JUDGMENT OF THE COURT (Fifth Chamber)
16 October 2003 *

In Case C-339/00,

Ireland, represented by D.J. O'Hagan, acting as Agent, assisted by R. Brady, SC, and A.M. Collins, BL, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. Niejahr and K. Fitch, acting as Agents, assisted by J. O'Reilly, SC, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49) in so far as it excludes from Community financing the sum of EUR 4 844 345.35 in afforestation aid paid by Ireland for the financial years 1997 and 1998,

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges,

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 26 June 2002, at which Ireland was represented by A.M. Collins and E. Fitzsimons, SC, and the Commission by M. Niejahr and K. Fitch,

after hearing the Opinion of the Advocate General at the sitting on 6 February 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 September 2000, Ireland brought an action under the first paragraph of Article 230 EC for annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49) ('the contested decision') in so far as it excludes from Community financing the sum of EUR 4 844 345.35 in afforestation aid paid by that Member State for the financial years 1997 and 1998.

Legal background

Legislation governing clearance of the EAGGF accounts

2 Article 5(2)(c) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), ('Regulation No 729/70') provides:

'The Commission, after consulting the Fund Committee:

...

(c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

...'

3 The conciliation procedure referred to in Article 5(2)(c) of Regulation No 729/70 is governed by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee

Section (OJ 1994 L 182, p. 45). Article 1(1) of that decision set up a conciliation body which may intervene in the clearance procedure. According to Article 1(2)(a), 'the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts'.

4 Regulation No 729/70 was repealed and replaced by Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

5 Article 16 of Regulation No 1258/1999 provides in that regard:

'1. Regulation (EEC) No 729/70 shall be repealed.

2. References to the repealed Regulation shall be construed as references to this Regulation and should be read in accordance with the correlation table set out in the Annex.'

6 Article 20 of Regulation No 1258/1999 states:

'This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

It shall apply to expenditure effected as from 1 January 2000.'

Legislation governing aid for forestry measures

7 Council Regulation (EEC) No 2080/92 of 30 June 1992 instituting a Community aid scheme for forestry measures in agriculture (OJ 1992 L 215, p. 96) provides for grants of Community aid for the afforestation of agricultural land. That aid falls under the expenditure referred to in Article 5(2)(c) of Regulation No 729/70.

8 The second recital in the preamble to Regulation No 2080/92 states:

'... experience in matters of afforestation of agricultural land by farmers shows that existing aid schemes for promoting afforestation are insufficient;... afforestation of agricultural land withdrawn from agricultural production in recent years has proved unsatisfactory'.

9 According to the sixth recital in the preamble to Regulation No 2080/92:

'..., in order to increase afforestation of agricultural land as a way of furthering the aims of the common agricultural policy (CAP), it is necessary to introduce premiums to compensate for the income loss incurred by farmers during the non-productive period of afforested agricultural land'.

10 According to the seventh recital in the preamble to that regulation:

'..., in many cases, private persons other than farmers are in a position to undertake afforestation of agricultural land and... provisions should be made for incentives to be offered to such persons;..., therefore, a premium per hectare should be introduced for the benefit of private persons other than farmers who undertake afforestation of agricultural land'.

11 Article 2 of Regulation No 2080/92 provides:

'1. The aid scheme may comprise:

(a) aid for afforestation costs;

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

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

...

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

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

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

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

...

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

12 Under the first indent of Article 4(1) of Regulation No 2080/92:

'Member States shall implement the aid scheme referred to in Article 2 by means of national or regional multiannual programmes covering the objectives laid down in Article 1 and which set out in particular:

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

13 Article 5 of Regulation No 2080/92 provides:

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

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

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

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

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

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

...'

Facts and pre-litigation procedure

14 Until the end of the 1980s, the Irish State owned approximately 400 000 hectares of forest, which it managed directly.

15 By the Forestry Act 1988, the Irish Parliament authorised the incorporation of Coillte Teoranta (the Forestry Board) to develop forestry and perform functions previously exercised by the Minister for Finance and the Minister for Energy.

