Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 February 2020*

(Appeal – Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) – Expenditure excluded from EU financing – Expenditure incurred by the Hellenic Republic – Regulation (EC) No 1782/2003 – Regulation (EC) No 796/2004 – Area-related aid scheme – Concept of 'permanent pasture' – Flat-rate financial corrections)

In Case C-252/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 6 April 2018,

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

appellant,

the other parties to the proceedings being:

European Commission, represented by D. Triantafyllou and A. Sauka, acting as Agents,

defendant at first instance,

Kingdom of Spain, represented by S. Jiménez García, acting as Agent,

intervener at first instance,

THE COURT (Ninth Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

* Language of the case: Greek.

Judgment

1 By its appeal, the Hellenic Republic asks the Court to set aside the judgment of the General Court of the European Union of 1 February 2018, *Greece* v *Commission* (T-506/15, not published, 'the judgment under appeal', EU:T:2018:53), by which the General Court dismissed its action challenging Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39, 'the decision at issue').

Legal framework

Regulation (EC) No 1782/2003

2 Recitals 3, 4, 21 and 24 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) stated:

'(3) In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established which may or may not have a basis in provisions of the Member States. It is therefore appropriate to establish a Community framework within which Member States may adopt standards taking account of the specific characteristics of the areas concerned, including soil and climatic conditions and existing farming systems (land use, crop rotation, farming practices) and farm structures.

(4) Since permanent pasture has a positive environmental effect, it is appropriate to adopt measures to encourage the maintenance of existing permanent pasture to avoid a massive conversion into arable land.

…

(21) The support schemes under the common agricultural policy provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. In order to avoid misallocations of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.

…

(24) Enhancing the competitiveness of Community agriculture and promoting food quality and environment standards necessarily entail a drop in institutional prices for agricultural products and an increase in the costs of production for agricultural holdings in the Community. To achieve those aims and promote more market-oriented and sustainable agriculture, it is necessary to complete the shift from production support to producer support by introducing a system of decoupled income support for each farm. While decoupling will leave the actual amounts paid to farmers unchanged, it will significantly increase the effectiveness of the income aid. It is, therefore, appropriate to make the single farm payment conditional upon cross-compliance with environmental, food safety, animal health and welfare, as well as the maintenance of the farm in good agricultural and environmental condition.'

3 Regulation No 1782/2003 contained Title III, entitled 'Single payment scheme', which included Chapter 3, relating to 'payment entitlements'. Section 1 of that chapter, concerning 'payment entitlements based on areas', contained Article 43 of the regulation, entitled 'Determination of the payment entitlements', which stated:

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

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

…

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

…

(b) all forage area in the reference period.

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

– buildings, woods, ponds, paths,

– …'

4 Article 44 of Regulation No 1782/2003, relating to the 'use of payment entitlements', stated in paragraph 2:

'"Eligible hectare" shall mean any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non agricultural activities.'

Regulation (EU) No 796/2004

5 The first paragraph of Article 2 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008 (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 380/2009 of 8 May 2009 (OJ 2009 L 116, p. 9) ('Regulation No 796/2004'), was worded as follows:

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

…

(1a) "Agricultural parcel": shall mean a continuous area of land on which a single crop group is cultivated by a single farmer; however, where a separate declaration of the use of an area within a crop group is required in the context of this Regulation, that specific use shall further limit the agricultural parcel;

…

(2) "Permanent pasture": shall mean land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding land under set aside schemes pursuant to Article 107(6) of Regulation (EC) No 1782/2003, areas set aside in accordance with Council Regulation (EEC) No 2078/92 [of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85)], areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 [of 17 May 1999 on support for rural development from the EAGGF and amending and repealing certain Regulations (OJ 1999 L 160, p. 80)] and areas set aside in accordance with Article 39 of Council Regulation (EC) No 1698/2005 [of 20 September 2005 on support for rural development by the EAFRD (OJ 2005 L 277, p. 1)];

(2a) "Grasses or other herbaceous forage": shall mean all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals). Member States may include crops listed in Annex IX to Regulation [No 1782/2003];

…'

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

'Article 2 of [Regulation No 796/2004] contains several definitions that need to be clarified. In particular, the definition of "permanent pasture" in point 2 of that Article needs to be clarified and it is also necessary to introduce a definition for the term "grasses or other herbaceous forage". However, in that context it has to be considered that the Member States need to have a certain flexibility to be able to take account of local agronomic conditions.'

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

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

8 Title III of Regulation No 796/2004, relating to 'controls', contained Article 27 of the regulation, entitled 'Selection of the control sample'. Article 27(1) provided:

'1. Control samples for on-the-spot checks under this Regulation shall be selected by the competent authority on the basis of a risk analysis and representativeness of the aid applications submitted. The effectiveness of risk analysis shall be assessed and updated on an annual basis:

(a) by establishing the relevance of each risk factor;

(b) by comparing the results of the risk based and randomly selected sample referred to in the second subparagraph;

(c) by taking into account the specific situation in the Member State.

