Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

7 June 2013*

(EAGGF — Guarantee Section — Clearance of accounts — Expenditure excluded from financing — Excessive delay in the assessment by the Commission of the communications sent pursuant to Article 5(2) of Regulation (EEC) No 595/91 — Article 32(5) of Regulation (EC) No 1290/2005 — Obligation to state reasons — Reasonable time)

In Case T-267/07,

Italian Republic, represented by G. Aiello and S. Fiorentino, avvocati dello Stato,

applicant,

v

European Commission, represented by C. Cattabriga and F. Erlbacher, acting as Agents,

defendant,

APPLICATION for partial annulment of Commission Decision 2007/327/EC of 27 April 2007 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year (OJ 2007 L 122, p. 51),

THE GENERAL COURT (Eighth Chamber),

composed of L. Truchot, President, M. E. Martins Ribeiro and A. Popescu (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 April 2012,

gives the following

Judgment

Legal context

1 Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the Common Agricultural Policy (OJ 1970 L 94, p. 13), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), established the general rules applicable to the financing of the

* Language of the case: Italian.

common agricultural policy (CAP). Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the CAP (OJ 1999 L 160, p. 103) has replaced Regulation No 729/70 and applies to expenditure incurred from 1 January 2000 to 16 October 2006.

2 Under Article 1(2)(b) and Article 3(1) of Regulation No 729/70 and Article 1(2)(b) and Article 2(2) of Regulation No 1258/1999, in the context of the common organisation of agricultural markets, the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) is to finance, interventions intended to stabilise those markets, undertaken in accordance with European Union rules.

3 According to Article 5(2)(c) of Regulation No 729/70 and Article 7(4) of Regulation No 1258/1999, the Commission of the European Communities is to decide on the expenditure to be excluded from European Union financing where it finds that the latter has not been effected in compliance with European Union rules.

4 According to Article 8(1) of Regulation No 729/70 and Article 8(1) of Regulation No 1258/1999, the Member States are, in accordance with national provisions laid down by law, regulation or administrative action, to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence.

5 In accordance with Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999, in the absence of full recovery, the financial consequences of irregularities or negligence are to be borne by the European Union, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

6 Regulation No 1258/1999 has been repealed and replaced by Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the Common Agricultural Policy ('CAP') (OJ 2005 L 209, p. 1).

7 Under Article 32(3) of Regulation No 1290/2005, '[w]hen the annual accounts are sent, as provided for in Article 8(1)(c)(iii), Member States shall provide the Commission with a summary report on the recovery procedures undertaken in response to irregularities. This shall give a breakdown of the amounts not yet recovered, by administrative and/or judicial procedure and by year of the primary administrative or judicial finding of the irregularity'. It is also stated/provided/made clear that 'Member States shall make available to the Commission detailed particulars of the individual recovery procedures and of the individual sums not yet recovered'.

8 Article 32(5) of Regulation No 1290/2005 sets out the following:

'If recovery has not taken place within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts, 50% of the financial consequences of non-recovery shall be borne by the Member State concerned and 50% by the Community budget.

Member States shall indicate separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts not recovered within the time-limits specified in the first subparagraph of this paragraph.

The distribution of the financial burden of non-recovery in line with the first subparagraph shall be without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 9(1) of this regulation. Fifty percent of the amounts recovered in this way shall be credited to the [European Agricultural Guarantee Fund (EAGF)], after application of the deduction provided for in paragraph 2 of this Article.

Where, in the context of the recovery procedure, the absence of any irregularity is recorded by an administrative or legal instrument of a definitive nature, the Member State concerned shall declare as expenditure to the EAGF the financial burden borne by it under the first subparagraph.

However, if for reasons not attributable to the Member State concerned, recovery could not take place within the time-limits specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time-limits by a maximum of 50% of the initial time-limits.'

9 According to Article 32(6) of Regulation No 1290/2005, '[i]f there is justification for doing so, Member States may decide not to pursue recovery'. That provision states that a decision to that effect may be taken only in the following cases:

'(a) if the costs already and likely to be incurred total more than the amount to be recovered, or

(b) if recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity'.

10 That provision also provides that '[t]he Member State shall show separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts for which it has been decided not to pursue recovery and the grounds for its decision'.

11 Under Article 32(8) of Regulation No 1290/2005:

'Following completion of the procedure laid down in Article 31(3), the Commission may decide to exclude from financing sums charged to the Community budget in the following cases:

(a) under paragraphs 5 and 6 of this Article, if it finds that the irregularity or lack of recovery is the outcome of irregularity or negligence attributable to the administrative authorities or another official body of the Member State;

(b) under paragraph 6 of this Article, if it considers that the grounds stated by the Member State do not justify its decision to halt the recovery procedure.'

12 Pursuant to Article 16 of Regulation No 729/70, read in conjunction with Article 20 of Regulation No 1258/1999 and Article 47 of Regulation No 1290/2005, Regulation No 729/70 applies/is to apply to expenditure incurred by the Member States between 1 January 1971 and 31 December 1999, while Regulation No 1258/1999 applies/is to apply to expenditure incurred between 1 January 2000 and 16 October 2006.

13 However, under the third subparagraph, second indent, of Article 49 of Regulation No 1290/2005, in particular, Article 32 of that regulation is to apply to cases of irregularities which have been communicated in accordance with Article 3 of Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the CAP and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11), and for which full recovery has not yet taken place by 16 October 2006.

14 Article 3 of Regulation No 595/91 provides:

'(1) During the two months following the end of each quarter, Member States shall communicate to the Commission a list of irregularities which have been the subject of the primary administrative or judicial findings of fact.

