# OPINION OF ADVOCATE GENERAL KOKOTT
delivered on 18 March 2010[1]

## I – Introduction

1. The present appeal proceedings provide an opportunity to consider a problem relating to time-limits in the context of definitive financial allocations to Member States for the restructuring and conversion of vineyards.

2. The proceedings stem from a dispute between the Hellenic Republic ('the appellant') and the European Commission ('the Commission') over the meaning of Article 16(1) of Regulation (EC) No 1227/2000. The question arising in this context is essentially whether the Commission was under an obligation to take account, in its decision on financial allocations for the financial year 2006, of data which the Hellenic Republic did not submit until after the time-limit laid down in that provision had passed.

3. By judgment of 11 December 2008 ('the judgment under appeal')[2] the Court of First Instance (now the General Court) dismissed as unfounded the Hellenic Republic's application for the annulment or alteration of Decision 2006/669/EC fixing, in respect of a certain number of hectares, the definitive financial allocations to Member States[3] on the ground that the Commission had failed to take into account in that decision data submitted by the Hellenic Republic after the time-limit had passed.

4. In its appeal, which was received by the Court of Justice on 6 February 2009, the Hellenic Republic calls for the judgment under appeal to be set aside and maintains the original form of order sought.

## II – Legislative background

5. The General Court described the legislative background in paragraphs 1 to 5 of the judgment under appeal as follows:

'1. The rules relating to the restructuring and conversion of vineyards are laid down by

1 — Original language: German.

2 — Judgment in Case T-339/06 *Greece* v *Commission* [2008] ECR II-3525.

3 — Commission Decision 2006/669/EC of 4 October 2006 fixing, for the 2006 financial year and in respect of a certain number of hectares, the definitive financial allocations to Member States for the restructuring and conversion of vineyards under Council Regulation (EC) No 1493/1999 (OJ 1999 L 275, p. 62) ('the contested decision').

Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1) and Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Regulation No 1493/1999, as regards production potential (OJ 2000 L 143, p. 1), as amended.

2. Article 14 of Regulation No 1493/1999 provides:

"1. The Commission shall make initial allocations to Member States per year on the basis of objective criteria taking into account particular situations and needs, and efforts to be undertaken in the light of the objective of the scheme.

2. Initial allocations shall be adapted in view of real expenditure and on the basis of revised expenditure forecasts submitted by the Member States taking into account the objective of the scheme and subject to funds available.

…"

3. Article 16 of Regulation No 1227/2000 was amended inter alia by Commission Regulation (EC) No 1841/2003 of 17 October 2003 amending Regulation No 1227/2000 (OJ 2003 L 268, p. 58). Thus Article 16 of Regulation No 1227/2000 in the version applicable to the financial year 2006 provides:

"1. The Member States shall forward to the Commission, not later than 10 July each year in respect of the restructuring and conversion system:

(a) a statement of expenditure actually incurred at 30 June of the current financial year and the total area concerned;

(b) a statement of expenditure validated at 30 June of the current financial year and the total area concerned;

…

2. Without prejudice to the general rules established for budgetary discipline, where the information which Member States are required to transmit to the Commission according to paragraph 1 is incomplete or the time-limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure on a temporary and flat-rate basis."

4. Article 17 of Regulation No 1227/2000 was amended inter alia by Commission Regulation (EC) No 315/2003 of 19 February 2003 (OJ 2003 L 46, p. 9) and by Commission Regulation (EC) No 1203/2003 of 4 July 2003 (OJ 2003 L 168, p. 9). Thus, Article 17 of Regulation No 1227/2000 in the version applicable to the financial year 2006 provides:

"1. For each Member State, expenditure actually incurred, validated and declared for any given financial year shall be financed within the limits of the amounts notified to the Commission under Article 16(1)(a) and (b), provided that those amounts do not exceed in total the financial amount allocated to the Member State pursuant to Article 14(1) of Regulation … No 1493/1999.

