Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

24 November 2015*

(EAGGF — Guarantee Section — EAGF and EAFRD — Financial correction applied in respect of the non-reporting of interest — Obligation to state reasons — Obligation to account for interest — Article 32(5) of Regulation (EC) No 1290/2005 — Principle of equivalence — Obligation of due care)

In Case T-126/14,

**Kingdom of the Netherlands**, represented by M.K. Bulterman, J. Langer and M. Noort, acting as Agents,

applicant,

v

**European Commission**, represented by H. Kranenborg and P. Rossi, acting as Agents,

defendant,

APPLICATION for partial annulment of Commission Implementing Decision 2013/763/EU of 12 December 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 338, p. 81),

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro (Rapporteur), President, S. Gervasoni and L. Madise, Judges,

Registrar: J. Plingers, Administrator,

Having regard to the written procedure and further to the hearing on 21 April 2015,

gives the following

* Language of the case: German.

## Judgment

### Legal context

*Basic rules: Regulation (EEC) No 729/70 and Regulations (EC) No 1258/99 and No 1290/2005*

1 The basic rules relating to the financing of the common agricultural policy are constituted, in respect of expenditure incurred by the Member States from 16 October 2006 and in respect of expenditure incurred by the Commission of the European Communities from 1 January 2007, by Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1). That regulation repealed Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), which had succeeded, in respect of expenditure incurred from 1 January 2000, 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).

2 In accordance with Article 1(1) and Article 1(2)(a) of Regulations No 729/70 and No 1258/1999, the European Agricultural Guidance and Guarantee Fund (EAGGF) formed part of the Community budget and financed, in its 'Guarantee' Section, refunds on exports to third countries.

3 Article 8(1) of Regulations No 729/70 and No 1258/1999 provided that the Member States, in accordance with national provisions laid down by law, regulation or administrative action, were to take the measures necessary to recover sums lost as a result of irregularities or negligence. Pursuant to the first subparagraph of Article 8(2) of those regulations, in the absence of total recovery, the financial consequences of irregularities or negligence were to be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States. Finally, under the second subparagraph of Article 8(2) of Regulation No 729/70 in the version resulting from Council Regulation (EC) No 1287/95 of 22 May 1995 amending Regulation No 729/70 (OJ 1995 L 125, p. 1), and applicable from the financial year beginning on 16 October 1995, and under the second subparagraph of Article 8(2) of Regulation No 1258/1999, interest on sums recovered or paid late was to be paid into the EAGGF.

4 Under Article 3(1)(a) of Regulation No 1290/2005, the European Agricultural Guarantee Fund (EAGF) finances, in a context of shared management between the Member States and the European Union, refunds for the exportation of agricultural products to third countries.

5 Under Article 8(1)(c)(iii) of Regulation No 1290/2005, Member States are to send to the European Commission, for measures relating to operations financed, inter alia, by the EAGF, the annual accounts of the accredited paying agencies with a statement of assurance signed by the person in charge of the accredited paying agency, accompanied by the requisite information for their clearance, and a certification report drawn up by the certification body.

6 Article 31 of Regulation No 1290/2005, entitled 'Conformity clearance', provides:

'1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed [Union] rules, it shall decide what amounts are to be excluded from [Union] financing in accordance with the procedure referred to in Article 41(3).

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

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

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

4. Financing may not be refused for:

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

(b) expenditure on multiannual measures falling within the scope of Article 3(1) or within the scope of the programmes as indicated in Article 4, where the final obligation on the recipient occurs more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

(c) expenditure on measures in programmes, as indicated in Article 4, other than those referred to in point (b), for which the payment or, as the case may be, the payment of the balance, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

5. Paragraph 4 shall not apply in the case of:

(a) irregularities covered by Articles 32 and 33;

…'

7 Article 32 of Regulation No 1290/2005, entitled 'Provisions specific to the EAGF', provides in paragraphs 1 and 3 to 6:

'1. Sums recovered following the occurrence of irregularity or negligence and the interest thereon shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.

…

3. When 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.

Member States shall make available to the Commission detailed particulars of the individual recovery procedures and of the individual sums not yet recovered.