16 Coillte Teoranta was incorporated on 8 December 1988 as a 'private company' under the Companies Act 1963, that is to say, a company limited by shares which limits the number of its members to 50, restricts the right to transfer shares and prohibits any invitation to the public to subscribe for shares. The Minister for Finance acquired all the shares in Coillte Teoranta. Nevertheless, under the Forestry Act 1988, this company was under an obligation to exercise its activities independently of the State and on a purely commercial basis.

17 The issue of Coillte Teoranta's status and its classification as a private-law legal person within the meaning of Article 2(2)(b) of Regulation No 2080/92 was raised in the course of meetings between the Commission and the Irish Department of Agriculture, Food and Forestry held between July and October 1992.

18 By letter of 26 January 1993, that department answered various questions put by the Commission with regard to the status of Coillte Teoranta.

19 The Commission made no observations with respect to that reply.

20 In July 1993, Ireland submitted to the Commission, in accordance with Regulation No 2080/92, a national multi-annual afforestation programme, which was approved by the Commission on 27 April 1994.

21 On 8 December 1994, the Commission approved the 'Operational Programme for Agriculture, Rural Development and Forestry (1994-1999)'.

22 In July 1996, the Minister for Agriculture, Food and Forestry published a 'Strategic Plan for Development of the Forestry Sector in Ireland', which stated that Coillte Teoranta satisfied the conditions necessary for the grant of aid under Community schemes.

23 Until 1997, the EAGGF reimbursed to Ireland the amounts claimed in respect of afforestation aid paid to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92.

24 Since September 1994, Coillte Teoranta has funded part of the cost of its operations by way of loans borrowed from commercial banks against grants and premiums to be received under Regulation No 2080/92 for afforestation programmes. Relying on estimates drawn up at the end of 1998, Coillte Teoranta has thus borrowed IEP 24 400 000 in anticipation of receiving premiums for land afforested between 1993 and 1998.

25 Following various exchanges of correspondence and a bilateral meeting, the Commission informed the Irish Government, by letter of 3 August 1999, that it was proposing to adopt a decision excluding from Community financing certain amounts of afforestation aid paid to Coillte Teoranta from 1 August 1996. According to that letter, Coillte Teoranta was a public entity which, under Article 2(2)(b) of Regulation No 2080/92, could not claim the premium provided for in Article 2(1)(c). By that letter, the Commission also rejected the Irish authorities' complaint alleging that there had been an infringement of the principle of the protection of legitimate expectations.

26 By letter of 11 October 1999, Ireland requested initiation of a conciliation procedure under Decision 94/442.

27 In its final report of 30 March 2000, the conciliation body set up by Decision 94/442 found that it was impossible to reconcile the positions of the two parties.

28 On 5 July 2000, the Commission adopted the contested decision.

The first plea

Arguments of the parties

29 By its first plea, Ireland submits that the Commission lacked competence to adopt the contested decision on the basis of Regulation No 729/70, as that regulation had been repealed by Regulation No 1258/1999.

30 Ireland argues that, upon the entry into force of Regulation No 1258/1999 in July 1999, Article 16(1) of that regulation repealed Regulation No 729/70. Since Regulation No 729/70 had been repealed by the time the contested decision was adopted, it was, in Ireland's view, incapable of providing the legal basis for that decision. Moreover, neither could Regulation No 1258/1999 constitute an appropriate basis because, under Article 20 of that regulation, it is to apply only to expenditure effected from 1 January 2000, that is to say, from a date occurring after the expenditure at issue had been effected.

31 Ireland adds that the Community legislature could easily have inserted a transitional provision into Regulation No 1258/1999 but did not do so.

32 The Commission contends, on the contrary, that Regulation No 729/70 was the correct basis for the contested decision. It takes the view that Regulation No 1258/1999 is not in fact applicable to the present case since the expenditure in question was effected in the financial years 1997 and 1998 and thus predates 1 January 2000.

33 The Commission accepts that the transition between the two regulations is not a model of clarity. However, it argues that the repeal of Regulation No 729/70 does not preclude its application to expenditure effected before 1 January 2000. There is necessarily implied into Regulation No 1258/1999 a transitional provision to ensure that expenditure effected under Regulation No 729/70 will continue to be dealt with under the earlier regulations until the new regulations are fully effective.

Findings of the Court

34 It is necessary to determine whether the contested decision could properly be adopted on the basis of Regulation No 729/70.