…

3. Requests made by Member States in accordance with Article 16(1)(c) shall be accepted on a pro rata basis, using the amounts available after deducting, for all Member States, the total of the amounts notified in accordance with Article 16(1)(a) and the amounts declared in accordance with Article 16(1)(b) from the total amount allocated to the Member States pursuant to Article 14 of Regulation … No 1493/1999. The Commission shall notify the Member States as soon as possible after 30 June of the extent to which the requests may be accepted.

4. Notwithstanding paragraphs 1 and 2, where the total area notified in accordance with Article 16(1)(a) is less than the number of hectares indicated in the allocation for the financial year made to the Member State pursuant to Article 14(1) of Regulation No 1493/1999, then expenditure declared for the financial year in question shall be financed only up to a limit equal to the total area notified multiplied by the average amount of aid per hectare; this figure is calculated as a ratio between the amount allocated to the Member State pursuant to Article 14(1) of Regulation … No 1493/1999 and the anticipated number of hectares.

This amount cannot in any event be greater than the expenditure declared in accordance with Article 16(1)(a).

For the purposes of implementing this paragraph, a tolerance of 5% shall be applied to the total area notified as compared with that appearing in the allocation for the financial year.

Amounts not financed under this paragraph shall not be available for the purpose of applying paragraph 3.

…

8. References to a given financial year shall refer to payments actually made by Member States between 16 October and the following 15 October.

…"

5. Article 7(2) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103) provides:

"2. The Commission shall decide on monthly advances on the provision for expenditure effected by the accredited paying agencies.

Expenditure for October shall be attributed to October if it is effected from 1 to 15 October and to November if it is effected from 16 to 31 October. Advances shall be paid to the Member State not later than the third working day of the second month following that in which the expenditure is effected.

…""

**III – Facts of the case and the contested decision**

6. The General Court sets out the facts of the case and the contested decision in paragraphs 6 to 14 in the following terms:

'6. For the financial year 2006 (16 October 2005 to 15 October 2006), the indicative breakdown of the allocations made pursuant to Regulation No 1493/1999 for the restructuring and conversion of vineyards was established by Commission Decision 2005/716/EC of 10 October 2005 fixing, for the 2005/06 marketing year and in respect of a certain number of hectares, an indicative financial allocation by Member State for the restructuring and conversion of vineyards under Regulation No 1493/1999 (OJ 2005 L 271, p. 45). In the Annex to that decision, the amount of the indicative financial allocation to the Hellenic Republic was fixed at EUR 8 574 504 for an area of 1 249 ha.

7. On 10 July 2006, pursuant to Article 14 of Regulation No 1493/1999 and Article 16 of Regulation No 1227/2000, the Greek authorities submitted to the Commission a statement of the expenditure connected with the restructuring and conversion of vineyards in Greece in the course of the financial year 2006 for the purpose of obtaining financial allocations. According to that statement, the expenditure

amounted to EUR 6 829 204.46 in total and the corresponding area was 788.002 ha.

8. On 22 September 2006, the Greek authorities sent a letter to the Commission in order to inform it of a computer data capture error, as the area to be taken into account was 1 102.271 ha. They explained that that area corresponded to the sum of the total area mentioned in the table annexed to the letter of 10 July 2006 setting out the expenditure for the restructuring and conversion of vineyards in Greece actually incurred at 30 June 2006, namely 1 085.391 ha, and the total area mentioned in the table annexed to the letter of 10 July 2006 setting out the expenditure for the restructuring and conversion of vineyards in Greece validated at 30 June 2006, namely 16.88 ha. They also reiterated that the total expenditure amounted to the sum of EUR 6 829 204.46.

9. On 26 September 2006, at the 890th meeting of the Management Committee for Wine, the Greek authorities reiterated their request that the Commission take into account the corrected data. The Commission orally rejected the Greek authorities' request, stating that the corrected information had been submitted too late.

10. On 4 October 2006, the Commission adopted Commission Decision 2006/669/EC fixing, for the 2006 financial year and in respect of a certain number of hectares, the definitive financial allocations to Member States for the restructuring and conversion of vineyards under Regulation No 1493/1999 (OJ 2006 L 275, p. 62) ("the contested decision"). On the same day a representative of the Commission met representatives of the Greek authorities to whom he explained that it was impossible, in view of the time-limit, to grant their request to take into account the corrected data communicated on 22 September 2006.