4. After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:

(a) if the Member State has not for recovery purposes initiated all the appropriate administrative or judicial procedures laid down in national and [Union] legislation within one year of the primary administrative or judicial finding;

(b) if there has been no administrative or judicial finding, or the delay in making it is such as to jeopardise recovery, or the irregularity has not been included in the summary report provided for in the first subparagraph of paragraph 3 of this Article for the year in which the primary administrative or judicial finding is made.

5. 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 [Union] 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 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.

6. If there is justification for doing so, Member States may decide not to pursue recovery. A decision to this 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.

The 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.'

8 Under Article 34(1)(a) of Regulation No 1290/2005, entitled 'Assignment of revenue from the Member States', sums which, under Articles 31, 32 and 33 of that regulation, must be paid to the Union budget, including interest thereon, are regarded as earmarked revenue within the meaning of Article 18 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

9 Pursuant to the second subparagraph of Article 49 of Regulation No 1290/2005, the regulation shall apply as of 1 January 2007. However, it is apparent from the third subparagraph, second indent, of Article 49 of that regulation, that Article 32 thereof is to apply, from 16 October 2006, to cases 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 common agricultural policy 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.

*Applicable regulations*

Regulation No 595/91

10 The first subparagraph of Article 3(1) of Regulation No 595/91 provides that Member States shall communicate to the Commission, during the two months following the end of each quarter, a list of irregularities which have been the subject of the primary administrative or judicial findings of fact.

11 Moreover, Article 5(2) of Regulation No 595/91, which was removed by Regulation No 1290/2005, provides for a special notification by which a Member State, where it considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, shall inform the Commission 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.

12 Regulation No 595/91 was repealed, with effect from 1 January 2007, by Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field (OJ 2006 L 355, p. 56).

Regulation (EC) No 885/2006

13 Under Article 6 of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90), the annual accounts referred to in Article 8(1)(c)(iii) of Regulation No 1290/2005 shall include inter alia the table of the amounts to be recovered by the end of the financial year, following the model set out in Annex III ('the table in Annex III to Regulation No 885/2006').

14 The Commission set out the guidelines for submitting the tables in Annex III to Regulation No 885/2006 for the financial years 2006 and 2007 by, respectively, the document entitled 'Communication to the Agricultural Funds Committee — Guidelines on the transmission to the Commission, by 10 February 2007, of Table 5 in Annex III to [Regulation No 885/2006]' ('the 2006 Guidelines') and the document entitled 'Communication to the Agricultural Funds Committee — Guidelines on the transmission to the Commission, by 1 February 2008, of Tables 1-6 in Annex III to [Regulation No 885/2006]' ('the 2007 Guidelines').

15 Article 11 of Regulation No 885/2006 lays down the detailed rules of the conformity clearance procedure introduced in Article 31 of Regulation No 1290/2005. Moreover, Article 16 of that regulation lays down the detailed rules of the conciliation procedure.

*Sectoral regulations*

Regulation (EEC) No 3665/87

16 Article 11 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), in the version resulting from Commission Regulation (EC) No 2945/94 of 2 December

1994 amending Regulation No 3665/87 (OJ 1994 L 310, p. 57), laid down the detailed rules for recovering unduly paid export refunds, the sanctions to be imposed in that connection, and provided for the possibility of waiving certain sanctions in the event of *force majeure*. Article 11(3) provided, in particular, that where a refund had been paid unduly, the beneficiary was bound to reimburse the amounts unduly received, plus interest calculated according to the time which had elapsed between payment and refund.

17 Under the second subparagraph of Article 2 of Regulation No 2945/94, that regulation applied to exports for which the formalities referred to in Article 3 or Article 25 of Regulation No 3665/87 were completed from 1 April 1995.

18 Regulation No 3665/87 was repealed and replaced by Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11), which was subsequently repealed and replaced by Commission Regulation (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 2009 L 186, p. 1).

Regulation (EEC) No 536/93

19 **Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12; together with Regulation No 3665/87, 'the sectoral regulations'), repealed and replaced Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1988 L 139, p. 12).**

20 Under Article 3(4) of Regulation No 536/93 and Article 4(4) of the same regulation, the purchaser and the producer, respectively, shall pay the competent body, before 1 September each year, the amount due in accordance with rules laid down by the Member State, and it is specified that, where the time limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.