To this end they shall as far as possible give detailed information concerning:

— the provision which has been infringed,

— the nature and amount of the expenditure; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the economic operator is guilty of error or negligence detected before payment and not resulting in any administrative or judicial penalty,

— the common organisation of the market and the product or products or measure concerned,

— the period during which, or the moment at which, the irregularity was committed,

— the practices adopted in committing the irregularity,

— the manner in which the irregularity was discovered,

— the national authorities or bodies which recorded the irregularity,

— the financial consequences and possibilities of recovery,

— the date and source of the first information leading to suspicion that an irregularity existed,

— the date on which the irregularity was discovered,

— where appropriate, the Member States and third countries involved,

— the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.

— …'

15 Article 5(1) of that regulation states that '[d]uring the two months following the end of each quarter, Member States shall inform the Commission of the procedures instituted following the irregularities notified under Article 3 and of all important changes resulting therefrom'. Article 5(2) thereof provides that '[w]here a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it shall inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State', that '[t]his information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8(2) of Regulation (EEC) No 729/70', and that '[t]his decision shall be taken in accordance with the procedure laid down in Article 5 of that Regulation'.

16 The detailed rules for the procedure for clearance of the EAGGF accounts are laid down by Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as last amended by Commission Regulation (EC) No 465/2005 of 22 March 2005 (OJ 2005 L 77, p. 6).

17 Article 8(1) and (2) of that regulation provides:

'If, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it shall notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance.

The communication shall refer to this regulation. The Member State shall reply within two months and the Commission may modify its position in consequence. In justified cases, the Commission may extend the period allowed for reply.

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission, after consultation of the Member States, for the provision of further information or, where the Member State does not accept the invitation to a meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC. Without prejudice to the fourth subparagraph of this paragraph, that communication shall include an evaluation of any expenditure the Commission intends to exclude under Article 5(2)(c) of Regulation … No 729/70.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force. The Commission shall, as appropriate, adopt one or more Decisions under Article 5(2)(c) of Regulation … No 729/70 to exclude expenditure affected by non-compliance with Community rules up to the date of entry into force of the corrective measures'.

(2) The decisions referred to in Article 5(2)(c) of Regulation (EEC) No 729/70 shall be taken after an examination of any report drawn up by the Conciliation body according to the provisions laid down in Directive 94/442/EC.'

Background to the dispute

18 In 2003, the Commission created a "'payment' task force" ('the task force'), made up of officials of the European Anti-Fraud Office (OLAF) and Directorate-General (DG) 'Agriculture'. That task force was required to examine the files of irregularities communicated by the Member States in accordance with Article 3 of Regulation No 595/91 before 1 January 1999, with respect to which the sums paid had not been entirely recovered, and to ascertain whether the national authorities comply with the obligations laid down by Article 8 of Regulation No 729/70 or, where appropriate, by Article 8 of Regulation No 1258/1999. The work of the task force included, in particular, inspecting the activities of the Italian paying agencies, the Agenzia per le erogazioni in agricoltura (AGEA, agency for the grant of aid in the agricultural sector) and the Servizio autonomo interventi nel settore agricolo (SAISA, independent service for intervention in the agricultural sector).

19 In the light of the large number of cases of irregularities coming within its responsibility, approximately 4 200 cases representing a total amount of EUR 1.2 thousand million, the task force decided to investigate, in a first phase, the procedures relating to irregularities of an amount exceeding EUR 500 000 and to analyse cases of lesser amounts only in a second phase.

20 When the work of the task force relating to cases of an amount exceeding EUR 500 000 was completed, and following the procedures for the clearance of accounts provided for by Regulation No 1663/95, the Commission adopted Decision 2006/678/EC of 3 October 2006 on the financial treatment to be applied, in the context of clearance of expenditure financed by the EAGGF, in certain cases of irregularity by operators (OJ 2006 L 278, p. 24).

21 The specific grounds for the financial corrections made by the Commission were set out in summary report AGRI-2006-62645-01-00 relating to the results of checks in the clearance of accounts under the Guarantee Section of the EAGGF, pursuant to Article 5(2)(c) of Regulation No 729/70 and Article 7(4) of Regulation No 1258/1999 concerning the recovery of irregular payments.

22 In that report, with regard to a first group of 157 cases of irregularities, the Commission declared that the Italian authorities had not fully complied with the obligation/duty of diligence under Article 8 of Regulation No 729/70 and Article 8 of Regulation No 1258/1999 and that they must, in the light of their negligence, bear in full/bear the full financial consequences of non-recovery of the sums wrongly paid, amounting to a total of EUR 310 849 495.98. With regard to a second group of cases, the Commission stated that the behaviour of the national authorities did not give rise to any observations on the part of its services. In several of those cases, for which recovery of the sums wrongly paid was henceforth considered to be impossible, the corresponding financial burden must/was to be entirely borne by the EAGGF. With regard, finally, to a third group of cases, where the recovery of the sums in question still seemed possible, the Commission decision was postponed, for it was not yet possible to charge the financial consequences of the non-recovery of the sums concerned to the EAGGF.

23 By application lodged at the Registry of the Court on 11 December 2006, the Italian Republic brought an action before the Court for the partial annulment of Decision 2006/678, in so far as it excluded from Community financing, and charged the financial consequences relating to 105 cases of irregularities to the Italian Republic. That action was dismissed by the Court by judgment of 12 September 2012 in Case T-394/06 *Italy* v *Commission* [2012], not published in the ECR.