35 Although Article 16(1) of Regulation No 1258/1999 provides for the repeal of Regulation No 729/70, it follows from the 16th recital in the preamble to Regulation No 1258/1999 that the aim of the legislature was, in the light of the new amendments which had been made to Regulation No 729/70, to recast the applicable provisions with a view to ensuring clarity.

36 The provisions of Regulation No 729/70 are thus reproduced in Regulation No 1258/1999. Indeed, Article 16(2) of the latter regulation provides that references to the repealed regulation are to be construed as references to Regulation No 1258/1999 and should be read in accordance with the correlation table set out in the annex. Regulation No 1258/1999 thus represents a continuation of the rules laid down by Regulation No 729/70.

37 It is in this context that Article 16(1) of Regulation No 1258/1999 must be interpreted. As the Advocate General noted in points 20 to 24 of his Opinion, the purpose of Article 16(1), read in conjunction with Article 20 of that regulation, is not to interrupt the application of the rules on the financing of the common agricultural policy, thereby creating a legal vacuum undermining the effectiveness of Regulations No 729/70 and No 1258/1999.

38 Thus, as undesirable as the absence of transitional provisions making it possible to identify clearly the relationship between Regulations No 729/70 and No 1258/1999 and thereby to ensure that legislation is sufficiently comprehensible may be, the repeal declared in Article 16(1) of Regulation No 1258/1999 did not limit the Commission's obligation to monitor the conformity with the Community rules of expenditure effected by the Member States up to 31 December 1999 in the field of the common agriculture policy.

39 In the light of all these findings, it must be held that the contested decision, in so far as it covers the financial years 1997 and 1998, was properly adopted on the basis of Regulation No 729/70.

The second plea

40 By its second plea, Ireland submits, first, that the contested decision misapplies Regulation No 2080/92 inasmuch as Coillte Teoranta is a private-law legal person for the purposes of Article 2(2)(b) of that regulation. It argues, second, that, in adopting that decision, the Commission acted in breach of its obligations relating to cooperation in good faith, legal certainty and sound administration and that it infringed the principle of the protection of legitimate expectations.

The first limb of the second plea: misapplication of Regulation No 2080/92

Arguments of the parties

41 Ireland claims that Coillte Teoranta is a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92 and that it was therefore entitled to receive the aid referred to in Article 2(1)(c) of that regulation.

42 Ireland argues that, even though the term 'private-law legal person' as opposed to 'public-law legal person' is unusual in countries of the common law tradition, Coillte Teoranta was established in the form of a private company under the Companies Act 1963 and that form is equivalent to that of private-law companies in the Member States in which that concept is commonly used, such as the French Republic, the Federal Republic of Germany or the Kingdom of Spain.

43 The fact that Coillte Teoranta is a public undertaking wholly owned by the State does not preclude it from being a private-law legal person. Ireland claims that the Council expressly defined the persons eligible for aid in terms of their legal status and not in terms of the rules of economic ownership, whether public or private, to which they are subject.

44 Ireland also submits that Regulation No 2080/92 is intended to ensure that a maximum area of agricultural land is afforested by granting financial support to the natural and legal persons undertaking that afforestation. The provisions on the persons eligible for aid must therefore, as Ireland suggests, be construed broadly.

45 Ireland submits, moreover, that Coillte Teoranta is not a 'public authority' within the meaning of Article 2(3) of Regulation No 2080/92. It concedes that, in Case C-306/97 *Connemara Machine Turf* [1998] ECR I-8761 (paragraph 35) and Case C-353/96 *Commission* v *Ireland* [1998] ECR I-8565 (paragraph 40), which were concerned with the public procurement sector, the Court ruled that Coillte Teoranta was a 'public authority whose public supply contracts are subject to control by the State'. However, it argues that the term 'public authority' should be applied with caution as, in those judgments, the concept in question was examined in a different context — namely that of public procurement — and in the light of a directive which has since been repealed. Ireland submits that Coillte Teoranta is not a 'body governed by public law' for the purposes of the new public procurement directives. It points out, in particular, that the company is managed on a commercial basis and that the Irish State does not play a role in its decision-making process.

46 In any event, Ireland argues that, even if, contrary to the position defended by it, Coillte Teoranta were to be regarded as a public authority within the meaning of Article 2(3) of Regulation No 2080/92, that would not preclude it from being at the same time a private-law legal person and, therefore, from being able to claim the aid in question under Article 2(1)(c) of that regulation.