21 In accordance with the second subparagraph of Article 10 of Regulation No 536/93, the regulation applied from the 12-month period commencing on 1 April 1993.

22 Regulation No 536/93 was repealed and replaced by Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products (OJ 2001 L 187, p. 19), which was subsequently repealed and replaced by Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (OJ 2004 L 94, p. 22).

## Background to the dispute

23 On 10 July 2003, the Kingdom of the Netherlands sent the Commission a special notification, within the meaning of Article 5(2) of Regulation No 595/91 ('special notification of 10 July 2003'). By that notification, the Netherlands authorities informed the Commission of the fact that, owing to the bankruptcy and insolvency of the debtors concerned, the amounts due in connection with the file NL/98/039-Centramelk ('the Centramelk file') could not be recovered, or could not be expected to be recovered. They asked that institution to charge the balance to the European Community. That file, which had previously been the subject of a notification under Article 3 of Regulation No 595/91, is made up of nine individual cases of evasion of payment, by purchasers of untreated milk, of additional levies in the milk sector, which were discovered between 1989 and 1990.

24 By letter of 21 February 2006, the Commission inter alia informed the Netherlands authorities that its decision relating to the Centramelk file was deferred since, according to its services, recovery of the debts to which that file refers was still ongoing.

25 By letter of 4 October 2006, the Netherlands authorities drew the attention of the Commission to the classification of the Centramelk file. On that occasion, they also asked the Commission to adopt a decision on that file before 16 October 2006 and to deal with it in accordance with the provisions of Article 8(2) of Regulation No 1258/1999 and not those of Article 32(5) of Regulation No 1290/2005.

26 By letter of 23 October 2006, the Commission inter alia informed the Netherlands authorities that it had not yet taken a decision as regards the Centramelk file and that it would apply Article 32 of Regulation No 1290/2005 to the cases which had not been dealt with before 16 October 2006.

27 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), by which, inter alia, it submitted the claims in the Centramelk file to the rule under Article 32(5) of Regulation No 1290/2005. The Kingdom of the Netherlands did not bring an action for annulment of Decision 2007/327.

28 Between 15 and 17 September 2008, the Commission's services conducted an enquiry at the Netherlands payment agency Dienst Regelingen.

29 By letter of 17 June 2009 ('the first communication'), sent pursuant to Article 11(1) of Regulation No 885/2006, the Commission notified the Netherlands authorities of the outcome of the enquiry conducted between 15 and 17 September 2008. An annex entitled 'Observations and requests for information', which contains the enquiry's findings, was attached to that letter.

30 It is apparent from the first communication, inter alia, that the Commission considered that the Netherlands authorities had not fully met the requirements of the Union legislation and that corrective measures were necessary to ensure future compliance with those requirements. The Commission asked to be informed of the corrective measures already adopted and of those envisaged and of the schedule for their implementation. It also stated that it could exclude from Union funding all or part of the expenditure financed by the EAGGF, Guarantee Section, and the EAGF (taken together, 'the Funds'), in accordance with Articles 31 and 32 of Regulation No 1290/2005. Moreover, it was stated that the deficiencies found would serve as a basis for calculating the financial correction relating to the expenditure incurred until the appropriate corrective measures were implemented.

31 In the observations and recommendations set out in the annex to the first communication, the Commission, inter alia, pointed out, in essence, that the debtors' ledger and, therefore, the tables in Annex III to Regulation No 885/2006, drawn up for the financial years 2006 and 2007, did not include the interest due on the unpaid sums since that interest was only entered in the accounts by the Dienst Regelingen when it was received. The Commission considered that that interest should appear in the tables since, if it were not shown, the amounts subject to the rule in Article 32(5) of Regulation No 1290/2005 would be underestimated. It also noted that the Dienst Regelingen issued an interest collection notice only after recovering the principal sums, and only in respect of sums recovered after 16 October 2007. The non-accounting of interest on sums recovered before that date constitutes a loss for the Funds. Moreover, the Commission requested the Netherlands authorities to provide it with certain information.