11. On 16 October 2006, the Greek authorities sent a letter to the Commission requesting that it amend the Annex to the contested decision. The Commission did not grant that request.…

12. In the contested decision, the Commission took into account, in respect of the Hellenic Republic, the data communicated by the Greek authorities on 10 July 2006.

13. It is stated in recital 6 of the preamble to the contested decision that the Commission applied to the Hellenic Republic the penalty laid down in Article 17(4) of Regulation No 1227/2000 in the amount of EUR 1 129 015.

14. In the Annex to the contested decision, the definitive financial allocation to the Hellenic Republic for the restructuring and conversion of vineyards in Greece was fixed at EUR 5 700 190 for an area of 788 ha.'

**IV – Proceedings at first instance and forms of order sought in the appeal proceedings**

7. The Hellenic Republic brought an action before the General Court against the contested Decision 2006/669 by way of an application received by the Registry of the General Court on 30 November 2006. It based its action on five heads of complaint. In the first it claimed that, as the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is only indicative, data submitted after the time-limit has passed must also be taken into account. It complained, secondly, of an infringement of the principle of genuine cooperation; thirdly, of an infringement of the principle of sound administration; fourthly, of an infringement of the principle of equal treatment; and, fifthly, of an infringement of the principle of practical effectiveness.

8. In the judgment of 11 December 2008 under appeal, the General Court confirmed the contested decision. It consequently dismissed the Hellenic Republic's application and ordered it to pay the costs of the proceedings.

9. Greece has lodged the present appeal against that judgment, requesting that:

— the appeal be declared admissible;

— the judgment under appeal be set aside;

— its action be upheld in accordance with the form of order sought; and

— the Commission be ordered to pay the costs of the appeal proceedings and of the proceedings before the General Court.

10. The Commission, for its part, requests that:

— the appeal be declared inadmissible and dismissed as unfounded; and

— the Hellenic Republic be ordered to pay the costs.

11. The appeal was examined before the Court of Justice on the basis of the written documents. Neither of the parties requested that a hearing be held.

## V – Legal appraisal

### A – *The admissibility of the appeal*

12. The Commission contends that the appeal is inadmissible, on the ground that the appellant is merely reiterating the arguments which it presented at first instance.

13. In this respect, however, the Commission fails fundamentally to appreciate the settled case-law of the Court of Justice on the admissibility of appeals.

14. It is true that, according to settled case-law, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements under Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of its Rules of Procedure. [4] In reality, such an appeal amounts to no more than a request for re-examination of the application submitted to the General Court, which, under Article 49 of the Statute of the Court of Justice, falls outside the jurisdiction of the Court of Justice. [5]

15. However, a distinction must be made between this and an appeal which expressly takes issue with the General Court's judgment and its legal appraisal and, in so doing, resorts to arguments already advanced against the contested decision itself.

16. It will be obvious that, provided that the appellant challenges the General Court's interpretation or application of Community law, the points of law examined at first instance may be discussed again in the course of an appeal. [6] It is precisely the central task of the Court of Justice, in its appellate capacity, to clarify definitively such questions of interpretation.

17. The present appeal seeks to challenge the position taken by the General Court on various points of law which were submitted to it at first instance. The appeal cites accurately the disputed aspects of the judgment under appeal and the grounds and arguments on which it is based.

4 — Judgments in Case C-321/99 P *ARAP and Others* v *Commission* [2002] ECR I-4287, paragraph 48; Case C-353/01 P *Mattila* v *Council and Commission* [2004] ECR I-1073, paragraph 27; and Case C-496/99 P *Commission* v *CAS Succhi di Frutta* [2004] ECR I-3801, paragraph 50.

5 — Order in Case C-174/97 P *FFSA and Others* v *Commission* [1998] ECR I-1303, paragraph 24.

6 — Judgment in Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43.

18. The appeal is consequently admissible.

B – *The merits of the appeal*

19. The Hellenic Republic bases its appeal on three grounds. It argues, first, that the ruling of the General Court was based on a misinterpretation of Article 16(1) and (2) and Article 17(1) of Regulation No 1227/2000; second, that the General Court failed to appreciate the significance of various general legal principles in its ruling; and third, that the judgment under appeal contains contradictory reasoning.

