted. Ireland had legitimately inferred from this that the Commission considered the aid in question to be in compliance with the Community legislation. In its turn, Coillte Teoranta had also relied on the lawfulness of that aid, contracting loans to finance its own activities, the repayment of which would be guaranteed by obtaining the aid in question. If it were now forced to withdraw from those borrowing arrangements, or even to repay those loans, Coillte Teoranta would be exposed to serious losses, which would require it to curtail some of its own activities, including those which Regulation No 2080/92 is intended to encourage.

56. For its part, the Commission denies that the absence of a reply to the letter of 26 January 1993 can be construed as implicit approval of the Irish authorities' stated intention to pay Coillte Teoranta the premiums in compensation for loss of income referred to in Article 2(1)(c) of Regulation No 2080/92. In support of its

22 — Order in Case C-2/88 Imm. [1990] ECR I-3365.

own arguments, the Commission relies on the judgment in *Cooke*,[23] from which, it claims, is to be inferred the principle that the absence of a reply from the Commission to requests from a Member State concerning that Member State's interpretation of a Community act does not authorise the Member State to infer that that interpretation is correct. On the other hand, the defendant continues, the letter of 26 January 1993 would not in any case have made it possible to establish whether Coillte Teoranta was in fact a 'private-law legal person' for the purposes of Article 2(2)(b) of Regulation No 2080/92 since it did not contain complete information on the relationship existing between that body and the Irish Government.
It is in that context, according to the Commission, that the absence of a reply to the abovementioned letter must be considered.

57. Apart from that letter, however, the Commission points out that it subsequently received no further requests to express a view on the matter.

58. With regard, finally, to the approval of the national afforestation programme under Regulation No 2080/92, the Commission argues that that circumstance could not in any way have given rise to a legitimate expectation on the part of Ireland since, whilst it is true that the programme in question mentions Coillte Teoranta, it does not state that that body benefited from the compensatory aid at issue.

Assessment

59. In the light of the foregoing arguments, I am of the opinion that the emphasis here must be primarily on the principle of the protection of legitimate expectations and secondarily on the duty of cooperation in good faith imposed on the Commission by Article 10 EC.

60. With regard to the former, I would recall that, according to the case-law of the Court of First Instance, that principle may be relied on by anyone who 'is in a situation in which it appears to him that the Community administration, by giving him *precise assurances*, has led him to entertain legitimate expectations'.[24] More specifically, the Court of First Instance has held that 'the Commission's silence [regarding a request for clarification addressed to it], however regrettable it may be, cannot... be considered to be a precise assurance given by the administration', capable of creating legitimate expectations.[25]

23 — Case C-372/98 [2000] ECR I-8683.

24 — See Case T-76/98 *Hamptaux* v *Commission* [1999] ECR-SC I-A 59; II-303, paragraph 47, see also Case C-207/99 P, *'Commission" Hamptaux* [2000] ECR I-9485, paragraph 6.
Emphasis added.

25 — Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraph 27.

61. That said, I am of the opinion that, in the light of that case-law, Ireland cannot plead breach of the principle of legitimate expectations. On the basis of what the parties have stated, it seems obvious to me that the Commission never gave Ireland 'precise assurances' that Coillte Teoranta was eligible to receive premiums to compensate for loss of income as referred to in Article 2 of Regulation No 2080/92. In fact, in the only instance in which, before initiating the procedure which led to the adoption of the contested decision, the Commission officials expressed a view on this matter, namely, during the bilateral meetings with the officials of the Irish Government in the second half of 1992, that was in order to raise doubts and certainly not in order to provide assurances as regards Coillte Teoranta's entitlement to receive those premiums. [26]

62. I therefore cannot accept that 'precise assurances' to that effect can be inferred from the Commission's conduct subsequent to receiving the letter of 26 January 1993.

63. With regard, first, to the absence of a reply to that letter, it appears obvious to me that it cannot represent a 'precise assurance', given to the Irish Government, of Coillte Teoranta's entitlement to the premiums referred to in Article 2(1)(c) of Regulation No 2080/92. As the Court of First Instance stated in the judgment cited above, the Commission's failure to reply to a letter, however reprehensible it may be, is not in itself such as to create legitimate expectations in favour of the person who sent the letter. [27]

64. Not even the Commission's approval of the multiannual Afforestation Programme (Annex 5 to the application), the Operational Programme for Agriculture, Rural Development and Forestry (Annex 6 to the application) and the Strategic Plan for the Development of the Forestry Sector (Annex 7 to the application) can, in my opinion, be regarded as a 'precise assurance', given by the Commission to Ireland, as to the lawfulness of the payment of the premiums in question.

65. So far as concerns the multiannual afforestation plan, Ireland has not challenged the Commission's objection that it contained no express reference to Coillte Teoranta.

26 — See, to the same effect, *Cooke*, cited above, which is rightly referred to by the Commission.
At paragraph 44 of that judgment, this Court noted that '[w]hilst it is true that the Commission did not reply to numerous letters sent to it by the United Kingdom Government, its written observations show that the Government knew, from July 1997, that the Commission had doubts as to the validity of the interpretation adopted by the United Kingdom, and that the Commission clearly told the Government, at a bilateral meeting on 30 September 1997, that it did not agree with that interpretation'.