32 By letter of 21 July 2009, the Netherlands authorities replied to the findings made by the Commission in the first communication.

33 By letter of 7 September 2010, the Netherlands authorities were invited by the Commission to submit their observations on the matters in dispute for the purpose of a bilateral meeting to take place on 5 October 2010. On that occasion, the Commission inter alia asked the Netherlands authorities to calculate the total amount of interest in respect of all the recoveries subject to the rule introduced in Article 32(5) of Regulation No 1290/2005 during the financial years 2006 to 2009.

34 The bilateral meeting between the Commission's services and the Netherlands authorities was held in Brussels (Belgium) on 5 October 2010. The minutes of that meeting were sent to the Netherlands authorities on 14 December 2010.

35 The minutes of the bilateral meeting show that, following that meeting, the Commission essentially maintained its conclusions as set out in the first communication; it considered, in essence, that no interest had been received for the sums repaid before 16 October 2007, which caused financial loss to the Funds, and that the interest shown in the tables in Annex III to Regulation No 885/2006 had been underestimated. According to the Commission, no interest had been declared or an incorrect amount of interest had been declared, so that, when the accounts were audited in 2006 and 2007, the claims subject to Article 32(5) of Regulation No 1290/2005 did not include a correct amount of interest. It therefore announced that it proposed a financial correction in respect of the unclaimed interest on the claims recovered in 2006 and 2007 ('the unclaimed interest') and undeclared interest in the cases of unrecovered claims which had been subject to the rule in Article 32(5) of Regulation No 1290/2005 ('undeclared interest') in 2006 and 2007. Under the circumstances, it invited the Netherlands authorities to confirm the amount of EUR 60 779 stated by the Dienst Regelingen in respect of the unclaimed interest and to provide a calculation or as accurate as possible an estimate of the amount of undeclared interest.

36 By letter of 11 February 2011, first, the Netherlands authorities confirmed that the amount of EUR 60 779 in respect of unclaimed interest was correct. Second, they set out their calculation of the amount of undeclared interest corresponding, in their view, to a total amount of EUR 513 566.65 for the years 2006 to 2009. In that regard, they stated that that calculation did not take into account claims relating to additional levies paid late and prior to 1 April 1993 ('old claims relating to additional levies'), or claims relating to export refunds wrongly paid prior to 1 April 1995 ('old claims relating to export refunds' and, together with the old claims relating to additional levies, 'old claims').

37 By letter of 25 November 2011, the Commission sent the Netherlands authorities a formal communication pursuant to the third subparagraph of Article 11(2) of Regulation No 885/2006, in which it maintained its position with regard to the incompatibility with EU law, in respect of the financial years 2006 to 2009, of the debt management system and the declaration of irregularities in Annex III to Regulation No 885/2006. In particular, first, it pointed out, in the annex to that letter, that the Netherlands authorities had wrongly omitted to account for interest. In that regard, it stated that, under the 2006 and 2007 Guidelines and as confirmed by the Court in the judgment of 22 April 2010 in *Italy* v *Commission* (T-274/08 and T-275/08, ECR, EU:T:2010:154), it was necessary to declare the interest on sums outstanding in the table in Annex III to Regulation No 885/2006, and it was stipulated that non-declaration of interest is contrary to the provisions of Article 32(1) of Regulation No 1290/2005 and constitutes a loss for the Union budget. Second, since the Netherlands authorities had excluded old claims from their calculation of the interest, the Commission stated that, even though the sectoral regulations did not establish any obligation to charge interest, Union claims cannot receive less favourable treatment than any national debt. It follows that, if, at the time of the events, the Kingdom of the Netherlands entered in the accounts interest on national claims, such as tax debts or subsidies wrongly paid from the national budget, the same should apply to the Union claims. On that basis, the Commission considered that interest should be added to all the sums given in the table in Annex III to Regulation No 885/2006 from the year 2006, including in respect of old claims relating to export refunds and in respect of old claims relating to additional levies, which were the subject of clearance in 2006 or 2007.