1. The first ground of appeal

20. The Hellenic Republic submits that, contrary to the General Court's finding, the time-limit laid down in Article 16(1) of Regulation No 1227/2000, which passes on 10 July each year, is merely indicative in nature. The appellant contends that the Commission should therefore have taken into account in the contested decision the data submitted after the time-limit had passed. Following the Commission's view, by contrast, the General Court assumes that the time-limit is mandatory. This is contested by the Hellenic Republic in its first ground of appeal.

21. However, the wording of Article 16(1) of Regulation No 1227/2000, its classification within the scheme of that regulation and teleological considerations of the meaning and purpose of the rules on the time-limit in their legislative context confirm, in effect, the view held by the General Court. The time-limit laid down in Article 16(1) of Regulation No 1227/2000 is binding.

(a) Wording

22. The view of the General Court that the wording of Article 16(1) of Regulation No 1227/2000 indicates that the time-limit laid down therein is binding must be endorsed.

23. In almost all language versions the wording of Article 16(1) requires the Member States to forward to the Commission the data listed in that provision 'not later than' 10 July each year. This is an indication of the binding

nature of the time-limit as a mandatory time-limit, especially as the explicit use of the term 'mandatory time-limit' is not required for a mandatory time-limit to be assumed.[7] If an act is required to be carried out not later than 10 July in one year, it is already late the day thereafter and therefore, in principle, no longer possible.

24. While three language versions (the Greek, the Portuguese and the Romanian) require the Member States to forward the data to the Commission 'by' 10 July each year, they do not thereby confer on Article 16(1) of Regulation No 1227/2000 any meaning different from that of the other language versions.

(b) Systematic interpretation

25. The Greek Government submits that the purely indicative nature of the time-limit laid down in Article 16(1) of Regulation No 1227/2000 arises from a systematic understanding of that provision. From the rules laid down in Article 16(2) of Regulation No 1227/2000 it follows, in effect, that statements received even after the time-limit laid down in Article 16(1) has passed must be taken into account by the Commission in the context of the definitive financial allocations.

26. Pursuant to Article 16(2) of Regulation No 1227/2000, 'where the information which Member States are required to transmit to the Commission according to paragraph 1 is incomplete or the time-limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure on a temporary and flat-rate basis'.

27. As the starting point for its line of argument, the Hellenic Republic chooses the wording of paragraph 2, which provides for a temporary reduction of resources as the penalty for submission of incomplete information or for failure to observe the time-limit. It claims that it follows necessarily from this that any penalty must subsequently be withdrawn again if the missing information is submitted or the initial submission occurs only after the time-limit has passed. One can, after all, refer to a temporary penalty only if, in accordance with Article 16(1) of Regulation No 1227/200, it can subsequently be withdrawn, as the result of the submission of a – belated – statement.

7 — In this context, the General Court referred to the judgments in Case 32/72 *Wasaknäcke* [1972] ECR 1181, paragraph 2, and in Case 52/72 *Walzenmühle Magstadt* [1972] ECR 1267, paragraph 2.

28. Secondly, the Hellenic Republic advances an *argumentum a majore ad minus*: in the proceedings before the General Court the Commission had pointed out that, to judge from its wording, Article 16(2) of Regulation No 1227/2000 lays down rules solely for the case of no statement at all or no more than an incomplete statement being submitted, but not for the present case of an apparently complete, yet defective statement.

29. In the Hellenic Republic's view, even in the present case of a defective statement being submitted within the time-limit, it thus follows from Article 16(2) that a subsequent (corrected) statement may be submitted after the passing of the time-limit, since a State which fulfils its obligation to submit a statement in accordance with Article 16(1) within the time-limit laid down therein and merely makes an error when so doing must not, ultimately, find itself in a worse position than a State which has from the outset disregarded the time-limit laid down in Article 16(1). Both are, rather, permitted by Article 16(2) of Regulation No 1227/2000 to submit a subsequent statement, which must then be taken into account by the Commission for purposes of the definitive financial allocation.