47 Ireland adds that, in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), which replaced Regulation No 2080/92, the Council made a point of defining the persons eligible for aid differently. It submits further that, under Commission Regulation (EC) No 1750/1999 of 23 July 1999 laying down detailed rules for the application of Regulation No 1257/1999 (OJ 1999 L 214, p. 31), forests of whose capital the State holds at least 50% are excluded from afforestation aid. Ireland draws the contrary inference that, since Regulation No 2080/92 did not contain such an exclusion, Coillte Teoranta was entitled to receive the aid in question.

48 The Commission contends, conversely, that Coillte Teoranta is not a private-law legal person for the purposes of Article 2(2)(c) of Regulation No 2080/92, but that it is, on the contrary, a public authority within the meaning of Article 2(3) and was therefore not eligible to receive the aid in question.

49 The Commission relies on the purpose of Regulation No 2080/92. It claims that that regulation was adopted as part of the 1992 reform of the common agricultural policy. Since the existing aid schemes had failed to encourage farmers to withdraw sufficient areas of land from agricultural production, the regulation was, according to the Commission, intended to provide greater incentives to do so. It provided, in particular, for compensation for loss of income suffered during the non-productive period of newly afforested land.

50 The Commission claims that it is clear from the seventh recital in the preamble to Regulation No 2080/92 that the aid in question is intended for farmers and other private persons but not for Member States or bodies governed by public law.

51 The Commission argues that there is no doubt that Coillte Teoranta is a public undertaking entirely subject to State control. It observes that, before incorporation of the company in 1988, the forests were directly managed by the competent Ministers. Today, Coillte Teoranta is wholly owned by the State and managed on behalf of the Government.

52 Not only does the State hold all the shares in the company and appoint its officers but it may also intervene in its financing. Coillte Teoranta is also subject to obligations to provide public services, compliance with which is monitored by the State.

53 The Commission takes the view that the judgments in *Connemara Machine Turf* and *Commission* v *Ireland*, cited above, in which the Court ruled that Coillte Teoranta was a 'public authority' are relevant even though they were concerned with the public procurement sector. According to the Commission, the Court concluded in those judgments that Coillte Teoranta is a public-law body. Since that concept is exclusive, the Commission claims that Coillte Teoranta cannot at the same time be a private-law person.

54 Next, the Commission argues that the change made to the definition of the persons eligible for aid by Regulations No 1257/1999 and No 1750/1999 does not affect the substance of its reasoning. Regulation No 2080/92 was, according to the Commission, already to be interpreted as excluding forests of whose capital the State holds at least 50%.

Findings of the Court

55 As Ireland has pointed out, the concept of a private-law legal person used in Article 2(2)(b) of Regulation No 2080/92 does not exist in the legal systems of all the Member States. No purpose is therefore served in the present case by referring to the definition used in certain national legal systems.

56 It is, however, appropriate to interpret that concept in the light of the purpose and scheme of Regulation No 2080/92.

57 It is apparent from the second recital in the preamble to Regulation No 2080/92 that it was necessary to improve the existing aid schemes because, in particular, those schemes had failed adequately to encourage farmers to afforest agricultural land by withdrawing it from agricultural production. As is stated in the sixth and

seventh recitals in the preamble to that regulation, in order to achieve that aim, the Community legislature decided to compensate the loss of income suffered by farmers during the non-productive period of newly afforested land and to extend that compensation to other private persons.

58 It should be observed that a distinction is drawn in Article 2(2) of Regulation No 2080/92 between the persons eligible for aid according to the type of aid in question.

59 The wording of the provisions in Article 2(2)(b), which relate to aid intended to cover loss of income from agriculture, is restrictive in comparison to that of Article 2(2)(a), which concerns aid intended to cover afforestation costs and the costs of maintaining the afforested land. Whereas the latter aid may be granted to any natural or legal person undertaking afforestation of agricultural land, the aid relating to loss of income may be granted only to farmers who meet certain requirements or to any other private-law, natural or legal person. In the light of the sixth and seventh recitals in the preamble to Regulation No 2080/92, it must be held that the expression 'any other private-law, natural or legal person' in Article 2(2)(b) covers only private persons in contrast to the expression 'any natural or legal person' in Article 2(2)(a), which covers both private persons and non-private persons such as legal persons owned and controlled by the State.