38 The Commission therefore proposed excluding the sum of EUR 5 277 577.43 from Union financing.

39 By letter of 3 January 2012, the Netherlands authorities submitted a request for conciliation to the Conciliation Body pursuant to Article 16 of Regulation No 885/2006. The Commission reacted to that request by summarising its position in a note which it sent to the Conciliation Body.

40 On 30 April 2012, the Conciliation Body delivered its final report. In that report, it concluded inter alia that it had not been able to reconcile the respective points of view of the Commission and the Netherlands authorities. It also, in essence, invited the Commission to assess whether the application of the principle of equivalence was based on an adequate factual basis to justify the financial correction proposed and whether it was possible to limit the calculation of interest in respect of the Centramelk file to the single individual case of evasion in that file which had actually been the subject of a recovery procedure in 2006.

41 By letter of 2 April 2013, the Commission sent the Netherlands authorities its final conclusions ('the final position'). It is apparent from that letter that the Commission, in essence, maintained its position, as summarised in paragraphs 37 and 38 above, with regard to the irregularities pointed out, and to the financial corrections envisaged. In response to the conclusions of the Conciliation Body, the Commission, in essence, noted that, in accordance with the principle of equivalence, recovery of the Union claims at issue should be effected in the same way as that of unpaid national taxes. Also, with regard to the Centramelk file, it stated that, since the individual cases of evasion in that file were to be handled in accordance with the rule in Article 32(5) of Regulation No 1290/2005 and since the interest, as ancillary to the principal claim, was to follow the same regime, it was necessary to apply a financial correction, in accordance with that rule, for the interest which had not been subject to clearance for the financial year 2006.

42 By letter of 15 April 2013, the Netherlands authorities submitted observations on the final position and expressed their disagreement with it.

43 On 18 November 2013, the Commission sent the Kingdom of the Netherlands a summary report on the results of the enquiry carried out between 15 and 17 September 2008.

44 It was in those circumstances that, on 12 December 2013, the Commission adopted Implementing Decision 2013/763/EU on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 338, p. 81, 'the contested decision'), by which it inter alia applied a financial correction in respect of the undeclared interest relating to the old claims at issue in the present case.

## Procedure and forms of order sought by the parties

45 By application lodged at the Court Registry on 21 February 2014, the Kingdom of the Netherlands brought the present action.

46 Upon hearing the report of the Judge-Rapporteur, the General Court (Second Chamber) decided to open the oral procedure.

47 The parties presented oral argument and replied to the Court's oral questions at the hearing on 21 April 2015.

48 The Kingdom of the Netherlands claims that the Court should:

— primarily, annul Article 1 of the contested decision and the annex thereto, in so far as that provision and annex relate to interest, in the amount of EUR 4 703 231.78, which, it is alleged, the Netherlands failed to calculate in respect of a number of claims relating to the late payment of additional levies and unlawfully granted export refunds;

— in the alternative, annul Article 1 of the contested decision and the annex thereto, in so far as that provision and annex relate to interest, in the amount of EUR 3 208 935.04, which, it is alleged, the Netherlands failed to calculate in respect of a number of claims relating to the late payment of additional levies;

— order the Commission to pay the costs.

49 The Commission contends that the Court should:

— dismiss the action;

— order the Kingdom of the Netherlands to pay the costs.

**Law**

50 In support of the application, the Kingdom of the Netherlands raises three pleas in law. The first plea alleges infringement of the obligation to state reasons. The second, raised in the alternative, alleges infringement of Article 13(2) TEU or misapplication of the principle of equivalence. The third plea, raised in the further alternative, alleges infringement of the principle of due care, in conjunction with Article 8(2) of Regulation No 729/70 and with Article 5(2) of Regulation No 595/91.

51 First, it should be pointed out that, as is apparent from the pleadings of the Kingdom of the Netherlands and as the Netherlands confirmed in response to a question posed by the Court at the hearing, formal note of which was taken in the minutes of the hearing, the first and second pleas are raised in support of the first head of claim, presented as its principal argument (see paragraph 48 above). On the other hand, the third plea for annulment, which concerns only the financial corrections relating to the Centramelk file, is raised in support of the second head of claim, presented in the alternative (see paragraph 48 above).

