JUDGMENT OF THE COURT (Fifth Chamber)

6 November 2003 *

In Case C-293/00,

Kingdom of the Netherlands, represented by A. Fierstra, C. Wissels and J.G.M. van Bakel, acting as Agents,

applicant,

v

Commission of the European Communities, represented by T. van Rijn, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Dutch.

APPLICATION for annulment of Commission Decision 2000/362/EC of 25 May 2000 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1997 (OJ 2000 L 129, p. 33), in so far as the financial aid granted to the Netherlands by the Community for the eradication of classical swine fever in 1997 is reduced by 25% of the amounts paid to farmers by way of compensation,

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur) and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 26 March 2003,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 31 July 2000, the Kingdom of the Netherlands brought an action under Article 230 EC for annulment of Commission Decision 2000/362/EC of 25 May 2000 on the total amount of Community aid for the eradication of classical swine fever in the Netherlands in 1997 (OJ 2000 L 129, p. 33; 'the contested decision'), in so far as the financial aid granted to the Netherlands by the Community for the eradication of classical swine fever in 1997 is reduced by 25% of the amounts paid to farmers by way of compensation.

Community legislation

2 The contested decision provides:

'Article 1

The total amount of Community financial aid for the eradication of classical swine fever in 1997 in the Netherlands is hereby fixed at EUR 109 937 795.

Article 2

The balance of EUR 35 507 928 shall be paid as appropriations become available.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.'

3 The Preamble to the contested decision is worded as follows:

'(1) Outbreaks of classical swine fever occurred in the Netherlands in 1997. The appearance of the disease represents a serious danger to the Community pig herd. With a view to the speedy eradication of the disease the Community is able to contribute to expenditure incurred by the Member State.

(2) On 22 June 1998 the Netherlands presented an application for reimbursement of all the expenditure incurred in the country in 1997. This application was replaced by a new application lodged on 2 June 1999.

(3) The Commission adopted Decisions 98/25/EC and 1999/18/EC on Community financial aid towards the eradication of classical swine fever in the Netherlands. These Decisions provided for the payment of two initial advances amounting to EUR 74 429 868.

(4) The total amount of Community aid must now be fixed.

(5) The Commission has checked to see whether all Community veterinary rules have been observed and all the conditions for Community financial assistance have been met.

(6) As a result of these checks, not all of the expenditure submitted could be accepted as eligible. This position was confirmed in a report by the Court of Auditors.

(7) The Commission's initial comments were officially notified to the Netherlands authorities on 13 January 1998.

(8) Further comments and the method for calculating the eligible expenditure were officially notified to the Netherlands authorities on 5 May and 29 October 1999.

(9) The Standing Veterinary Committee has not given an opinion; the Commission therefore proposed these measures to the Council on 17 February 2000 in accordance with Article 41 of Decision 90/424/EEC, the Council being required to act within three months.

(10) However, the Council has not acted within the required time limit; these measures should now be adopted by the Commission.'

4 The contested decision is based on Article 3, and in particular paragraphs 2 and 5 thereof, of Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field (OJ 1990 L 224, p. 19), most recently amended by Council Decision 94/370/EC of 21 June 1994 (OJ 1994 L 168, p. 31; 'Decision 90/424').

5 Article 3 of Decision 90/424 provides:

'1. The provisions of this Article shall apply in the event of the occurrence of one of the following diseases in the territory of a Member State:

— ...

— classical swine fever,

— ...

2. The Member State concerned shall obtain a financial contribution from the Community for the eradication of the disease, on condition that the measures applied immediately comprise at least the isolation of the holding from the time of suspicion and, following official confirmation of the disease:

— the slaughter of animals of susceptible species which are affected or contaminated or suspected of being affected or contaminated, and their destruction, and, in the case of avian plague, destruction of the eggs,

— the destruction of contaminated feedingstuffs and contaminated equipment, where the latter cannot be disinfected in accordance with the third indent,

— the cleaning, disinsectisation and disinfection of the holdings and of the equipment on the holdings,

— the establishment of protection zones,

— the imposition of suitable measures to prevent the risk of the spread of infection,

— the establishment of a waiting period to be observed after slaughter before re-stocking of the holding,

— swift and adequate compensation of the livestock farmers.