24 On 27 April 2007, the Commission adopted Decision 2007/327/EC on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the EAGGF, Guarantee Section, for the 2006 financial year (OJ 2007 L 122, p. 51) ('the contested decision'). In that decision, the Commission, applying of Article 32(5) of Regulation No 1290/2005, charged to the Italian Republic 50% of the financial consequences of wrongful payments that had been communicated by that Member State in accordance with Article 3 of Regulation No 595/91 and which had not been fully recovered on 16 October 2006. Included in those payments were cases of irregularities of an amount exceeding EUR 500 000, which had been communicated by the Italian Republic in accordance with Article 3 of Regulation No 595/91 before 1 January 1999 and which, pending the conclusion of the recovery proceedings, could not be included in Decision 2006/678, and other cases of an amount less than EUR 500 000, which had been subject to investigation by the task force during the second phase of its work.

Procedure and forms of order sought by the parties

25 By application lodged at the Registry of the Court on 9 July 2007, the Italian Republic brought the present action.

26 After a change in the composition of the Chambers of the Court, the Judge Rapporteur was attached to the Eighth Chamber, to which the present case was, consequently, assigned.

27 Upon hearing the report of the Judge Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure.

28 The parties presented their oral arguments and their replies to the questions put by the Court at the hearing on 18 April 2012.

29 The Italian Republic claims that the Court should:

— annul the contested decision inasmuch as it charged to it 50% of the financial consequences of the failure to recover in certain cases of irregularity or negligence referred to in the application;

— order the Commission to pay the costs.

30 The Commission contends that the Court should:

— dismiss the application;

— order the Republic of Italy to pay the costs.

Law

31 The Italian Republic essentially raises two pleas in law in support of its action. It alleges, first, an infringement of Article 8 of Regulation No 1663/95, of Article 5(2) of Regulation No 595/91 and of the obligation to state reasons and, secondly, an infringement of Article 8(2) of Regulation No 729/70, of Article 8(2) of Regulation No 1258/1999 and of the obligation to state reasons.

Infringement of Article 8 of Regulation No 1663/95, of Article 5(2) of Regulation No 595/91 and of the obligation to state reasons

32 The first plea is divided into two parts. The first part concerns cases of irregularities of an amount exceeding EUR 500 000, while the second part relates to cases of a lesser amount.

Cases of irregularities of an amount exceeding EUR 500 000

33 The Italian Republic argues that the Commission failed to adopt a formal decision concerning seven cases of irregularities of an amount exceeding EUR 500 000 in the context of Decision 2006/678. It concerns the following cases: Ilca SpA [IT/1989/003 (S)], Eurofeed SpA [IT/1991/003 (S)], Italtrading Srl (IT/1994/001), Codelme Srl (IT/1996/001), Codelme Srl (IT/1997/014), Europa Vini Srl (IT/1998/003), Italsemole Srl (IT/1996/018) ('the seven cases of irregularities of an amount exceeding EUR 500 000').

34 It claims/in its view, the Commission's unwarranted delays in taking a decision prevented the conclusion of the seven cases of irregularities of an amount exceeding EUR 500 000 before the adoption of the contested decision, which resulted in 50% of the charges being borne by the budget of the Italian Republic. The Commission had, for a reasonable period, all the information necessary to take cognisance, or not, of its being impossible to recover all of the sums subject to irregularities and to charge them either to the Community budget or to the budget of the Member State. By failing to act to do so, in that way, the Commission deprived the Italian authorities of the opportunity, where appropriate, of exercising their legal rights.

35 According to the Italian Republic, the first subparagraph of Article 8(1) of Regulation No 1663/95, which provides that the Member State is to reply within two months to the communication by which the Commission informed it of the results of an investigation, requires the Commission to meet the same two-month deadline when it must decide on the communications made pursuant to Article 5(2) of Regulation No 595/91.

36 In any event, the Italian Republic states that the lack of a specific deadline in Article 5(2) of Regulation No 595/91 does not justify a deadline within the limits indicated in the case-law being exceeded. However, that deadline had been significantly exceeded at the time the Commission adopted Decision 2006/678.

37 In its reply, the Italian Republic states that this plea is fully admissible in view of the fact that the interest in criticising the failure to include cases of an amount exceeding EUR 500 000 in Decision 2006/678 became clear only when those cases were included in the contested decision. According to the Italian Government, the failure to include the cases in question in Decision 2006/678 did not

mean necessarily that those cases would be included in the contested decision, but constituted only one of the conditions for that to happen. In the meantime, the Commission could have redefined the cases at issue, or even disregarded them, which would have led to no complaints from the Italian Government.

38 Furthermore, the Italian Republic claims that there is a failure to state reasons in the contested decision, since the Commission did not explain why the seven cases of irregularities of an amount exceeding EUR 500 000 had not been provided for in Decision 2006/678, nor did it give reasons for the delay in adopting the contested decision. It was only in the context of the present proceedings that the Italian Republic was informed of the reasons why the Commission had not taken a decision concerning the seven cases of irregularities of an amount exceeding EUR 500 000. The explanations provided by the Commission in its defence constitute, however, not only a statement of reasons which post-date the adoption of the contested decision, irrelevant for the purposes of assessing the lawfulness thereof, but also an argument which is insufficient in order to clarify the reasons for that decision. Since the concepts of 'absence of total recovery' and 'procedure in progress' are legal concepts, the Commission should not have merely stated that a given procedure was still pending/in progress, but should have made it clear why it considered that the recovery of the sums at issue was still possible.

39 The Commission contends, first of all, that the first plea for annulment raised by the Italian Republic is directed, in fact, not against the contested decision, but against Decision 2006/678. The Commission considers that this part of the first plea for annulment must therefore be declared inadmissible.