To provide the element of representativeness, the Member States shall select randomly between 20% and 25% of the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 26(1) and (2).

…'

9 Title III of Regulation No 796/2004 also contained Article 30, entitled 'Determination of areas'. Article 30(2) stated:

'The total area of an agricultural parcel may be taken into account provided that it is fully utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

…'

Regulation (EC) No 1290/2005

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

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

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

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

4. Financing may not be refused for:

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

…'

Regulation (EC) No 885/2006

11 Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Regulation No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90) contained Article 11, entitled 'Conformity clearance'. Article 11(1) to (3) provided:

'1. When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Community rules, it shall communicate its findings to the Member State concerned and indicate the corrective measures needed to ensure future compliance with those rules.

The communication shall make reference to this Article. The Member State shall reply within two months of receipt of the communication and the Commission may modify its position in consequence. In justified cases, the Commission may agree to extend the period for reply.

After expiry of the period for reply, the Commission shall convene a bilateral meeting and both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Community budget.

2. Within two months from the date of the reception of the minutes of the bilateral meeting referred to in the third subparagraph of paragraph 1, the Member State shall communicate any information requested during that meeting or any other information which it considers useful for the ongoing examination.

In justified cases, the Commission may, upon reasoned request of the Member State, authorise an extension of the period referred to in the first subparagraph. The request shall be addressed to the Commission before the expiry of that period.

After the expiry of the period referred to in the first subparagraph, the Commission shall formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. The communication shall evaluate the expenditure which the Commission envisages to exclude from Community financing under Article 31 of Regulation [No 1290/2005] and shall make reference to Article 16(1) of this Regulation.

3. The Member State shall inform the Commission of the corrective measures it has undertaken to ensure compliance with Community rules and the effective date of their implementation.

The Commission, after having examined any report drawn up by the Conciliation Body in accordance with Chapter 3 of this Regulation, shall adopt, if necessary, one or more decisions under Article 31 of Regulation [No 1290/2005] in order to exclude from Community financing expenditure affected by the non-compliance with Community rules until the Member State has effectively implemented the corrective measures.

When evaluating the expenditure to be excluded from Community financing, the Commission may take into account any information communicated by the Member State after the expiry of the period referred to in paragraph 2 if this is necessary for a better estimate of the financial damage caused to the Community budget, provided that the late transmission of the information is justified by exceptional circumstances.

…'

Regulation (EC) No 73/2009

12 Recitals 7 and 23 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation No 1782/2003 (OJ 2009 L 30, p. 16), stated:

'(7) Regulation [No 1782/2003] recognised the positive environmental effect of permanent pasture. The measures in that Regulation aimed at encouraging the maintenance of existing permanent pasture to ensure against mass conversion to arable land should be maintained.

…

(23) Experience of the application of the single payment scheme shows that decoupled income support was in a number of cases granted to beneficiaries whose agricultural activities formed only an insignificant part of their overall economic activities or whose business purpose was not or only marginally targeted at performing an agricultural activity. To prevent agricultural income support from being allocated to such beneficiaries and to ensure that Community support is entirely used to ensure a fair standard of living for the agricultural community, Member States should be empowered, where such allocation occurs, to refrain from granting such natural and legal persons direct payments under this Regulation.'

13 Regulation No 73/2009 contained Title II, entitled 'General provisions on direct payments', which included Chapter 4 on the 'integrated administration and control system'. That chapter contained Article 19, entitled 'Aid applications', paragraph 1 of which provided:

'Each year, a farmer shall submit an application for direct payments indicating, where applicable:

(a) all the agricultural parcels on the holding, and where the Member State is applying Article 15(3), the number of olive trees and their positioning in the parcel;

(b) the payment entitlements declared for activation;

(c) any other information provided for by this Regulation or by the Member State concerned.

…'

14 Title III of that regulation, entitled 'Single payment scheme', contained Article 34 relating to the 'activation of payment entitlements per eligible hectare'. Article 34(2) stated:

'For the purposes of this Title, "eligible hectare" shall mean:

(a) any agricultural area of the holding, and any area planted with short rotation coppice … that is used for an agricultural activity …; and

(b) any area which gave a right to payments under the single payment scheme or the single area payment scheme in 2008 and which:

…

(ii) for the duration of the relevant commitment of the individual farmer, is afforested pursuant to Article 31 of [Regulation No 1257/1999] or to Article 43 of [Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the EAFRD (OJ 2005 L 277, p. 1)] or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of that Regulation; …

…’

15 Entitled ‘Confirmation of payment entitlements’, Article 137 of Regulation No 73/2009 was contained in Chapter 1, entitled ‘Implementing provisions’, of Title VII of the regulation. That article was worded as follows:

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

2. Paragraph 1 shall not apply to payment entitlements allocated to farmers on the basis of factually incorrect applications except in cases where the error could not reasonably have been detected by the farmer.

3. Paragraph 1 of this Article shall not prejudice the Commission’s power to take decisions referred to in Article 31 of Regulation [No 1290/2005] in relation to expenditure incurred for payments granted in respect of any calendar year up to 2009 included.’