2a The Member State concerned shall also qualify for a Community financial contribution where, on the outbreak of one of the diseases listed in paragraph 1, two or more Member States collaborate closely to control the epidemic, particularly in carrying out an epidemiological survey and disease surveillance measures. Without prejudice to the measures provided for under the common organisation of markets concerned, the specific community financial contribution shall be decided on in accordance with the procedure laid down in Article 41.

3. The Member State concerned shall, without delay, inform the Commission and the other Member States of the measures applied in accordance with Community legislation on notification and eradication and the results thereof. The situation shall be examined as soon as possible within the Standing Veterinary Committee, hereinafter referred to as the "Committee", set up by Decision 68/361/EEC. The specific financial contribution by the Community shall be decided in accordance with the procedure laid down in Article 41, without prejudice to the measures provided for in the context of the common organisation of markets concerned.

4. If, in view of the development of the situation in the Community, it proves necessary to continue the measures provided for in paragraph 2, a new decision concerning the financial contribution by the Community, which might exceed the figure of 50% laid down in the first indent of paragraph 5, may be adopted in accordance with the procedure laid down in Article 40. When this decision is adopted, any measures which the Member State concerned must take in order to ensure the success of the action may be laid down, and in particular measures other than those mentioned in paragraph 2.

5. Without prejudice to market support measures to be taken as part of the common organisation of markets, the financial contribution by the Community, divided if necessary into several tranches, must be:

— 50% of the costs incurred by the Member State in compensating owners for the slaughter, destruction of animals and, where appropriate, their products, for the cleaning, disinsectisation and disinfection of holdings and equipment and for the destruction of the contaminated feedingstuffs and contaminated equipment referred to in the second indent of paragraph 2,

— where vaccination has been decided upon in accordance with paragraph 4, 100% of the cost of supply of the vaccine and 50% of the costs incurred in carrying out that vaccination.'

6 Article 41 of Decision 90/424 provides:

'1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter without delay to the Standing Veterinary Committee set up by Decision 68/361/EEC..., hereinafter referred to as "the Committee", either on his own initiative or at the request of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

(b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the Commission shall adopt the proposed measures and implement them immediately.'

7 Council Directive 80/217/EEC of 22 January 1980 introducing Community measures for the control of classical swine fever (OJ 1980 L 47, p. 11), in the version amended by Council Directive 91/685/EEC of 11 December 1991 (OJ 1991 L 377, p. 1) ('Directive 80/217') provides in Article 9:

'1. Immediately after the diagnosis of classical swine-fever has been officially confirmed in pigs on a holding, the competent authority shall establish a protection zone with a radius of at least three kilometres around the outbreak site, which shall itself be included in a surveillance zone of a radius of at least 10 kilometres.

...

4. The following measures shall be applied in the protection zone:

(a) a census of all the holdings shall be made as soon as possible; after the establishment of the protection zone these holdings shall be visited by an official veterinarian within not more than seven days;

(b) the movement and transport of pigs on public or private roads shall be prohibited. This prohibition shall not apply to the transit of pigs by road or rail without unloading or stopping. However, in accordance with the procedure [laid down in Article 16, a derogation] may be granted for slaughter pigs coming from outside the protection zone and on their way to a slaughterhouse situated in the said zone;

(c) trucks and other vehicles and equipment, which are used to transport pigs or other livestock or material which may be contaminated (e.g. feedingstuff, manure, slurry, etc.) and which are used within the protection zone, shall not leave:

(i) a holding situated within the protection zone,

(ii) the protection zone,

(iii) a slaughterhouse,

without having been cleaned and disinfected in accordance with the procedures laid down by the competent authority. Those procedures shall provide in particular that no truck or vehicle which has been used in the transport of pigs may leave the zone without being inspected by the competent authority;

(d) no other species of animal may enter or leave a holding without the authorisation of the competent authority;

(e) all dead or diseased pigs on a holding shall be notified to the competent authority, which shall carry out any investigations necessary to establish the presence of classical swine-fever;

(f) pigs may not be removed from a holding in which they are kept for 21 days after the completion of the preliminary cleaning and disinfection of the infected holdings as provided for in Article 10; after 21 days, authorisation may be given to remove pigs from the said holding:

(i) directly to a slaughterhouse designated by the competent authority, preferably within the protection or surveillance zone, provided that:

— an inspection of all the pigs on the holding has been carried out,

— a clinical examination of the pigs to be moved for slaughter, including the taking of the body temperature of a proportion thereof, has been carried out,

— each pig has been marked by ear marking,

— the pigs are transported in vehicles sealed by the competent authority.