40 It is therefore necessary to assess the admissibility of that part of the first plea.

41 In that regard, the Italian Republic challenges, essentially, the lack of a formal Commission decision concerning the seven cases of irregularities of an amount exceeding EUR 500 000 in the context of Decision 2006/678. The Italian Republic considers that the Commission should have complied with a two-month deadline or, in any event, a reasonable deadline, to decide on the communications sent by the Member State pursuant to Article 5(2) of Regulation No 595/91. However, that deadline had been significantly exceeded at the time the Commission adopted Decision 2006/678.

42 It is necessary to point out that it cannot legitimately be maintained that that plea of the Italian Republic is not directed against Decision 2006/678. It is clear from a simple reading of the application and the reply that the arguments put forward by the Italian Republic concern not the lawfulness of the contested decision, but that of Decision 2006/678.

43 It is indeed true that, although the seven cases of irregularities of an amount exceeding EUR 500 000 were covered by Decision 2006/678, they were not included in the contested decision. It is nevertheless the case that Decision 2006/678 is not the subject of the present dispute and that, therefore, the pleas directed against that decision cannot result in the annulment of the contested decision and are thus ineffective in the circumstances.

44 Moreover, it should be noted, as was pointed out by the Commission, that, although the Italian Government sought to complain that the Commission did not adopt, in a reasonable deadline, an express decision, with adequate reasons, about the seven cases of irregularities of an amount exceeding EUR 500 000, it was open to it to request the Commission to decide on those cases and, where appropriate, to bring an action, under the second paragraph of Article 232 EC, for a declaration from the European Union courts that the Commission had failed to act.

45 In those circumstances, that complaint of the Italian Republic must be rejected as ineffective, and not as inadmissible.

46 Concerning the complaint alleging a failure to state reasons for the contested decision, it should be recalled that the statement of reasons required by Article 253 EC must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the European Union Court to exercise its power of review (see Case C-26/00 *Netherlands* v *Commission* [2005] ECR I-6527, paragraph 113, and Case T-48/04 *Qualcomm* v *Commission* [2009] ECR II-2029, paragraph 174 and the case-law cited).

47 In the present case, it is apparent from recital 11 in the preamble to the contested decision that, pursuant to Article 32(5) of Regulation No 1290/2005, 50% of the financial consequences of non-recovery of irregularities is to be borne by the Member State concerned and 50% by the Community budget if the recovery of those irregularities has not taken place within four years of the primary administrative or judicial finding, or within eight years if the recovery is taken to the national courts.

48 In light of the fact that, in accordance with Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) 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), which applies with effect from 16 October 2006 and Article 11(1) to (3) of which provides, essentially, for the same procedure as that provided for by Article 8 of Regulation No 1663/95, the Member States communicated the cases of irregularities for which full recovery of the sums had not taken place on 16 October 2006, that recital concludes that, on the basis of that information, the Commission must take a decision on the financial consequences of non-recovery of sums corresponding to irregularities which are, as the case may be, more than four or eight years old respectively.

49 It follows that that recital of the contested decision allowed the Italian Republic to know the reasons why the Commission decided to charge 50% of the financial consequences of the non-recovery to the Member State.

50 In any event, although, by that complaint, the Italian Republic seeks to contest a failure to state reasons for Decision 2006/678, in so far as it was not explained in that decision why the seven cases of irregularities of an amount exceeding EUR 500 000 had not been dealt with in that decision, that complaint must be rejected as ineffective. It was, a finding of a possible failure to state reasons for Decision 2006/678 can in no way result in the annulment of the contested decision.

51 Furthermore, it should be noted that the decisions taken by the Commission concerning the clearance of EAGGF accounts are taken on the basis either of summary reports or of correspondence between the Commission and the Member State (Case C-132/99 *Netherlands* v *Commission* [2002] ECR I-2709, paragraph 39). In those circumstances, the statement of reasons for such decisions must be regarded as sufficient if the Member State to which those decisions were addressed was closely involved in the process by which they came about and was aware of the reasons for which the Commission took the view that it should not charge the sum in dispute to the EAGGF (Case C-130/99 *Spain* v *Commission* [2002] ECR I-3005, paragraph 126).

52 However, it should be noted, as the Commission contends, that the summary report AGRI-2006-62645-01-00, referred to in paragraph 21 above, includes a detailed explanation of the corrections in Decision 2006/678. In that document, in paragraph 4, under the heading ‘Report on decisions about the financial consequences of the non-recovery of sums related to irregularities’, the Commission clearly stated that it had declared, in several cases of irregularities prior to 1999, that the recovery procedures were still pending before the national courts, although the national authorities had acted until then with all due diligence. The Commission, consequently, considered that it was no longer possible to close those cases, since the corresponding amount could not be borne by the Community budget, as recovery was still possible, or by the budget of the Member State concerned,

since the national authorities had not acted negligently. It concluded that it was necessary to await the outcome of the pending national legal proceedings in order to be able to decide on the financial consequences of a possible failure to recover and that those cases had, therefore, been excluded from the scope of application of Decision 2006/678.

53 Consequently, the complaint alleging a failure to state reasons for the contested decision must be rejected as unfounded and, in any event, as concerns the alleged failure to state reasons for Decision 2006/678, as ineffective.