Regulation (EC) No 1120/2009

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

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

…

(c) “permanent pasture” means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding areas set aside in accordance with [Regulation No 2078/92], areas set aside in accordance with Articles 22, 23 and 24 of [Regulation No 1257/1999] and areas set aside in accordance with Article 39 of [Regulation No 1698/2005]; and to this end, “grasses or other herbaceous forage” means all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals). Member States may include arable crops listed in Annex I;

…’

Regulation (EC) No 1122/2009

17 Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Regulation No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for [in] that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65),

contained Title II relating to 'aid applications'. In that title, Chapter I concerning the 'single application' included Article 11 of the regulation, entitled 'Date of submission of the single application'. Article 11(2) provided:

'The single application shall be submitted by a date to be fixed by the Member States which shall not be later than 15 May. However, Estonia, Latvia, Lithuania, Finland and Sweden may fix a later date which shall not be later than 15 June.

…'

18 Article 31 of Regulation No 1122/2009 concerned the 'selection of the control sample' and provided in paragraphs 1 and 2:

'1. Control samples for on-the-spot checks under this Regulation shall be selected by the competent authority on the basis of a risk analysis and representativeness of the aid applications submitted.

To provide the element of representativeness, the Member States shall select randomly between 20% and 25% of the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2).

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2), the percentage of randomly selected farmers in the additional sample should not exceed 25%.

2. The effectiveness of the risk analysis shall be assessed and updated on an annual basis:

(a) by establishing the relevance of each risk factor;

(b) by comparing the results of the risk based and randomly selected sample referred to in the second subparagraph of paragraph 1;

(c) by taking into account the specific situation in the Member State.'

19 Article 34 of Regulation No 1122/2009, entitled 'Determination of areas', provided in paragraphs 2 and 4:

'2. The total area of an agricultural parcel may be taken into account provided that it is fully utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

…

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

20 Entitled 'Elements of the on-the-spot checks', Article 53 of Regulation No 1122/2009 provided in paragraph 6:

'On-the-spot checks related to the sample provided for in Article 50(1) shall be carried out within the same calendar year where the aid applications are submitted.'

Regulation (EU) No 1307/2013

21 Article 4(1)(h) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Regulation No 73/2009 (OJ 2013 L 347, p. 608), in its original version, stated as follows:

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

…

(h) "permanent grassland and permanent pasture" (together referred to as "permanent grassland") means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more; it may include other species such as shrubs and/or trees which can be grazed provided that the grasses and other herbaceous forage remain predominant as well as, where Member States so decide, land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas'.

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

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

…

(h) "permanent grassland and permanent pasture" (together referred to as "permanent grassland") means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more, as well as, where Member States so decide, that has not been ploughed up for five years or more; it may include other species such as shrubs and/or trees which can be grazed and, where Member States so decide, other species such as shrubs and/or trees which produce animal feed, provided that the grasses and other herbaceous forage remain predominant. Member States may also decide to consider as permanent grassland:
   (i) land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas; and/or
   (ii) land which can be grazed where grasses and other herbaceous forage are not predominant or are absent in grazing areas'.

Background to the dispute

23 Between June 2010 and June 2012, the Commission carried out two series of inquiries concerning the expenditure incurred by the Hellenic Republic, first, in respect of area-related aid for claim years 2009 to 2011 and, secondly, in connection with cross-compliance for those claim years.

24 Following those inquiries, the Commission submitted its observations to the Hellenic Republic by letter of 24 November 2011, in accordance with Article 11(1) of Regulation No 885/2006 ('the first communication of 24 November 2011'). The Hellenic Republic replied on 24 January 2012.

25 As regards area-related aid, following the first communication of 24 November 2011 and the replies of the Hellenic Republic, a bilateral meeting was held on 23 May 2013. On 14 June 2013, the Commission sent its conclusions to the Hellenic Republic, to which the latter replied on 19 September 2013.

26 By letter of 18 February 2014, the Commission informed the Hellenic Republic that it proposed to exclude from EU financing expenditure in the amount of EUR 302 577 561.08 on the ground that the application of the area-related aid system in respect of claim years 2009 to 2011 did not comply with EU rules.

27 By letter of 8 April 2014, the Hellenic Republic referred the matter to the Conciliation Body, which delivered its opinion on 22 October 2014.

28 On 27 January 2015, the Commission adopted its final position, proposing to exclude from financing a final gross amount of EUR 313 483 531.71.

29 As regards the cross-compliance system, following the first communication of 24 November 2011 and the replies of the Hellenic Republic, that system was also addressed at the bilateral meeting of 23 May 2013 referred to in paragraph 25 of the present judgment. On 14 June 2013, the Commission sent its conclusions to the Hellenic Republic, to which the latter replied on 13 November 2013.

30 By letter of 1 April 2014, the Hellenic Republic referred the matter to the Conciliation Body, which delivered its opinion on 24 September 2014.