The competent authority responsible for the slaughterhouse shall be informed of the intention to send pigs to it.

On arrival at the slaughterhouse these pigs shall be kept and slaughtered separately from other pigs. The vehicle and equipment which have been involved in the transport of the pigs shall immediately be cleaned and disinfected.

...

8. By derogation from paragraphs 4(f) and 6(f), the competent authority may authorise that pigs be moved from the holding to be transported to a rendering plant for rendering or to a place where the pigs are slaughtered in order to be burned or buried. These animals shall be tested at random for the presence of the classical swine-fever virus. The criteria laid down in Annex IV with regard to the collection of blood samples shall be taken into account during such random testing.

All necessary precautions shall be taken to avoid the risk of spreading the virus during such transport, in particular by cleaning and disinfecting the truck after the transport.

9. Where the prohibitions provided for in paragraphs 4(f) and 6(f) are maintained beyond 30 days because of an outbreak of further cases of the disease and as a result problems arise in keeping the pigs, the competent authority may, following a reasoned application by the owner, authorise removal of pigs from a holding within the protection or surveillance zone, as the case may be, provided that:

(a) the official veterinarian has verified the facts;

(b) an inspection of all pigs on the holding has been carried out;

(c) a clinical examination of the pigs to be moved, including the taking of the body temperature of a proportion thereof, has been carried out;

(d) each pig has been marked by ear marking;

(e) the holding of destination is located in the protection zone or within the surveillance zone.

All necessary precautions shall be taken to avoid the risk of spreading the virus during such transport, in particular by cleaning and disinfecting the truck after the transport.'

8 Article 14b of Directive 80/217 provides that each Member State is to draw up a contingency plan specifying the national measures to be implemented in the event of an outbreak of classical swine fever. These plans are to be submitted to the Commission not later than 1 January 1993; the Commission is to examine them and, after any necessary amendments, approve them.

9 In the meantime, Directive 80/217 has been replaced by Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever (OJ 2001 L 316, p. 5).

Facts

10 An outbreak of classical swine fever in the Netherlands was established on 4 February 1997 in Venhorst (Province of Brabant-Septentrional), in an area with the greatest concentration of pig holdings (90% of pig production in the Netherlands takes place in the southern and western areas of the country). The disease spread rapidly and affected a wide area, so that a total of 429 contaminated farms were evacuated and 629 388 contaminated pigs were destroyed. As a preventive measure, 1 250 holdings were evacuated (1 013 697 pigs).

11 The Netherlands Government states that the number of pigs destroyed is almost equivalent to the normal production of a full year. The epizootic was declared in a region in which pig farms of various structures were situated (basic farms and

high-quality farms, farms producing animals for fattening and fattening farms, farms raising breeding animals and farms producing slaughter pigs).

12 Furthermore, in the Netherlands the structure of pig farming is the result of specialisation in the sector. Production takes the form of a pyramid, with very specialised farms at the top, carrying out genetic progress. The base of the pyramid consists of farms for slaughter pigs, intended for the production of meat for consumption. At the intermediate levels are farms involved in cross-breeding products and farms producing piglets intended for farms selling pork meat.

Procedure before the Court

13 Taking the view that the contested decision is vitiated by errors of law, the Kingdom of the Netherlands brought the present action, in which it claims that the Court should:

1. annul the contested decision in so far as the financial aid granted to the Netherlands by the Community for the eradication of classical swine fever in 1997 includes a reduction by 25% of the amounts paid to farmers by way of compensation;

2. order the Commission to pay the costs.

14 The Commission contends that the Court should dismiss the application of the Kingdom of the Netherlands as unfounded and order it to pay the costs.

Preliminary observations

15 The Netherlands Government puts forward five pleas in law in support of its application. First, it claims that the contested decision is based on factually incorrect elements (first plea). Second, it claims that the Commission has acted unlawfully in adopting the decision. Decision 90/424 does not offer the possibility of applying an adjustment to the Community financial contribution, at any event as the Commission has done (first part of the second plea). Furthermore, the Commission is alleged to have interpreted the facts in a legally incorrect manner (second part of the second plea). Next, the Netherlands Government contends that the contested decision is disproportionate (third plea). The absence of any express legal basis formulated in sufficiently precise legal terms for the application of a financial adjustment has also entailed a breach of the principle of legal certainty (fourth plea). Last, the Netherlands Government submits that the contested decision does not contain a sufficient statement of reasons for the purposes of Article 253 EC (fifth plea).