54 Having regard to all the foregoing considerations, the first part of the first plea must be rejected.

Cases of irregularities of an amount less than EUR 500 000

55 The Italian Republic claims, with regard to cases of irregularities of an amount less than EUR 500 000 cleared by the contested decision, that the subject of that decision is influenced by the fact that the Commission delayed, without any justification, taking decisions relating to those cases beyond a reasonable period. Furthermore, the Commission acknowledged, in its defence, that those cases did not appear to require supplementary explanations from the Italian authorities and that they were included in the procedure entrusted to the task force only on account of requirements relating to administrative procedural economy. As a result of that delay, for which no reasons at all were given, the cases in question were included in the contested decision and were therefore subject to the application of Article 32 of Regulation No 1290/2005, with the consequence that 50% of the corresponding charges were borne by the national budget.

56 In the first place, the Italian Republic complains that the Commission did not take a decision in a reasonable time concerning 25 cases of irregularities of an amount less than EUR 500 000 already included in a clearance procedure initiated in 2001 and with respect to which the liability of the EAGGF had already been declared by OLAF in a note of 12 June 2001. It concerns the following cases: Coprap (IT/1987/001), Tabacchi Levante (IT/1987/002), Casearia Sarda (IT/1991/001), Beca (IT/1994/009), Soc.Coop.Super (IT/1995/003/A), Vinicola Magna (IT/1995/005/A), Eurotrade (IT/1995/015/A), COASO – Italiana Tabacchi (IT/1995/016/A), Ionia (IT/1995/017/A), Beca (IT/1995/018), Addeo Fruit (IT/1995/021), Quaranta (IT/1996/003), D'Apolito (IT/1996/007), Sibillo (IT/1996/016), Agrocom (IT/1996/019), Procaccini (IT/1996/020), Addeo Fruit (IT/1996/023), Mediterrane Vini (IT/1996/001), Oleificio Centro Italia (IT/1996/029), Procaccini (IT/1997/002), Soc.Coop.Super (IT/1997/006/A), Savict (IT/1997/01), Agricola S. Giuseppe (IT/1997/012), Terra D'Oro (IT/1997/017/A), Toscana Tabacchi (IT/1997/018) ('the 25 cases of irregularities').

57 Secondly, the Italian Government complains that the Commission was late in clearing 36 other cases of irregularities, not included in OLAF's note of 12 June 2001 and in respect of which the Italian authorities unsuccessfully requested the Commission services to assign them to the Community budget. The Italian Republic makes reference, by way of example, to seven cases referred to in two SAISA notes of 6 and 13 October 2006. The reference concerns the following cases of irregularities: Codelme Cabosa (IT/III/98/12), Centro Sud Conserve (IT/4/98/16), Agroverde (IT/I/95/9), Racaniello Rosa (IT/3/95/19), Agricola Paduli (IT/00/11), Vinicola Vedovato Mario (IT/3/96/26) and Agricola Paduli (IT/95/12).

58 The Italian Government considers that the Commission's failure to comply with its obligation to take a decision within a reasonable time resulted in the files corresponding to 36 other cases of irregularities coming within the field of application of Article 32(5) of Regulation No 1290/2005, with the result/consequence that 50% of the financial consequences would be borne by the national budget.

59 It should be noted, first of all, that no rule of law required the Commission to adopt a decision relating to a special notification under Article 5(2) of Regulation No 595/91 within a specific period (Case T-236/07 *Germany* v *Commission* [2010] ECR II-5253, paragraph 63).

60 However, according to a general principle of law, the Commission is required to act within a reasonable time in the context of its administrative procedures (see, to that effect, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 179; and Case T-196/01 *Aristoteleio Panepistimio Thessalonikis* v *Commission* [2003] ECR II-3987, paragraph 229).

61 The obligation to conduct administrative procedures within a reasonable time is a general principle of European Union law which is enforced by the European Union Courts and set forth, as an element of the right to good administration, in Article 41(1) of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1) (Case T-394/03 *Angeletti* v *Commission* [2006] ECR-SC I-A-2-95 and II-A-2-441, paragraph 162).

62 It is established case-law that the reasonableness of the length of an administrative procedure must be appraised in the light of the circumstances specific to each case and, in particular, its context, the various procedural stages followed, the complexity of the case and its importance for the various parties involved (Case C-501/00 *Spain* v *Commission* [2004] ECR I-6717, paragraph 53).

63 In the present case, it should be pointed out that, although it is true that the legislation in force does not impose a specific deadline on the Commission to adopt a decision on liability for financial consequences in cases of communication by the Member State, pursuant to Article 5(2) of Regulation No 595/91, it is nevertheless the case that it is necessary to assess the reasonableness of the length of the administrative procedure and, where it exceeds a reasonable period, to establish whether that fact could have affected on the contested decision.

64 With regard, in the first place, to the 25 cases of irregularities, it is not disputed, as the Commission confirmed during the hearing, that they concern cases communicated by the SAISA to the Commission before 1995.

65 Those 25 cases were part of a collection of more than a thousand cases of irregularities communicated by the Italian Republic before 1995. However, they concern the only cases of irregularities which had not required supplementary explanations from the Italian authorities.

66 OLAF, in its note of 12 June 2001, stated that that note constituted an ‘official notification under Article 8(1) of Regulation No 1663/95’ and explained, with respect to a first group of cases included in Annex 1 thereto, as follows: ‘cases with respect to which the competent authorities declared that the amounts at issue must be regarded as irrecoverable and which we agree should be borne by the EAGGF, Guarantee Section … .’

67 The Commission adopted the contested decision, including the 25 cases of irregularities, only on 27 April 2007.

68 Since those cases of irregularities were communicated to the Commission before 1995, but were not included in a Commission decision regarding the clearance of the accounts until 27 April 2007, the clearance procedure relating to them lasted, in total, more than 10 years.