30. The central argument advanced by the Hellenic Republic in its first ground of appeal is, however, untenable.

31. At first glance, the Hellenic Republic's line of argument seems entirely convincing. Where legislation imposes a 'temporary' penalty for failure to observe a time-limit, the implication would appear to be that the act which is not initially performed may be performed later. If the act could not be performed later and yet still be taken into account in the decision to be adopted, there would be little scope for referring to a merely 'temporary' penalty.

32. A careful examination of the wording of Article 16(2) of Regulation No 1227/2000 reveals, however, that it cannot in any way be inferred from the 'temporary reduction' to which it refers that the Hellenic Republic's belated statement mandatorily had to be taken into account for the purposes of the contested Commission decision.

33. Where the statement required by Article 16(1) of Regulation No 1227/2000 is not submitted on time or is incomplete, Article 16(2) provides, after all, for a reduction of '*advances* on entry in the accounts of agricultural expenditure on a temporary and flat-rate basis.'

34. Article 16(2) of Regulation No 1227/2000 thus refers to the procedure laid down in the Common Agricultural Policy for the payment of financial resources to the Member

States. Pursuant to Article 5(1) of Regulation No 1258/1999, the financial resources required to cover expenditure are to be made available to the Member States by the Commission by means of advances on the provision for expenditure effected in a reference period.

35. Under Article 7(2) of Regulation No 1258/1999, the Commission decides on monthly advances on the provision for expenditure effected by the accredited paying agencies, those advances being paid to the Member State not later than the third working day of the second month following that in which the expenditure is effected.

36. Thus, if a Member State submits, within the time-limit laid down by Article 16(1) of Regulation No 1227/2000, no statement or an incomplete statement with the contents required by that provision, the consequence is, pursuant to Article 16(2) of that regulation, a temporary reduction in the advances paid, pursuant to Article 7 of Regulation No 1258/1999, on the provision for monthly expenditure effected by the Member State concerned. This constitutes a means of exerting continuous pressure on Member States to fulfil their obligation to submit statements pursuant to Article 16(1) of Regulation No 1227/2000. If the Member State meets its obligation to submit statements, the temporary reduction subsequently becomes obsolete.

37. It is exclusively that penalty, namely the reduction of advances on the provision for expenditure effected on a monthly basis by the accredited paying agencies, which is temporary pursuant to Article 16(2) of Regulation No 1227/2000, which means that it becomes obsolete when the statement is subsequently submitted.

38. In the decision contested in the present appeal, however, the Commission made no reduction at all in advances on entry in the accounts of the Hellenic Republic's agricultural expenditure. There is no question of a reduction pursuant to Article 16(2) of Regulation No 1227/2000 in that case.

39. The subject of the scheme for which the contested decision provides is in fact quite different.

40. In the contested decision the Commission fixed the *definitive* financial allocation to the Member States in respect of a certain number of hectares for the financial year 2006 pursuant to Article 14(2) of Regulation No 1493/1999. As that definitive allocation is in no way the subject of a 'temporary reduction' pursuant to Article 16(2) of Regulation No 1227/2000, no inferences can be drawn from the temporary nature of the reduction provided for therein as to whether statements received after the passing of the time-limit laid down in Article 16(1) must be taken into account in the context of the definitive financial allocation. The Hellenic Republic thus

opts, in effect, for the wrong reference value in its arguments.

41. Understandably, however, Article 16(2) of Regulation No 1227/2000 does not provide for a temporary reduction in the *definitive* financial allocations pursuant to Article 14(2) of Regulation No 1493/1999. Instead, it lays down rules on flat-rate reductions at a completely different stage: the *advances* to be paid on entry in the accounts of the Hellenic Republic's agricultural expenditure. This does not, however, allow of any inferences as to whether statements submitted after the time-limit are still to be taken into account in the context of the fixing of definitive financial allocations.

42. If this misunderstanding on the part of the Greek Government is put to the side, the legislative context of the rules which Chapter IV of Regulation No 1227/2000 lays down even confirms the interpretation initially derived from the wording of Article 16(1) that the time-limit laid down therein is binding.