16 The first part of the second plea and the fourth plea call in question the very principle of the possibility of applying a flat-rate or other adjustment to the financial participation of the Community under Article 3(2) and (5) of Decision 90/424. As the very existence of such a possibility constitutes a precondition for the examination of the other pleas, that possibility must be examined first.

First part of the second plea and fourth plea

Arguments of the parties

17 In its application, the Netherlands Government maintains that Decision 90/424 makes no provision for the application of a flat-rate financial adjustment. The implementation of the measures provided for in Article 3(5) of that decision confer on each Member State a right to a Community financial contribution of 50% of the costs incurred, without imposing other conditions. It maintains that, in the light of the extent of the crisis and the complexity of the ensuing situation, it was inevitable that technical and administrative lacunae should subsequently be established and that these lacunae could not therefore give rise to the application of a financial adjustment. The application of such a flat-rate financial adjustment infringes the principle of legal certainty.

18 The Commission contends that the Community financial contribution requires compliance with the conditions laid down, inter alia, in Article 3(2) of Decision 90/424. As those conditions were not fulfilled, or were fulfilled only in part, the Commission is entitled to reduce the contribution by the amount resulting from the failure to comply with those conditions.

19 At the hearing, the Netherlands Government stated that in its view the Commission is entitled to reduce the Community contribution, provided, however, that there is a clear and proportionate link between the errors committed and the reduction applied.

Findings of the Court

20 According to the first indent of Article 3(5) of Decision 90/424, the financial contribution by the Community is '50% of the costs incurred by the Member State in compensating owners for the slaughter, destruction of animals and, where appropriate, their products, for the cleaning, disinsectisation and disinfection of holdings and equipment and for the destruction of the contaminated feedingstuffs referred to in the second indent of paragraph 2'.

21 Article 3(2) of Decision 90/424 defines the conditions to which that financial contribution is subject. They include, in particular, the slaughter of certain categories of animals, the cleaning of the holdings, the destruction of the dead bodies and also of contaminated feedingstuffs and equipment which cannot be disinfected, the establishment of protection zones, the prevention of the risk of the spread of infection and swift and adequate compensation of the livestock farmers.

22 According to the actual wording of that provision, it is only where the conditions set out in the applicable Community legislation are fulfilled that entitlement to the financial contribution arises. Accordingly, if only one of those conditions is not satisfied, that is sufficient for the Member State not to be entitled to the Community financial contribution. Nor is there any provision for payment to be made pro rata if the measures required by the Community legislation are taken only in part.

23 This arrangement may be explained by the fact that the absence of just one of the conditions is liable to have a seriously deleterious effect on the success of the fight against classical swine fever.

24 However, it must be accepted that instead of granting no financial contribution where a Member State has not complied with all the conditions set out in the Community legislation, the Commission may, in application of the principle of proportionality, deduct from the amount of the expenditure in respect of which the Member State seeks a Community financial contribution the expenditure occasioned by the failure to comply with those conditions and consider the financial contribution only in respect of the remaining amount.

25 It must also be accepted, moreover, that the fight against a widespread epizootic cannot be undertaken without errors and that, in principle, the existence of certain errors should not preclude the Community financial contribution. However, where such errors exceed the limit of what might be reasonably regarded as inevitable and therefore excusable in a complex and sometimes complicated situation, their financial consequences cannot be borne, even in part, by the Community and must be assumed by the Member State to which the authorities responsible for the errors belong.

26 Contrary to what the Netherlands Government claims in its application, the fact that the Member State assumes 50% of the expenditure does not constitute a sufficient precaution against the authorities of that State exceeding the limits of what is necessary and appropriate to combat an epizootic. Although it is true that that way of apportioning the costs provides an incentive to keep the costs as low as possible, the Community legislation does not require the Community to contribute 50% of the expenditure, independently of the justification for its amount.

27 The Community financial contribution is limited to measures taken in accordance with Article 3(2) of Decision 90/424. The costs incurred by the Member State for the purposes of Article 3(5) must therefore be limited to those which are necessary and appropriate for the implementation of those measures.