31 On 4 February 2015, the Commission adopted its final position, proposing to exclude from financing a final gross amount of EUR 16 060 573.95.

32 By the decision at issue, adopted on 22 June 2015, the Commission applied flat-rate corrections for claim years 2009 to 2011, in the amount of EUR 302 577 561.08 net in respect of area-related direct aid, and in the amount of EUR 15 383 972.53 net as regards the cross-compliance system.

33 The Commission justified the imposition of the flat-rate corrections on the grounds set out in the summary report annexed to the decision at issue, which are also to be found in paragraphs 16 to 34 of the judgment under appeal.

The proceedings before the General Court and the judgment under appeal

34 By application lodged at the Registry of the General Court on 29 August 2015, the Hellenic Republic brought an action for annulment of the decision at issue, relying, in essence, on six pleas in law.

35 The first two pleas concerned the 25% correction imposed for weaknesses in the definition and checking of permanent pasture, the first being based on the misinterpretation and misapplication of Article 2, first paragraph, point 2, of Regulation No 796/2004 and of Article 2(c) of Regulation No 1120/2009, and the second being based on the misinterpretation and misapplication of Commission Document VI/5330/97 of 23 December 1997, entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee' ('Document VI/5330/97'), with respect to whether the conditions for the imposition of a financial correction of 25% were met, on a failure to state reasons, on the fact that the Commission exceeded the limits of its discretion and on a simultaneous breach of the principle of proportionality.

36 The third plea alleged that Document VI/5330/97 had been misinterpreted and misapplied with respect to the imposition of a financial correction of 5%, that the Commission had exceeded the limits of its discretion and that the principle of proportionality had been infringed.

37 The fourth plea alleged that Article 31(2) of Regulation No 1122/2009 and Article 27 of Regulation No 796/2004 had been misinterpreted and misapplied and that the principle of the protection of legitimate expectations had been infringed.

38 The fifth and sixth pleas concerned the cross-compliance system, the fifth plea alleging misinterpretation and misapplication of Article 11 of Regulation No 885/2006 and Article 31 of Regulation No 1290/2005, an insufficient statement of reasons and an error of assessment with respect to the flat-rate correction of 2% for claim year 2011, and the sixth plea alleging infringement of Articles 266 and 280 TFEU in relation to the Commission's duty to take the measures necessary to comply with the judgment of 6 November 2014, *Greece* v *Commission* (T-632/11, not published, EU:T:2014:934), and a failure to state reasons with respect to the absence of reimbursement of the sum of EUR 10 460 620.42 to the Hellenic Republic following that judgment.

39 By the judgment under appeal, the General Court dismissed the action.

Forms of order sought by the parties to the appeal

40 The Hellenic Republic claims that the Court should:

– set aside the judgment under appeal;

– annul the decision at issue; and

– order the Commission to pay the costs.

41 The Commission contends that the Court should dismiss the appeal as unfounded. It also seeks an order for costs against the Hellenic Republic.

42 The Kingdom of Spain claims that the Court should set aside the judgment under appeal and order the Commission to pay the costs.

The appeal

43 The Hellenic Republic puts forward five grounds of appeal. The first two grounds of appeal relate to the financial correction of 25% applied to area-related aid for pasture. The third ground of appeal concerns a financial correction of 5% applied for weaknesses in the Land Parcel Identification System for claim year 2009. The fourth ground of appeal relates to a financial correction of 2% due to the ineffectiveness of the risk analysis in respect of claim year 2010. The fifth ground of appeal concerns the financial correction of 2% for claim year 2011 in connection with cross-compliance.

The first ground of appeal

Arguments of the parties

44 By the first ground of appeal, the Hellenic Republic complains, in essence, that in paragraphs 49 to 84 of the judgment under appeal the General Court misinterpreted and misapplied Article 2, first paragraph, point 2, of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, which set out the definition of 'permanent pasture', and that it failed to fulfil its obligation to state reasons, under Article 296 TFEU.

45 The Hellenic Republic contends that, in paragraphs 55, 56, 68 and 74 of the judgment under appeal, the General Court adopted an incorrect criterion relating to the type of vegetation covering the areas taken into consideration by the Commission for the purpose of determining whether those areas did constitute 'permanent pasture' within the meaning of EU law. It states that according to the General Court an area can be classified as 'permanent pasture' only if it is covered with grasses or other herbaceous forage, and not if it is covered with scrub and ligneous vegetation, which are characteristic of 'Mediterranean-type' pasture. However, according to the Hellenic Republic, the General Court should have adopted another criterion, under which land that forms part of established local practices, traditionally used for grazing, where grasses and herbaceous forage are not predominant constitutes 'permanent pasture'. Thus, the predominance of ligneous vegetation in the areas in question cannot indicate the abandonment of agricultural activity.