43. In this respect the legislative context of Article 16 of Regulation No 1227/2000 should first be borne in mind. It implements Regulation No 1493/1999 and, in this case, Article 14 thereof, which governs financial allocations to the Member States for the restructuring and conversion of vineyards within the framework of the Community's budgeting.

44. Article 14(1) of Regulation No 1493/1999 requires the Commission, before the beginning of the financial year, to make initial allocations to Member States per year on the basis of objective criteria taking into account particular situations and needs, and efforts to be undertaken in the light of the objective of the scheme. For the financial year at issue, this was achieved by means of Commission Decision 2005/716/EC of 10 October 2005.

45. Article 14(2) then provides, as a second step, for the initial allocations to be adapted in view of real expenditure and on the basis of revised expenditure forecasts submitted by the Member States, taking into account the objective of the scheme and subject to funds available. This was achieved for the financial year 2006, the year at issue, by means of the contested decision.

46. The obligation to submit the information listed in Article 16(1) of Regulation No 1227/2000 is intended to help the preparation of the definitive financial allocations pursuant to Article 14(2) of Regulation No 1493/1999.

47. The statement required by Article 16(1)(a) and (b) of expenditure actually incurred and identified in the current financial year and similarly any requests pursuant to Article 16(1)(c) for the subsequent financing

of expenditure in the current financial year in excess of the financial allocations made pursuant to Article 14(1) of Regulation No 1493/1999 act as the basis for the Commission's definitive financial allocation.

48. That allocation – as will be shown below, with teleological considerations included – certainly cannot be made to individual Member States on a merely temporary basis.

49. It follows from Article 17(3) of Regulation No 1227/2000, after all, that a financial allocation to a Member State which exceeds the amount initially allocated to it pursuant to Article 14(1) is possible only if funds are still available after deduction of all expenditure actually effected by the Member States in the financial year from the total amounts allocated pursuant to Article 14(1) of Regulation No 1493/1999. Accordingly, as the definitive allocation of funds depends on the actual scale of allocations to the other Member States, isolated subsequent changes are out of the question.

50. Nor, contrary to the Hellenic Republic's view, can Article 17(1) of Regulation No 1227/2000 be put forward as an argument against the binding nature of the time-limit laid down in Article 16(1).

51. Article 17(1) of Regulation No 1227/2000 expressly takes the data submitted in the period laid down in Article 16(1) as the basis for the Commission's definitive financial allocation. No support is, on the other hand, to be found in the wording for the Hellenic Republic's claim that, pursuant to Article 17(1), actual expenditure should form the basis and that any corrections made after the passing of the time-limit should therefore be taken into account.

52. The interim conclusion to be drawn, then, is that a systematic interpretation of Article 16(1) of Regulation No 1227/2000 confirms the interpretation of the wording according to which the time-limit laid down therein is binding.

(c) Teleological interpretation

53. The foregoing considerations are further confirmed by a teleological interpretation of Article 16(1) of Regulation No 1227/2000, which reveals that only if the time-limit laid down therein is binding can the purpose of Articles 16 and 17 be effectively safeguarded.

54. Adapting the initial financial allocation pursuant to Article 14(1) of Regulation No 1493/1999 to give a definitive financial allocation pursuant to Article 14(2) of that regulation makes sense only if the consequences of that financial adaptation are able to occur in the current, almost completed financial year.

55. If that provision is to be effective in practice, the decision fixing the definitive financial allocation to the Member States for the financial year must be adopted before that year ends on 15 October, in order that the Member States will be able to make the final payments in connection with the expenditure notified in accordance with Article 16(1) of Regulation No 1227/2000 before the end of the current financial year and to obtain reimbursement from the Commission before the end of the financial year from the budget lines available for that purpose, since Article 7(2) of Regulation No 1258/1999 provides that only expenditure effected from 1 to 15 October is attributed to October, whereas later expenditure is attributed to November.

56. For the preparation of the definitive financial allocation pursuant to Article 14(2) of Regulation No 1493/1999, however, all the Member States must submit the data specified in Article 16(1) of Regulation No 1227/2000; these are then processed in a comprehensive procedure to produce the definitive financial allocation.