69 Furthermore, it should be noted that, as from June 2001, that is to say, about six years before the adoption of the contested decision, the Commission had accepted that the amounts corresponding to 25 cases of irregularities were irrecoverable and that they be borne by the EAGGF.

70 In order to justify that period, the Commission explains that, although it was able to carry out, in 2003, the clearance of the financial consequences of cases of irregularities communicated before 1995 by the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland, since OLAF had succeeded in resolving all the cases of irregularities communicated before 1995 by those Member States, the situation remained very confused with regard to the Italian Republic because of the large number of continuing recovery procedures, not only because of the very vague and incomplete answers provided by the Italian authorities.

71 The Commission asserts that it could not include the 25 cases of irregularities in the same 2003 decision in order to undertake an overall analysis of the Italian situation and ensure the necessary administrative procedural economy. The Commission has, therefore, decided not to carry out the clearance of the cases communicated by the Italian Government before 1995, which were included, with those communicated after that date and until 1999 in the work of the task force created in 2003.

72 Furthermore, the Commission states that, since the task force began by focusing on the cases of an amount exceeding EUR 500 000, which represented 85% of the amounts to be recovered, it was only during the first months of 2005 that the task force was able to begin the analysis of the cases of an amount less than EUR 500 000, that is to say, more than 3 800 cases, the majority of which had been communicated by the Italian Republic.

73 The adoption of Regulation No 1290/2005, on 21 June 2005, meant, according to the Commission, that all the cases, including the 25 cases of irregularities, communicated before 16 October 2006 in the context of Article 3 of Regulation No 595/91 and with respect to which full recovery had not yet taken place, automatically came within the field of application of Article 32(5) of that regulation.

74 It must be pointed out that, even taking into account the large number of recovery procedures under way in Italy and the need for the Commission to undertake an overall analysis of the Italian situation and ensure the necessary administrative procedural economy, it could not validly be alleged that the length of that administrative procedure with respect to the 25 cases of irregularities was reasonable.

75 First, it should be noted that, since June 2001, the 25 cases of irregularities did not require any examination by the Commission, or any supplementary information from the Member State. That fact was confirmed by the Commission both in its written pleadings and during the hearing.

76 Secondly, the large number of other cases of irregularities concerning the Italian Republic which were still in the process of being defined in no way prevented the Commission from closing the procedure relating to the 25 cases of irregularities with a formal decision. It was, apart from the fact that all those cases of irregularities concerned the same Member State, there was no other technical or legal similarity between the 25 cases of irregularities and the other cases of irregularities concerning the Italian Republic which prevented the Commission from deciding the 25 cases of irregularities in a separate decision.

77 Third, the Italian Republic can in no way be held responsible for the delay in the definition of the 25 cases of irregularities. In particular, with regard to the period after the OLAF note of 12 June 2001, it has already been pointed out, in paragraph 75 above, that no supplementary information or clarification concerning those cases had been requested by the Commission from the Italian Republic. It follows that, even if, acknowledging, as the Commission claims, the situation of the cases of irregularities communicated by the Italian Republic was confused because, in particular, of vague and incomplete answers provided by the Italian authorities, none of those answers concerned the 25 cases of irregularities. Therefore, the Italian Republic in no way contributed to extending/prolonging the duration of the administrative procedure after June 2001.

78 In the light of the foregoing, it must be held that, with regard to the 25 cases of irregularities, the Commission failed to respect a reasonable time-limit in the conduct of the administrative procedure.

79 It is necessary, next, to determine/assertion whether the breach of that principle can lead to the annulment of the contested decision with respect to those cases.

80 It should be noted that a breach of the 'reasonable time' principle does not, as a general rule, warrant annulment of a decision adopted following an administrative procedure. It is only where the undue delay is likely to have an effect on the substance itself of the decision adopted following the administrative procedure that the failure to observe the 'reasonable time' principle affects the validity of the administrative procedure (see, to that effect, Order of the Court of 13 December 2000 in Case C-39/00 P *SGA* v *Commission* [2000] ECR I-11201, paragraph 44; see also, by analogy, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 203; and Case T-240/07 *Heineken* v *Commission* [2011] ECR II-3355, paragraph 295).

81 In the present case, it should be recalled that the Italian Republic complains about the Commission's delay in adopting the contested decision concerning the 25 cases of irregularities and the consequences of that delay for that decision.

82 In that regard, it should be noted that, under the provision in force before the adoption of Regulation No 1290/2005 and applicable to those 25 cases, namely, Article 8(2) of Regulation No 729/70, in the absence of full recovery, the financial consequences of the irregularities or negligence would have been borne by the Community budget, except/save the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

83 However, OLAF had acknowledged, in its note of 12 June 2001, that the amounts concerning the 25 cases of irregularities had to be regarded as irrecoverable and be borne by the EAGGF.

84 Consequently, a Commission decision adopted under Article 8(2) of Regulation No 729/70 would have charged all of the financial consequences of the 25 cases of irregularities to the EAGGF.

85 It follows that it is only as a result of the lapse of time, in particular, of the Commission's delay in adopting the contested decision and of the change of the applicable legislation, that 50% of those consequences was borne by the Italian Republic and 50% by the EAGGF.

86 In those circumstances, to the extent that the excessive lapse of time had an effect on the actual contents of the decision adopted following the administrative procedure, the infringement of the 'reasonable time' principle constitutes a ground for the partial annulment of the contested decision in so far as it charged 50% of the financial consequences of the 25 cases of irregularities to the Italian Republic.