46 According to the Hellenic Republic, that interpretation is permitted by the wording of Article 2 of Regulation No 796/2004 and by that regulation's context and objectives. It thus states that that broad interpretation of the concept of 'permanent pasture' results both from Article 4(1)(h) of Regulation No 1307/2013 and from the guide intended to provide Member States with guidance on how best to comply with the legal provisions in force relating to the common agricultural policy (CAP), published by the Joint Research Centre (JRC) of the Commission on 2 April 2008, as well as from the action plan drawn up in October 2012 by the Greek authorities in collaboration with the Commission, which included an assessment of the eligibility of pasture via photo-interpretation of satellite images at reference parcel (unit) level and the application of a pro-rata calculation system in cases where shrubs are scattered about ('the 2012 Action Plan').

47 In support of that line of argument, the Kingdom of Spain submits, in essence, that the General Court erred in law by holding that the relevant criterion was the type of vegetation present on the area in question and then conducting its examination in the light of that criterion. According to the Kingdom of Spain, the appropriate criterion is founded not on the type of vegetation present on the area in question, but on the actual agricultural use of that area.

48 The Commission proposes that this ground of appeal should be dismissed as unfounded. It is of the opinion that the General Court correctly interpreted and applied the concept of 'permanent pasture' defined in Article 2, first paragraph, point 2, of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009. It is clear from that definition that the criterion relating to the nature of the vegetation covering the agricultural area concerned is decisive. Furthermore, the guidance referred to in paragraph 46 of the present judgment, the 2012 Action Plan and Regulation No 1307/2013, which is applicable from 1 January 2015 and contains an extended definition of the concept of 'permanent pasture', are not relevant for the purpose of interpreting the law applicable at the material time and assessing the financial correction decided upon by the Commission.

Findings of the Court

49 By its first ground of appeal, the Hellenic Republic alleges, in essence, that the General Court erred in law in the interpretation of the concept of 'permanent pasture', within the meaning of Article 2, first paragraph, point 2, of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, by finding, in paragraph 56 of the judgment under appeal, that only areas covered with grasses or herbaceous forage fall within that concept, and not areas covered by ligneous plants or shrubs, which are characteristic of 'Mediterranean-type' pasture. According to the Hellenic Republic, the criterion relating to the nature of the vegetation covering the agricultural area concerned is not decisive in respect of the classification of 'permanent pasture'.

50 In that regard, it should be noted, first, that Article 2(c) of Regulation No 1120/2009 defines the concept of 'permanent pasture' in terms very similar to those used in Article 2, first paragraph, point 2, of Regulation No 796/2004. Secondly, it is apparent from the judgment of 15 May 2019, *Greece* v *Commission* (C-341/17 P, EU:C:2019:409), in which the Court interpreted the concept of 'permanent pasture' set out in Article 2, first paragraph, point 2, of Regulation No 796/2004, that the decisive criterion in respect of the definition of 'permanent pasture' is not the type of vegetation covering the agricultural area, but the actual use of that area for an agricultural activity that is typical for 'permanent pasture'. Consequently, the presence of ligneous plants or of shrubs cannot, in itself, prevent classification of an area as 'permanent pasture', as long as their presence does not compromise the actual use of that area for an agricultural activity (judgment of 15 May 2019, *Greece* v *Commission*, C-341/17 P, EU:C:2019:409, paragraph 54).

51 Accordingly, by holding in paragraph 56 of the judgment under appeal that the relevant criterion was the type of vegetation present on the area in question and by then conducting its examination in the light of that criterion, the General Court erred in law in the interpretation and application of the concept of 'permanent pasture' as resulting from Article 2, first paragraph, point 2, of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009. It follows that the General Court's finding, in paragraph 65 of the judgment under appeal, that the Hellenic Republic had failed to demonstrate that the Commission's assessments were incorrect is erroneous.

52 Consequently, the Hellenic Republic's first ground of appeal must be upheld. It follows that point 1 of the operative part of the judgment under appeal must be set aside, in so far as the General Court dismissed the Hellenic Republic's action regarding the flat-rate correction of 25% imposed by the decision at issue for claim years 2009 to 2011, in respect of weaknesses in the definition and checking of permanent pasture.

The second ground of appeal

53 By its second ground of appeal, the Hellenic Republic submits, in essence, that the General Court misinterpreted and misapplied Document VI/5330/97 with respect to whether the four conditions for the imposition of a correction rate of 25% were met.

54 Since this ground of appeal concerns the 25% correction imposed for weaknesses in the definition and checking of permanent pasture and, as is apparent from paragraph 52 of the present judgment, point 1 of the operative part of the judgment under appeal must be set aside, there is no need to examine this ground of appeal, which cannot result in the judgment under appeal being set aside to any greater extent.

The third ground of appeal

Arguments of the parties

55 Notwithstanding its lack of structure, the third ground of appeal may be understood as being divided into two parts.

56 By the first part, the Hellenic Republic submits, in essence, that the General Court infringed the principles of legality and good administration and the rights of defence, as well as the principle of proportionality, in paragraphs 141 to 162 of the judgment under appeal, in disregarding its argument that the change in status of areas from non-eligible to eligible in respect of claim year 2009 had been subject to checks, so that change in status had not generated any risk for the EAGF.