28 Consequently, where the authorities of a Member State have made errors in the fight against an epizootic which have entailed costs for which the Member State must assume responsibility (see paragraph 25 of this judgment), the Commission may reduce the Community contribution by the amount corresponding to those errors.

29 As regards the fact that the Commission may rely on estimates and apply flat-rate adjustments, the Commission cannot be required to examine in detail each slaughtered animal and each case of the destruction of feedingstuffs or contaminated equipment. Both where a Member State has not complied with all the conditions laid down in the Community legislation and where there have been errors for which the Member State must assume financial responsibility, the Commission is entitled to rely on estimates or to apply flat-rate adjustments, provided that those estimates and adjustments are reasonably based on the figures available to it.

30 The first part of the second plea and the fourth plea must therefore be rejected.

First plea and second part of the second plea

31 By the first plea and the second part of the second plea, the Netherlands Government claims that the Commission erred in establishing and interpreting the facts which in its view justify the financial adjustment. Before considering these pleas, it is appropriate to describe the extent of judicial review and the distribution of the burden of proof.

The extent of judicial review and the distribution of the burden of proof

32 Under Decision 90/424, the Member State concerned is required to implement a certain number of measures in order to benefit from the Community financial contribution for the fight against classical swine fever. As the multitude of possible situations means that the Community legislation cannot determine precisely what those measures are in each individual case, the Commission, when it evaluates the measures adopted by the Member States, must take account of the fact that the latter have a certain latitude as regards the choice of the measures to be taken and the manner in which they are to be implemented and that in that regard it cannot substitute its own assessment for that of the Member State concerned.

33 That is *a fortiori* true because the applicable Community legislation includes provisions which employ wide and general terms, such as the concept of 'swift and adequate compensation', which lend themselves to diverging interpretations.

34 On the other hand, if the Commission, while respecting the latitude enjoyed by the Member State concerned, has established that that State has not taken sufficient steps to combat the disease and that a financial adjustment must be applied, it is for that Member State, as the Advocate General states at point 66 of her Opinion, to prove that the Commission has made a manifest error of assessment. In so far as the Member State is unable to provide such proof, it cannot successfully initiate proceedings against the financial adjustment applied by the Commission.

35 That approach, moreover, is consistent with the case-law of the Court on the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), according to which it is the Member State which is best placed to

collect and verify the data required for the clearance of EAGGF accounts; consequently, it is for the State to adduce the most detailed and comprehensive evidence that it has made checks or that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect (see, in particular, Case C-157/00 *Greece* v *Commission* [2003] ECR I-153, paragraph 17).

The complaints raised by the Commission

36 The Commission based the financial adjustment on both technical complaints and administrative and financial complaints. The technical complaints relate to the procedures whereby the Netherlands implemented the eradication measures. The Commission considered that Directive 80/217 had not been applied in full and identified the following shortcomings: lack of an emergency plan, late diagnosis of contamination by classical swine fever, too frequent movements of animals in the protection zones, with inadequate guarantees of hygiene, suspension of preventive evacuation and in one case failure to create a protection zone. Without these inadequacies, the epizootic would have been shorter-lived and therefore less costly.

37 The administrative and financial complaints related to the organisation of compensation, following which too high a price level was applied. By those complaints, the Commission contends that the organisation of the taxation of pigs proved defective, that the animals were overvalued, that they changed category during the taxation period, that the weight of feedingstuffs was overestimated and that certain animals were the subject of double payment. The Commission further questions the system of re-evaluation applied by the Netherlands authorities, which resulted in a virtually systematic standard increase in the compensation.

38 From point 71 onwards of her Opinion, the Advocate General has stated her reasons for concluding that both the technical complaints (points 71 to 136) and the administrative and financial complaints (points 137 to 183) put forward by the Commission reveal no manifest error of assessment on the Commission's part.

39 The Court agrees.

40 The first plea and the second part of the second plea must therefore be rejected as unfounded.

Third plea

41 By its third plea, the Netherlands Government claims that the contested decision infringed the principle of proportionality.

Arguments of the parties

42 The Netherlands Government submits that there is a serious disproportion between the lacunae which the Commission established (or which it classified as such) and the financial adjustment which it applied. The Commission failed to take account of the particular complexity of the situation in the Netherlands and incorrectly extrapolated the data which it collected on the basis of a small and unrepresentative sample.