60 It follows that legal persons owned and controlled by the State are eligible for aid to cover the costs of afforestation and maintenance of forests in the same way as any other natural or legal person but that they are not, however, eligible for aid to compensate for a loss of income from agriculture.

61 In the present case, Ireland itself has stated that Coillte Teoranta is and always has been a public undertaking wholly owned by the State. Moreover, the Court has already held in *Connemara Machine Turf* and *Commission* v *Ireland* that that company was controlled by the State and no new evidence has been adduced which might show that this was no longer the case in the financial years 1997 and 1998. Neither the company's obligation to manage its affairs on a commercial basis nor the fact, alleged by Ireland, that the State does not, in practice, intervene in the company's management can prevail over the finding that the company is wholly owned and controlled by the State and that the State could therefore intervene. It follows that Coillte Teoranta is not a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92.

62 Furthermore, the fact that the distinction between private and public undertakings is more clearly drawn in Regulations No 1257/1999 and No 1750/1999 does not mean that that distinction was not drawn in Regulation No 2080/92.

63 In light of the above, it must be held that, as a public undertaking, Coillte Teoranta was not eligible to receive aid to compensate for a loss of income arising from afforestation and that the Commission did not err in law in its application of Article 2(2)(b) of Regulation No 2080/92. The first limb of the second plea must therefore be rejected as unfounded.

The second limb of the second plea: failure to comply with duties relating to cooperation in good faith, legal certainty and sound administration and infringement of the principle of the protection of legitimate expectations

Arguments of the parties

64 Ireland submits that it was reasonable for it to take the view that Coillte Teoranta was among the persons eligible for aid referred to in Article 2(2)(b) of Regulation

No 2080/92 on account of the very inaction of the Commission. The Commission's failure to act is inconsistent with the duty to cooperate in good faith laid down in Article 5 of the EC Treaty (now Article 10 EC) and the contested decision infringes the principle of the protection of legitimate expectations.

65 Ireland states that the issue of the status of Coillte Teoranta was the subject of discussions between the competent Irish Department and the Commission from July to October 1992. Following those discussions, the Commission requested that Ireland provide details of the status of that company. Ireland supplied the information required by its letter of 26 January 1993, to which a number of documents were attached, including the Forestry Act 1988, which provided for the establishment of Coillte Teoranta, and the company's memorandum and articles of association. The Commission did not reply to that letter. In 1994, the Irish multi-annual afforestation programme was approved by the Commission. In addition, the aid paid by Ireland to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92 was reimbursed in respect of the financial years prior to 1997 without any comment being made.

66 Ireland adds that Coillte Teoranta has borrowed considerable amounts from banks in anticipation of the reimbursements which it might obtain from the EAGGF.

67 The Commission does not deny the facts presented by Ireland in this regard. It concedes that it may be regrettable that it did not reply to the letter of 26 January 1993 but maintains that it has neither failed to comply with its duty to cooperate in good faith nor infringed the principle of the protection of legitimate expectations.

68 The Commission submits that Ireland participated in the negotiations on Regulation No 2080/92 and that it must therefore have known that the aid for loss of income arising from afforestation was not intended for public undertakings such as Coillte Teoranta. That Member State ought to have realised that

there was no legal basis allowing the Commission to reimburse, by way of the EAGGF, expenditure effected in breach of the rules governing the system of the common agricultural policy. Moreover, the Commission argues that its silence cannot be interpreted as consent. It adds that, in any event, Ireland did not insist on receiving a reply to its letter of 26 January 1993.

69 The Commission submits that its approval of the multi-annual afforestation programme communicated by Ireland under Regulation No 2080/92 could not give rise to a legitimate expectation on the part of Ireland that Coillte Teoranta was entitled to the aid in question. The Commission maintains that that document barely mentioned Coillte Teoranta and that there was nothing in it to indicate that Ireland had decided to pay the aid in question to that company as if it were a private undertaking.

Findings of the Court

70 By this plea, Ireland submits, essentially, that the contested decision breaches the duty to cooperate in good faith and infringes the principle that legitimate expectations must be protected.