57 By the second part, the Hellenic Republic submits, in essence, that, as regards the plea which it raised in support of its action before the General Court alleging that the Commission wrongly claimed that it had committed manifest errors in the amendments of the claims for 2009, the General Court infringed its obligation to state reasons and the principle of proportionality. The Hellenic Republic states that, in paragraphs 158 to 162 of the judgment under appeal, the General Court wrongly confirmed the Commission's assessment, which extrapolated the risk of loss for the EAGF on the basis of isolated cases.

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

Findings of the Court

59 As regards the first part of the third ground of appeal, it should be borne in mind that it follows from the Court's settled case-law that, under Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence does not, therefore, save where they have been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 28 November 2019, *LS Cable & System* v *Commission*, C-596/18 P, not published, EU:C:2019:1025, paragraph 24 and the case-law cited).

60 In the present case, on the pretext of supposed infringements of the principles of legality and good administration and of the rights of defence, the Hellenic Republic is in fact merely disputing the factual appraisal carried out by the General Court, in particular in paragraph 149 of the judgment under appeal, concerning the irregularities in the checks carried out where the status of areas changed from non-eligible to eligible in respect of claim year 2009.

61 Moreover, in so far as the Hellenic Republic complains that the General Court infringed the principle of proportionality since it did not take into account the figures which it submitted, such a complaint concerns the General Court's assessment of the accuracy of the data and thus relates to a factual appraisal.

62 The first part of the third ground of appeal must therefore be rejected and dismissed as inadmissible.

63 As regards the second part of this ground of appeal, it should be observed, as a preliminary point, that although the Hellenic Republic refers to paragraphs 158 to 162 of the judgment under appeal, its complaints alleging infringement of the principle of proportionality and an inadequate statement of reasons essentially concern only paragraph 159 of that judgment.

64 In that regard, it should be noted first of all that, in paragraphs 149 to 151 of the judgment under appeal, the General Court held that the irregularities identified by the Commission as regards the status of the areas in the Land Parcel Identification System and the treatment of the errors relating thereto had to be classified as weaknesses in key controls, in accordance with Annex 2 to Document VI/5330/97.

65 Secondly, in paragraphs 152, 153 and 156 of the judgment under appeal, the General Court held, in accordance with Document VI/5330/97, that the application of a flat-rate correction of 5% was justified in the light of the irregularities identified and the evidence submitted for its consideration.

66 In the context of paragraph 159 of the judgment under appeal, the General Court merely pointed out that the weaknesses identified by the Commission and mentioned in paragraphs 146 to 149 of the judgment under appeal could justify the suspicion of more extensive irregularities, and gave the Commission reason to question the quality of key controls. Furthermore, in paragraph 159, the General Court also noted that the Hellenic Republic had not provided any evidence to refute the Commission's findings. In doing so, in paragraph 159, the General Court was merely applying the established rules on the burden of proof in the area concerned - which it recalled, moreover, in paragraphs 143 to 145 of the judgment under appeal - according to which the burden of proof borne by the Commission is limited to its being able to provide evidence supporting the serious and reasonable doubt on its part regarding the inadequacy of the checks carried out by national authorities or the irregularity of the figures submitted by them, while it is for the Member State concerned to demonstrate that the Commission's findings are incorrect, or that there is no risk of loss or irregularity for the EAGF on the basis of the application of a reliable and effective system of checks.

67 It follows from the foregoing that, contrary to what the Hellenic Republic asserts, first, the General Court did not infringe the principle of proportionality and, secondly, it stated proper and sufficient reasons for the judgment under appeal.

68 Consequently, the second part of the third ground of appeal must be rejected as unfounded.

69 It follows that the third ground of appeal must be dismissed as partly inadmissible and partly unfounded.

The fourth ground of appeal

Arguments of the parties

70 By its fourth ground of appeal, the Hellenic Republic criticises the General Court for having dismissed, in paragraphs 163 to 183 of the judgment under appeal, its plea concerning the ineffectiveness of the risk analysis for claim year 2010. More specifically, the Hellenic Republic alleges that the General Court infringed its right of access to a court due to its excessive formalism. Indeed, in paragraph 181 of the judgment under appeal, the General Court held that the Hellenic Republic had not substantiated its argument relating to infringement of the principle of the protection of legitimate expectations, on the ground that it had merely argued that its method for randomly selecting control samples complied with technical specifications established in a Commission document, published in 2010, without however indicating which part of those specifications it complied with, and without supporting its argument in such a way as to enable the General Court to exercise its power of review. The Hellenic Republic submits that, by refusing to take those technical specifications into account, the General Court disproportionately interfered with its right of access to a court.