57. In this context, only a binding and, therefore, effective understanding of the time-limit laid down in Article 16(1) of Regulation No 1227/2000 ensures that the initial financial allocations granted pursuant to Article 14(1) of Regulation No 1493/1999 can be adapted by the Commission within the prescribed period on the basis of actual data. If the Member States were able to submit or amend some or all of the data at any time after 10 July and such data were taken into account in the definitive financial allocation, it would be impossible for the Commission to carry out a definitive financial allocation before the end of the financial year.

58. As, then, the conclusion to be drawn from a teleological interpretation is likewise that the time-limit laid down in Article 16(1) of Regulation No 1227/2000 is binding, any data submitted late should not, in principle, be taken into account in the definitive financial allocation made pursuant to Article 14(2) of Regulation No 1493/1999.

2. The second ground of appeal

59. In the second ground of appeal the Hellenic Republic complains that the General

Court misinterpreted various principles of Community law. It claims that, contrary to the view of the General Court, the Commission had infringed the principles of genuine cooperation, sound administration and equal treatment by failing to take into account corrected data submitted belatedly by the Hellenic Republic.

60. The General Court rightly found that the Commission could not be accused of infringing the aforementioned legal principles. In so doing, the General Court did not infringe those principles itself. The second ground of appeal cannot therefore serve as the basis for the Hellenic Republic's appeal.

61. As regards the obligation of genuine cooperation, it should be pointed out that, pursuant to Article 10 EC, that principle applies to relations between the Member States and the institutions. For the Member States it means their taking all the measures necessary to guarantee the application and effectiveness of Community law, and it also imposes on the Community institutions duties of genuine cooperation with the Member States. [8]

62. The Greek Government takes the view that the aforementioned principles were infringed, on the one hand, through the Commission's failure to draw immediate attention to what the Greek Government considers to have been an obvious error in the data forwarded before the time-limit passed, which would have made an immediate correction possible. The significant divergence between the number of hectares notified and that taken as a basis by the Commission in Decision 2005/716/EC of 10 October 2005 fixing indicative financial allocations [9] should have led the Commission to make further enquiries.

63. This is unconvincing, however. The statement submitted before the time-limit passed did not contain any obvious error which should have prompted the Commission to take immediate action. The mere fact that the data submitted differed from those taken as the basis in the initial financial allocation pursuant to Article 14(1) of Regulation No 1493/1999 is by no means an obvious indication of an error in transmission. Whether or not the error was obvious is, after all, a question of fact which cannot be challenged by means of an appeal. The Hellenic Republic has not complained that there was a falsification of evidence in this respect.

64. It is in the very nature of an *interim* financial allocation that the expense thus

8 — Order in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, paragraph 17; judgments in Case C-275/00 *First and Franex* [2002] ECR I-10943, paragraph 49, and Case C-339/00 *Ireland* v *Commission* [2003] ECR I-11757, paragraph 71.

9 — Commission Decision 2005/716/EC of 10 October 2005 fixing, for the 2005/06 marketing year and in respect of a certain number of hectares, an indicative financial allocation by Member State for the restructuring and conversion of vineyards under Regulation (EC) No 1493/1999 (OJ 2005 L 271, p. 45).

determined may not in fact be necessary. For that reason alone differences are, in principle, no cause for doubt as to the correctness of a statement. In the present case this general idea is, moreover, confirmed in Article 17(4) of Regulation No 1227/2000, which provides for a penalty where the total area notified is less than the area indicated in the initial financial allocation. That provision is explicitly premised on the possibility of significant differences between the data submitted by a Member State and those initially assumed.

65. The Commission thus had no reason to assume, immediately on receipt of the statement before the time-limit had passed, that the data submitted contained an error and to draw the appellant's attention to it.

66. The Greek Government maintains that the principles referred to above were further infringed by the Commission's failure to take into account the corrected data submitted more than two months after the time-limit had passed, even though that would, in fact, have been possible, in the Greek Government's view, in the three weeks remaining before the date on which the contested decision had to be adopted.