27 — *Chomel* v *Commission*, cited above, paragraph 27.

66. With regard, next, to the other two programmes, as the Commission has rightly observed, whilst Coillte Teoranta is mentioned in them, it is not as a potential beneficiary of the aid specifically provided for by Article 2(1)(c) of Regulation No 2080/92. As I have explained above, under that regulation public undertakings may be eligible for various types of aid, such as, for example, those provided for by Article 2(1)(a) and (b). Consequently, the fact that Coillte Teoranta was mentioned in those programmes is certainly not a sufficient basis for concluding that their approval by the Commission constitutes a 'precise assurance' to the Irish Government of the possibility of paying to Coillte Teoranta the premiums in compensation for loss of income referred to in Article 2(1)(c).

67. I would have been of the opposite view if, at the time of the formal submission to the Commission of the afforestation programme, which occurred in July 1993, the Irish Government had clearly confirmed, notwithstanding the doubts raised by the Commission officials and the absence, up to then, of any reply to the letter of 26 January 1993, its own intention to pay to Coillte Teoranta the premium in question. In that event, the approval of the programme by the Commission would undoubtedly have given rise to legitimate expectations on the part of Ireland since, under Article 5(2) of the Regulation, the Commission, when examining those programmes, must 'determine their compliance with [the] Regulation, taking account of its objectives and the links between the various measures'.

68. Next, as regards the Irish Government's assertion that the Commission officials came to know of the payment of those premiums before the check which gave rise to the contested decision was carried out, but did not raise any objection, I would observe that it is disputed by the Commission and that Ireland has not furnished any proof in that regard.

69. For the foregoing reasons, I am therefore of the opinion that, by adopting the contested decision, the Commission did not act in breach of the principle of the protection of legitimate expectations.

70. That said, it still remains for me to examine whether, as Ireland maintains, the Commission at least infringed the principle of cooperation in good faith referred to in Article 10 EC by not replying to the letter of 26 January 1993.

71. In that regard, I would observe first that, as is clear from the foregoing, Ireland was not entitled to draw from that absence

of a reply from the Commission the conclusion that the premiums which it intended to pay to Coillte Teoranta were lawful. I do not see, therefore, how that conduct could prevent the Commission from excluding from EAGGF financing the expenditure effected by Ireland in breach of Regulation No 2080/92.

72. Moreover, although in a somewhat different context, it seems to me that the Court ruled to that effect in Case C-56/90 *Commission* v *United Kingdom*. [28] In its judgment that case, the Court held that a Member State which is bound to implement a directive is not entitled to infer from the Commission's initial failure to react to a communication which that Member State addressed to it concerning the manner in which it intended to implement the directive that the Commission, in the absence of any obligation based on a provision of the directive to express a view within a given period, approved the terms of that communication. According to the Court, it is for the Commission to decide when it intends to formulate objections and there is nothing to prevent it from subsequently initiating an infringement procedure.

73. Apart from those considerations, however, it appears to me appropriate at this point to note that, whilst it is true, as the Irish Government has observed, that Article 10 EC also imposes on the Community institutions a duty to cooperate in good faith with the Member States, [29] it is equally important to point out that that duty is, by its very nature, reciprocal.

74. Even assuming that the Commission failed to comply with that duty by not replying to the letter of 26 January 1993, [30] Ireland also committed the same breach by its subsequent conduct.

75. Even though it was specifically obliged under Article 8(1) of Regulation No 729/70, which in turn reflects Article 10 EC, [31] to do whatever was necessary to satisfy itself that its own afforestation programme complied with the Community act, it failed, at the time of the submission of that programme to the Commission in July 1993, to give any specific indication of the type of aid which it intended to grant to Coillte

28 — [1993] ECR I-4109, paragraphs 12 to 15.

29 — See Case C-275/00 *First and Franex* [2002] ECR I-10943, paragraph 49.

30 — I nevertheless have some doubt about that, bearing in mind that the letter of 26 January 1993 merely provided the Commission with some information but did not request a reply.

31 — See, amongst many, Case C-2/93 *Exportslachterijen van Oordegem* [1994] ECR I-2283, paragraphs 17 and 18, Case C-209/96 *United Kingdom* v *Commission* [1998] ECR I-5655, paragraph 43, and Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 45.

Teoranta. That omission prevented the Commission from determining formally, as provided by Article 5(2) of Regulation No 2080/92, whether the aid in question complied with that regulation.

76. For the foregoing reasons, I am therefore of the opinion that the second plea in law is unfounded in all its parts and should therefore be rejected together with the application in its entirety.

IV — Costs

77. Under Article 69(2) 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 Commission has applied for costs, and in view of what I have just stated with regard to the outcome of the action, I am of the opinion that the application for costs should be granted.

V — Conclusion

78. In the light of the foregoing considerations, I propose that the Court should:

(1) dismiss the application;

(2) order Ireland to pay the costs.