71 The Commission contends that this ground of appeal should be dismissed.

Findings of the Court

72 In paragraph 181 of the judgment under appeal, the General Court found, in essence, that, in support of its argument, the Hellenic Republic had submitted only a document from a national body, which made reference to technical specifications established not for 2010, but for 2012. The General Court concluded that, since the Hellenic Republic did not enable it to verify that the technical specifications established by the Commission for 2010 were the same as those established for 2012, and did not indicate which part of those specifications it had complied with, that argument was not supported in such a way as to enable the General Court to exercise its power of review. On that basis, the General Court therefore rejected the argument.

73 Therefore, such an assessment by the General Court, based on the fact that the party relying on the content of a document fails, however, to produce that document before the General Court and thus prevents the General Court from verifying its content, reflects not 'excessive formalism' on the part of the General Court, but proper administration of justice. Accordingly, it cannot be validly argued that the approach adopted by General Court impaired the very essence of the right to effective judicial protection of the party whose plea was rejected on that ground.

74 Consequently, this ground of appeal must be dismissed as unfounded.

The fifth ground of appeal

Arguments of the parties

75 By this ground of appeal, the Hellenic Republic criticises the General Court for having held, in paragraphs 184 to 198 of the judgment under appeal, that the first communication of 24 November 2011, referred to in paragraph 24 of the present judgment, complied with the requirements resulting from Article 11 of Regulation No 885/2006 and that, therefore, that communication fulfilled its warning function, in accordance with Article 31 of Regulation No 1290/2005.

76 More specifically, the Hellenic Republic submits, in essence, that the inquiry relating to the cross-compliance system concerned only claim years 2009 and 2010, so that the first communication of 24 November 2011 could not also apply to claim year 2011. Indeed, on the date of that communication, it was impossible for the Hellenic Republic to rectify the irregularities identified by the Commission and to avoid the imposition of an additional correction for claim year 2011. By failing to draw the appropriate conclusions from the fact that it was impossible for the Hellenic Republic to take corrective measures for claim year 2011, the General Court infringed Article 11 of Regulation No 885/2006 and Article 31 of Regulation No 1290/2005, as well as Articles 11(2) and 53(6) of Regulation No 1122/2009. In any event, the judgment under appeal is not sufficiently reasoned.

77 The Commission contends that this ground of appeal should be dismissed as unfounded.

Findings of the Court

78 First of all, it should be noted that the European Agricultural Guidance and Guarantee Fund (EAGGF) finances, in a context of shared management between the Member States and the European Union, expenditure incurred in accordance with EU law. In the context of that shared management, the Commission is responsible for carrying out the conformity clearance procedure in accordance with Article 31 of Regulation No 1290/2005. In that regard, Article 31(4)(a) of that regulation provides that financing may not be refused for expenditure which is incurred more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

79 It is also apparent from the Court's settled case-law that the final and conclusive decision on the clearance of accounts must be taken at the conclusion of a specific procedure giving effect to the *audi alteram partem* rule, during which the Member State concerned must be provided with all the guarantees necessary for it to present its point of view (see, to that effect, judgment of 29 January 1998, *Greece* v *Commission*, C-61/95, EU:C:1998:27, paragraph 39 and the case-law cited).

80 In that context, Article 11 of Regulation No 885/2006 delineates the conformity clearance procedure by establishing the various stages of the procedure and laying down the procedural safeguards that enable the Member State concerned to present its point of view. Accordingly, first, under the first subparagraph of Article 11(1) of Regulation No 885/2006, when, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with EU law, it must communicate its conclusions to the Member State concerned and indicate the corrective measures needed to ensure future compliance with those rules.

81 In that regard, it is apparent from the Court's settled case-law that, where irregularities justifying the application of a financial correction persist after the date of the written communication of the results of the checks, the Commission is entitled and even obliged to take account of that situation when it determines the period to which the financial correction in question is to relate (judgment of 9 January 2003, *Greece* v *Commission*, C-157/00, EU:C:2003:5, paragraph 45).

82 Moreover, as the Court has also consistently held, the written communication referred to in the first subparagraph of Article 11(1) of Regulation No 885/2006 must inform the Member State concerned fully about the Commission's reservations, so that it can fulfil the warning function given to it by that provision. It follows that that provision requires that the irregularity which the Member State concerned is alleged to have committed should be stated with sufficient precision in the written communication, with the result that the Member State is fully informed of it (see, to that effect, judgment of 3 May 2012, *Spain* v *Commission*, C-24/11 P, EU:C:2012:266, paragraphs 27 and 28 and the case-law cited).

83 Secondly, it is to be noted that the second subparagraph of Article 11(3) of Regulation No 885/2006 obliges the Commission, after any conciliation procedure has been held, to exclude from EU financing, under Article 31 of Regulation No 1290/2005, expenditure that is not compliant with EU law 'until the Member State has effectively implemented the corrective measures'.

84 It follows from reading the abovementioned provisions together that, first, the conformity clearance procedure establishes a dialogue between the Commission and the Member State concerned and is intended, in essence, (i) to enable them to exchange information, (ii) to offer the Member State an opportunity to exercise its rights of defence, (iii) to enable the Member State to demonstrate that the Commission's findings are inaccurate and, finally, (iv) to enable the Member State to inform the Commission of the corrective measures implemented to ensure compliance with EU rules.