87 With regard, in the second place, to the other cases of irregularities of an amount less than EUR 500 000 not included in OLAF's note of 12 June 2001 and with respect to which the Italian authorities also allege infringement of the 'reasonable time' principle, it should be noted that the Italian Republic confines itself to providing a summary table annexed to the application which refers to 36 cases of irregularities, 22 of which are stated to be still pending, the other 14 to be closed.

88 In that regard, it should be noted that Article 5(2) of Regulation No 595/91 provides that '[w]here a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it shall inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State'. That article states that '[t]his information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8(2) of Regulation … No 729/70'.

89 Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999 provide that, in the absence of full recovery, the financial consequences of irregularities or negligence shall be borne by the European Union, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

90 It follows that, pursuant to those provisions, while the recovery procedures are under way and recovery of wrongly paid sums remains foreseeable, the possibility of charging the corresponding financial consequences to the Community budget is precluded.

91 In the light of that consideration, with regard to the 22 cases of irregularities described as being still pending in the summary table referred to in paragraph 87 above, it should be pointed out that the recovery procedures concerning those cases were not closed and that, consequently, under Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999, the corresponding sums could not be charged to the EAGGF.

92 It is true that the file contains two communications by the Italian authorities concerning the closure of seven of those 22 cases as a result of the irrecoverable nature of the claims at issue. However, those communications were not made until 6 and 13 October 2006.

93 However, under the third subparagraph, second indent, of Article 49 of Regulation No 1290/2005, Article 32 of that regulation applies to cases of irregularities which have been communicated in the context of Article 3 of Regulation No 595/91 and for which full recovery has not yet taken place by 16 October 2006.

94 It should be noted, therefore, that since those communications were made by the Italian authorities only on 6 and 13 October 2006, the Commission did not have the time necessary to carry out, before 16 October 2006, the investigations required in order to establish the impossibility of recovering debts corresponding to those cases of irregularities and, consequently, to decide who should bear the financial consequences of those cases, in accordance with Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999. Therefore, from 16 October 2006, those cases automatically came within the field of application of Article 32(5) of Regulation No 1290/2005.

95 Concerning the 14 other cases of irregularities which are described in the table referred to in paragraph 87 above as being closed, it should be noted that the file does not contain any special communication from the Italian authorities, within the meaning of Article 5(2) of Regulation No 595/91. Furthermore, nor does the file contain any communication from the Commission confirming that the amounts in question are irrecoverable.

96 In those circumstances, it must be held that the Italian Republic has not provided sufficient evidence, in view of the case-law referred to in paragraph 62 above, to allow the Court to assess the reasonableness of the length of the administrative procedure concerning those cases and, still less, whether any excessive length/duration of that procedure can be attributed to the Commission.

97 In the light of the foregoing, an infringement of the ‘reasonable time’ principle concerning the 36 cases referred to in the present case has not been established.

98 It follows from all of the foregoing that the second part of the first plea must be upheld as regards the 25 cases of irregularities included in OLAF’s note of 12 June 2001 and rejected as to the remainder.

Infringement of Article 8(2) of Regulation No 729/70, of Article 8(2) of Regulation No 1258/1999 and of the obligation to state reasons

99 In the context of the second plea, first, the Italian Republic claims, concerning the seven cases of irregularities of an amount exceeding EUR 500 000, that, at the time Decision 2006/678 was adopted, the criteria for a decision in its favour were met, since the Italian authorities had provided evidence of their diligence in the management of the recovery procedures relating to those cases. The exclusion of those cases from Decision 2006/678 and their inclusion in the contested decision, with the consequence that 50% of the corresponding amounts was charged to the Member State, is therefore clearly incompatible with the provisions of Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999.

100 Secondly, the Italian Republic claims, essentially, that the Commission considered wrongly that the Italian administrative authorities or bodies had shown themselves negligent in the performance of their obligations/carrying out of its obligations under Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999, so that it was not justified in charging to the Italian Republic 50% of the financial consequences of the alleged negligence both as regards/with regard to/in respect of the seven cases of irregularities of an amount exceeding EUR 500 000 and the other cases of an amount less than that threshold included in the contested decision.

101 The Italian Republic claims that, in the light of the applicable national rules, the length of the periods elapsed is not, in itself, sufficient to establish negligence on its part. It claims that, in accordance with those rules, in cases of irregularities communicated to the AGEA, following checks/inspections made by third parties, it was only at the end of the first assessment issued by the judicial authorities that the Italian Republic could have demanded recovery of the amounts concerned and that the claim would met the criteria that the claim be certain, be for a specific amount and have fallen due necessary under Italian law in order to make that demand. Consequently, the Commission should have taken into account the time necessary for those criteria to be met so as to assess the length of the periods in order to establish the alleged negligence of the Italian Republic, in accordance with Article 8(2) of Regulation No 729/70 and Article 8(2) of Regulation No 1258/1999.

102 Thirdly, according to the Italian Republic, the contested decision is vitiated by a failure to state reasons in that/inasmuch as it does not set out the reasons which, notwithstanding the Italian authorities' diligence, led the Commission to charge 50% of the amounts corresponding to the cases in question to the national budget.

103 The Commission points out that the complaints concerning the cases of an amount exceeding EUR 500 000 put forward by the Italian Republic in the context of the present plea do not refer to the contested decision, but to Decision 2006/678. The Commission states that, for the purposes of disputing Decision 2006/678 in that as it fails to decide on the cases in question, the Italian Government brought an action for annulment in Case T-394/06, in which it has already asserted the alleged diligence with which the recovery procedures relating to those cases of irregularities were managed.