43 Furthermore, even in the context of the clearance of the EAGGF accounts, an adjustment of 25% is applied only where a Member State has employed no system of control or done so very imperfectly and where there is evidence of large-scale irregularities and negligence in the fight against irregular or fraudulent practices.

44 The Commission contends that the supplementary costs for the Community budget arising from two of the 10 infringements found come to at least EUR 79 million. The financial adjustment of 25% represents only 42% of the additional costs, while the remaining 58% is borne by the Community budget. Those figures clearly show that the Commission did not seek to exploit the matter to the full and that it took into account the nature and circumstances of the epizootic in the Netherlands.

45 Nor does a reference to the EAGGF system assist the Netherlands: the Court has held on various occasions that the Commission is entitled to refuse unjustified expenditure outright.

Findings of the Court

46 The complaints raised by the Commission, which the Netherlands Government has been unable to show are based on manifest errors of assessment, serve to justify a financial adjustment of 25%.

47 In calculating the financial consequences of the complaints established, the Commission relied on a study by the University of Wageningen (Netherlands) and on its own assessments in the case of the financial and administrative complaints.

48 The study by the University of Wageningen on the financial consequences of the technical complaints provides useful indicia for the purpose of determining the amount of the financial adjustment. The Commission's assessments in relation to the administrative and financial complaints do not differ fundamentally from the figures produced by the Netherlands Government in the written procedure, while the complaints are taken to be well founded.

49 Furthermore, the financial consequences calculated by the Commission are much higher than the adjustment made, which shows that the Commission took due account of the inevitable errors associated with the exercise of the latitude conferred on each Member State and also the particular complexity of the epizootic of classical swine fever in question.

50 It follows that there has been no infringement of the principle of proportionality and that the third plea must also be rejected.

Fifth plea

51 The Netherlands Government maintains that the contested decision does not contain a proper statement of reasons and thus fails to satisfy the obligation to state reasons laid down in Article 253 EC.

Arguments of the parties

52 The Netherlands Government claims that the Commission failed, inter alia, to state the precise legal basis on which it relied in order to apply the financial adjustment of 25%. Nor did it indicate how it arrived at the decision to apply an adjustment to the declaration of costs concerning the payment of compensation to farmers. A detailed statement of reasons was all the more necessary because the Commission had never previously objected to the re-evaluation system used in the Netherlands.

53 The Commission denies that it failed to observe the requirement to state reasons. The scope of the obligation to state reasons is determined, inter alia, by the extent to which the addressees of the decision were associated in preparing it. In that regard, there was an extensive exchange of correspondence between the Commission and the Netherlands authorities.

Findings of the Court

54 Whilst the reasoning required by Article 253 EC must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to enable the persons concerned to ascertain the reasons for it and to enable the Court to exercise judicial review, the authority is not required to go into every relevant point of fact and law (see, inter alia, Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 165).

55 Furthermore, the question whether a statement of reasons satisfies the requirements must be assessed with reference not only to the wording of the impugned measure but also to its context and to the whole body of legal rules governing the matter in question (*British American Tobacco (Investments) and Imperial Tobacco*, cited above, paragraph 166).

56 That is *a fortiori* the case where the Member State concerned has been closely associated with the process of drafting the contested measure and is thus aware of the reasons underlying the measure (see, as regards the clearance of the EAGGF accounts, Case C-27/94 *Netherlands* v *Commission* [1998] ECR I-5581, paragraph 36, and, as regards total allowable catches of fish, Case C-120/99 *Italy* v *Council* [2001] ECR I-7997, paragraph 29).

57 In the present case, the Commission informed the Netherlands authorities of the results of its control visits and received their opinion. It is common ground, moreover, that before adopting the contested decision it stated the reasons for the proposed adjustments. The Kingdom of the Netherlands was thus closely associated with the process of drafting the contested decision and was aware of the reasons why the Commission considered it was able to deduct the amounts in question.

58 In the absence of a failure to state reasons, the fifth plea must therefore be rejected.

59 Since all the pleas have thus been rejected, the application must be dismissed in its entirety.

Costs

60 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Kingdom of the Netherlands to pay the costs.**

Timmermans Edward von Bahr

Delivered in open court in Luxembourg on 6 November 2003.

R. Grass V. Skouris

Registrar President