85 Secondly, the fact that the Member State concerned is not in a position to rectify the irregularities identified by the Commission in the written communication referred to in the first subparagraph of Article 11(1) of Regulation No 885/2006 is irrelevant if those irregularities fell within the period covered by the Commission's investigation. Indeed, taking the opposite view would render Article 31 of Regulation No 1290/2005 and Article 11 of Regulation No 885/2006 nugatory, as that would allow a Member State to claim that it was in practical terms impossible to implement corrective measures before the adoption of the decision imposing the financial correction in order to be able to avoid the imposition of that flat-rate correction.

86 In the present instance, in paragraph 193 of the judgment under appeal, the General Court pointed out first of all that, in the first communication of 24 November 2011, the Commission had stated that the inquiry related to claim years from 2009 onwards. Therefore, the General Court, in the exercise of its power to assess the facts and evidence, considered that claim year 2011 was included in the period covered by the Commission's investigation.

87 Next, in paragraphs 194 and 195 of the judgment under appeal, contrary to what is asserted by the Hellenic Republic, it was after an exhaustive assessment of the content of the first communication of 24 November 2011 and its annex that the General Court found that the Commission had identified shortcomings relating to cross-compliance for claim years 2009 to 2011, so that it could properly hold that the Commission had identified with sufficient precision the claim years concerned and that the Hellenic Republic had been given the opportunity to exercise its right of defence in response to the irregularities identified for claim year 2011.

88 Consequently, in deciding, in paragraph 199 of the judgment under appeal, that the first communication of 24 November 2011 complied with the requirements resulting from Article 11 of Regulation No 885/2006 and fulfilled its warning function in the light of Article 31 of Regulation No 1290/2005, the General Court did not err in law or fail to fulfil its obligation to state reasons.

89 The fifth ground of appeal must therefore be rejected as unfounded.

90 It follows from all the foregoing considerations that, as the first ground of appeal has been upheld, it is necessary to set aside point 1 of the operative part of the judgment under appeal in so far as the General Court dismissed the Hellenic Republic's action regarding the flat-rate correction of 25% imposed for weaknesses in the definition and checking of permanent pasture and to dismiss the appeal as to the remainder.

The action before the General Court

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

92 In this instance, the Court should give final judgment in the case, as the state of the proceedings so permits.

93 As is clear from paragraph 50 of the present judgment, for the purpose of determining whether the area concerned must be classified as 'permanent pasture', within the meaning of Article 2, first paragraph, point 2, of Regulation No 796/2004 and Article 2(c) of Regulation No 1120/2009, the decisive criterion to take into consideration is not the type of vegetation covering that area, but the actual use of the area for an agricultural activity that is typical for 'permanent pasture'.

94 As regards area-related aid for claim years 2009 to 2011, in its summary report annexed to the decision at issue the Commission justified the application of a flat-rate correction of 25% in the light of a set of irregularities relating to the definition and checking of permanent pasture, which, taken as a whole, enabled it to conclude that the implementation of the control system which was to guarantee the accuracy of expenditure was seriously inadequate and had probably caused extremely high losses for the EAGF.

95 Since, first, the flat-rate correction of 25% was imposed on the basis of a set of irregularities one of which was, however, founded on a misinterpretation of Article 2, first paragraph, point 2, of Regulation No 796/2004 and of Article 2(c) of Regulation No 1120/2009, and, secondly, that misinterpretation

could have affected the Commission's assessment of the other weaknesses which it identified, it is necessary, in this context, to carry out a new overall assessment in order to verify that that correction rate remains justified.

96 It follows that the first plea in the Hellenic Republic's action before the General Court should be upheld and, consequently, that the decision at issue should be annulled in so far as it imposes a flat-rate financial correction of 25% for area-related aid for claim years 2009 to 2011 in respect of weaknesses in the definition and checking of permanent pasture.

Costs

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

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

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

100 Pursuant to Article 140(1) of the Rules of Procedure, applicable to the procedure on appeal by virtue of Article 184(1) thereof, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

101 The Kingdom of Spain, as an intervener in the appeal, must bear its own costs.

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

1. **Sets aside points 1 and 2 of the operative part of the judgment of the General Court of the European Union of 1 February 2018, *Greece* v *Commission* (T-506/15, not published, EU:T:2018:53) in so far as, first, the General Court dismissed the Hellenic Republic's action regarding the flat-rate correction of 25% imposed by Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), for claim years 2009 to 2011, in respect of weaknesses in the definition and checking of permanent pasture, and secondly, it made a decision as to costs;**

2. **Dismisses the appeal as to the remainder;**

3. **Annuls Implementing Decision 2015/1119 in so far as it imposes on the Hellenic Republic a flat-rate financial correction of 25% applied to area-related aid for claim years 2009 to 2011, in respect of weaknesses in the definition and checking of permanent pasture;**

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

5. **Orders the Kingdom of Spain to bear its own costs at first instance and on appeal.**

[Signatures]