104 In that regard, it should be noted that Decision 2006/678 is not the subject of the present action and, consequently, that none of the complaints against that decision, even assuming that they are admissible and well-founded, can lead to the annulment of the contested decision and they must, therefore, be rejected as ineffective.

105 With regard to the Italian Government's disputing that it cited negligently in performing its obligations concerning recovery of wrongly paid sums, it should be pointed out that it is based on a false premiss.

106 In the contested decision, the Commission did not rely on the negligence of the Italian authorities in order to charge 50% of the financial consequences corresponding to the cases in question to the national budget. It relied on Article 32(5) of Regulation No 1290/2005, according to which with respect to amounts for which recovery has not taken place within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts, 50% of the financial consequences of non-recovery are to be borne by the Member State concerned and 50% by the Community budget.

107 In the previous system, under Article 8(2) of Regulation No 1258/1999, the financial consequences of irregularities or negligence were borne by the Community, except the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States. However, by adopting Regulation No 1290/2005, the Council of the European Union set itself the objective in particular of creating a procedure which allows the Commission to uphold the interests of the Community budget by deciding to charge to the Member State concerned part of the amounts lost as a result of irregularities and which have not been recovered within reasonable deadlines (recitals 25 and 26). Thus, Article 32(5) of Regulation No 1290/2005 provides that the amounts for which recovery has not taken place within four or eight years of the primary administrative or judicial findings of fact are thereafter attributed equally between the Member State and the Community budget (*Germany* v *Commission*, paragraph 49).

108 It follows that the provision in question allows the Commission to charge to the Member State 50% of the sums lost as a result of irregularities or which are not recovered in a reasonable time, without having to show case by case that the failure to recover or the delay in recovering the sums in question is the result of the negligence of the national authorities. The charging to the national budget of 50% of the financial burden resulting from the failure to recover or the delay in recovering is an automatic consequence of the mere passage of time.

109 In those circumstances, the present complaint of the Italian Republic must be rejected.

110 With regard to the alleged failure to state reasons for the contested decision, it suffices to point out, as the Commission correctly contends, that, given that the contested decision does not rely on the negligence of the Italian authorities in order to charge 50% of the financial consequences corresponding to the cases in question to the national budget, but merely applied Article 32(5) of Regulation No 1290/2005, the Commission could fulfil the obligation to state reasons by referring simply to that provision. However, as the Court has already pointed out in paragraphs 47 to 49 above, recital 11 in the preamble to the contested decision makes clear reference to Article 32(5) of Regulation No 1290/2005.

111 Consequently, the statement of reasons for the contested decision must be considered sufficient in that regard.

112 It follows from the foregoing that the second plea must be rejected.

113 It follows from all the foregoing considerations that the contested decision must be partially annulled, in that/inasmuch as the Commission charged to the Italian Republic 50% of the financial consequences of the failure to recover with respect to the 25 cases of irregularities. The present action is dismissed as to the remainder.

Costs

114 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Moreover, under Article 87(3) thereof, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the General Court may order that the costs be shared or that each party bear its own costs.

115 In the light of the fact that the Italian Republic has been unsuccessful, except as regards liability for 50% of the financial consequences of the failure to recover in 25 cases of irregularities, it must be ordered to pay four fifths of its own costs and four fifths of the costs incurred by the Commission.

116 The Commission is to pay one fifth of its own costs and one fifth of the costs incurred by the Italian Republic.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Annuls Commission Decision 2007/327/EC of 27 April 2007 on the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2006 financial year in that that the Commission charged to the Italian Republic 50% of the financial consequences of the failure to recover with respect to the following cases of irregularities: Coprap (IT/1987/001), Tabacchi Levante (IT/1987/002), Casearia Sarda (IT/1991/001), Beca (IT/1994/009), Soc.Coop.Super (IT/1995/003/A), Vinicola Magna (IT/1995/005/A), Eurotrade (IT/1995/015/A), COASO – Italiana Tabacchi (IT/1995/016/A), Ionia (IT/1995/017/A), Beca (IT/1995/018), Addeo Fruit (IT/1995/021), Quaranta (IT/1996/003), D'Apolito (IT/1996/007), Sibillo (IT/1996/016), Agrocom (IT/1996/019), Procaccini (IT/1996/020), Addeo Fruit (IT/1996/023), Mediterrane Vini (IT/1996/001), Oleificio Centro Italia (IT/1996/029), Procaccini (IT/1997/002), Soc.Coop.Super (IT/1997/006/A), Savict (IT/1997/01), Agricola S. Giuseppe (IT/1997/012), Terra D'Oro (IT/1997/017/A), Toscana Tabacchi (IT/1997/018).**

2. **Dismisses the action as to the remainder.**

3. **Orders the Italian Republic to pay four fifths of its own costs and four fifths of the costs incurred by the European Commission.**

4. **Order the Commission to pay one fifth of its own costs and one fifth of the costs incurred by the Italian Republic.**

Truchot Martins Ribeiro Popescu

Delivered in open court in Luxembourg on 7 June 2013.

[Signatures]

Table of contents

Legal context 1

Background to the dispute 5

Procedure and forms of order sought by the parties 6

Law 7

Infringement of Article 8 of Regulation No 1663/95, of Article 5(2) of Regulation No 595/91 and of the obligation to state reasons 7

Cases of irregularities of an amount exceeding EUR 500 000 7

Cases of irregularities of an amount less than EUR 500 000 10

Infringement of Article 8(2) of Regulation No 729/70, of Article 8(2) of Regulation No 1258/1999 and of the obligation to state reasons 15

Costs 17