67. In this respect, the Court of Justice is, of course, bound by the findings of fact made by the General Court in the judgment under appeal. Here again, the Hellenic Republic has not complained of a falsification of evidence.

68. According to its observations in paragraphs 32 and 59 of the judgment under appeal, the General Court explicitly found that it was, in fact, no longer possible for the Commission to take the corrected data into account before the contested decision was adopted. However, if, on the one hand, the time at which a decision is adopted cannot – as shown above – be delayed indefinitely and the time remaining until the envisaged date of the decision, which is already late in the year, does not suffice for data submitted belatedly still to be taken into account, the failure to take those data into account does not in any way constitute an infringement of the obligation of genuine cooperation.

69. It goes without saying, moreover, that a complex procedure for which the legislature has allowed the Commission approximately three months by setting the time-limit for the submission of statements at 10 July cannot be completed in a few days. This is all the more so the case as the decision on the definitive financial allocation can only be taken at the same time for all the Member States owing to the interdependence of the various factors referred to in Article 17(3) of Regulation No 1227/2000.

70. Finally, the General Court, in the judgment under appeal, also did not underestimate the scope of the principle of equality.

71. The principle of equality, as a general principle of Community law, requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified. [10]

72. The principle of equal treatment does not, therefore, require that a statement submitted more than two months after the time-limit has passed be taken into account in the same way as a statement which is a few days late, since a statement submitted a few days late, on the one hand, and a statement submitted more than two months late, on the other, do not constitute comparable situations in the case where the Commission has a total of approximately three months within which to take its decision.

3. The third ground of appeal

73. In the third ground of appeal the Hellenic Republic claims that the judgment under appeal is inherently contradictory and cannot therefore stand. The General Court's comments in paragraphs 25, 26 and 43 of the judgment under appeal, in which it describes the time-limit laid down in Article 16(1) of Regulation No 1227/2000 as binding, are, it argues, contradicted in paragraph 59 thereof, where the General Court finds that a taking into account of slightly belated data is not totally inconceivable.

74. The question as to whether the grounds of a judgment of the General Court are contradictory or inadequate is a question of law which is amenable, as such, to judicial review on appeal. [11]

75. The third ground of appeal is, however, similarly unconvincing, since, contrary to the appellant's view, the legal appraisal of the judgment under appeal is not contradictory. While the General Court does not consider it 'totally inconceivable', despite the recognition of the binding nature of the time-limit at issue, for belated statements to be taken into account in exceptional circumstances, it also explains that such an exception can be made only if the time-limit has been exceeded by a short period, but not if it has been so seriously exceeded as in the present case.

76. In the judgment under appeal the General Court explains at length why teleological considerations in particular argue in favour of the binding nature of the time-limit laid down in Article 16(1) of Regulation No 1227/2000: the Commission must have sufficient time for the decision on the definitive financial allocation,

10 — See, *inter alia*, Case C-313/04 *Egenberger* [2006] ECR I-6331, paragraph 33, with further references.

11 — For this aspect see the judgment in Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries and Nippon Steel* v *Commission* [2007] ECR I-729, paragraph 77 and the case-law cited therein.

which has to be adopted before the end of the financial year on 15 October.

77. In now envisaging the taking into account of only slightly belated statements, provided that they do not preclude the timeous adoption of the decision, the General Court is consistent in its line of argument. No break in the logic is here identifiable.

4. Summary

78. As none of the grounds of appeal put forward by the Hellenic Republic can be upheld, the appeal should be dismissed in its entirety.

## VI – Costs

79. Pursuant to the first paragraph of Article 122 of the Rules of Procedure, the Court of Justice is to make a decision as to costs where an appeal is unfounded. It follows from the first subparagraph of Article 69(2) of the Rules of Procedure, in conjunction with Article 118 thereof, that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

80. As the Commission has made such an application and the appellant has been unsuccessful, the appellant should be ordered to pay the costs.

## VII – Conclusion

81. I accordingly propose that the Court should rule as follows:

'1. The appeal is dismissed.

2. The Hellenic Republic shall pay the costs of the proceedings.'