71 Under Article 5 of the Treaty, the duty to cooperate in good faith governs relations between the Member States and the institutions. It entails an obligation on the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law and imposes on Member States and the Community institutions mutual duties to cooperate in good faith (see order in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, paragraph 17, and Case C-275/00 *First and Franex* [2002] ECR I-10943, paragraph 49).

72 It should be noted that, as the Advocate General stated in point 73 of his Opinion, the duty to cooperate in good faith is, by its very nature, reciprocal.

73 In the present case, Ireland took part in the discussions leading to the adoption of Regulation No 2080/92. It was therefore deemed to be just as aware of the implications of that adoption as was the Commission.

74 The Commission had expressed to Ireland the doubts which it entertained as to the status of Coillte Teoranta and, therefore, that Member State must have known that there was uncertainty surrounding the classification of that company as a private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92.

75 While the Commission could have repeatedly expressed its doubts to Ireland, it was, in any event, for the latter to ensure that any doubt which might have existed as to Coillte Teoranta's eligibility for the aid in question was removed.

76 The complaint raised by Ireland of a failure to comply with the duty to cooperate in good faith must therefore be rejected.

77 Ireland also claims that the Commission's conduct, in particular the fact that it failed to reply to Ireland's letter of 26 January 1993, approved Ireland's multi-annual afforestation programme and did not, prior to 1997, call into question the aid granted to Coillte Teoranta under Article 2(1)(c) of Regulation No 2080/92 and charged to the EAGGF, led it reasonably to believe that the aid was in conformity with the applicable rules.

78 While it may be regrettable that the Commission did not make observations on Ireland's letter of 26 January 1993, its failure to reply could not, either of itself or in combination with the other facts of the case, give rise to a legitimate expectation on the part of Ireland.

79 First of all, the Commission's failure to reply to a letter is not, in principle, capable of giving rise to a legitimate expectation on the part of the person who sent it. In the present case, Ireland's letter of 26 January 1993 was itself a response to a request made by the Commission and did not call directly for a reply.

80 Furthermore, with respect to the Commission's approval of the Irish multi-annual afforestation programme, that programme referred to Coillte Teoranta only incidentally and did not state clearly that there was an intention to grant to that undertaking premiums for loss of income. Moreover, no such intention was specified in the 'Operational Programme for Agriculture, Rural Development and Forestry (1994-1999)' or in the 'Strategic Plan for Development of the Forestry Sector in Ireland' published by the Department of Agriculture, Food and Forestry. That approval could not therefore be interpreted as an acknowledgement that there was a sound basis for the grant of the premiums in question.

81 Nor, finally, could the fact that the Commission did not call into question the aid granted to Coillte Teoranta prior to 1997 lead Ireland to believe that the grant of aid to that undertaking for loss of income would never be called into question in the future. The Court has ruled on several occasions that, where the Commission has tolerated irregularities on grounds of fairness, the Member State concerned does not acquire any right to demand that the same position be taken with regard to irregularities committed in the following financial year by virtue of the principle of legal certainty or the principle of the protection of legitimate expectations (see, inter alia, Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 12). This must apply *a fortiori* in cases in which the Commission had not detected the type of irregularities in question during the preceding financial years.

82 Accordingly, it must be held that the Commission did not, by its conduct, give Ireland reason to believe that the aid granted to Coillte Teoranta for loss of income would be co-financed by the EAGGF. On the contrary, it had informed the Irish authorities of its doubts as early as 1992. Its subsequent failure to adopt a position on Coillte Teoranta's eligibility to receive the aid in question could not give rise to a legitimate expectation in that regard on the part of Ireland, particularly as that Member State had been closely involved in the drafting of the relevant legislation and was under an obligation to apply that legislation correctly.

83 Therefore, Ireland's complaint that the Commission infringed the principle of the protection of legitimate expectations must likewise be rejected and the second limb of the second plea accordingly declared unfounded.

84 In light of the above findings, the second plea must be rejected as unfounded.

85 Since Ireland has been unsuccessful in all of its pleas, the application must be dismissed in its entirety.

Costs

86 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 to be awarded against Ireland and the latter has been unsuccessful in its pleas, Ireland must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders Ireland to pay the costs.**

Timmermans La Pergola Jann

von Bahr Rosas

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass — Registrar

V. Skouris — President