52 Second, it is important to note that, in response to a question posed by the Court at the hearing, the Kingdom of the Netherlands stated that the first plea raised in support of the application, which formally alleges infringement of the Commission's obligation to state reasons, was in fact intended to contest the merits of the grounds of the contested decision and not the formal statement of reasons. That information was noted in the minutes of the hearing.

53 It follows that the first plea, in that it seeks, in the end, to contest the merits of the contested decision, coincides, in essence, with the second plea raised by the Kingdom of the Netherlands. In the light of that information obtained at the hearing, it is no longer necessary, in this case, to examine the plea alleging infringement of the obligation to state reasons enshrined in Article 296 TFEU.

54 It is necessary to examine, first of all, the second plea raised by the Kingdom of the Netherlands.

*The second plea, alleging infringement of Article 13(2) TEU or misapplication of the principle of equivalence*

55 By the second plea, the Kingdom of the Netherlands complains that the Commission infringed Article 13(2) TEU or misapplied the principle of equivalence. This plea is formally divided into two parts.

56 By the first part of this plea, the Kingdom of the Netherlands maintains, in essence, that the Commission, in infringement of Article 13(2) TEU exceeded the limits of its powers in that it applied a financial correction in respect of the non-declaration of interest on old claims in the absence of any EU competence or obligation in EU law requiring interest to be accounted for. First, when the old claims arose, the sectoral regulations contained no obligation to account for interest. Second, such an obligation cannot stem from Article 32(1) and (5) of Regulation No 1290/2005, as is apparent, furthermore, from the case-law of the Court of Justice. Third, the Commission's statement that it is evident that interest must be charged when sums wrongly paid are recovered cannot constitute a legal basis. A legal basis must be expressly stated.

57 By the second part of this plea, the Kingdom of the Netherlands alleges that the Commission misapplied the principle of equivalence, since, in essence, at the time of the events, Netherlands law contained no obligation to account for interest in national disputes of the same kind, namely, in the case of recovery of national subsidies wrongly paid. In that regard, it considers that the Commission's view that the old claims are comparable to fiscal debts in respect of which Netherlands law laid down an obligation to account for interest is mistaken. According to the Kingdom of the Netherlands, old claims and fiscal debts are different, both in nature and in objective. Also, in so far as the Commission claims that the aim of recovery of old claims is the same as the aim of recovery of fiscal debts, the Kingdom of the Netherlands argues that the assignment, at European level, of revenue from recovery is irrelevant for the purpose of the application of the principle of equivalence, which concerns the equal treatment, at national level, of comparable national and European claims. In those circumstances, it considers that it did not infringe the principle of equivalence by treating old claims and fiscal debts differently.

58 The Commission contests the merits of the arguments of the Kingdom of the Netherlands.

59 As regards the first part of this plea, the Commission claims, in essence, that the obligation to impose interest stems from a combined reading of Article 32(1) and (5) of Regulation No 1290/2005 with the principle of equivalence. Furthermore, it is logical and apparent that, in the event of recovery of a sum wrongly paid, interest must also be recovered, as is confirmed by the case-law and by the second subparagraph of Article 8(2) of Regulation No 729/70, in its wording resulting from Regulation No 1287/95. Non-recovery of interest on old claims causes loss to the Funds.

60 As regards the second part of this plea, the Commission maintains, in essence, that the principle of equivalence requires calculation, on old claims, of interest equal to that which the Netherlands authorities imposed in respect of the recovery of fiscal debts. According to the Commission, recovery of unpaid tax is comparable to recovery of an agricultural subsidy wrongly granted. While pointing out that it is strange that, at the time of the events, the Netherlands law contained no obligation to impose interest when recovering national agricultural subsidies, it adds that, in view of the damage caused to the Funds by non-imposition of interest on old claims, the restrictive interpretation of the concept of a national obligation of the same type, by the Kingdom of the Netherlands, cannot be accepted. Moreover, the second subparagraph of Article 8(2) of Regulation No 729/70, in its wording resulting from Regulation No 1287/95, states an obvious fact, namely that interest must be calculated when a sum wrongly paid is recovered.

61 It is apparent from the account of the arguments of the parties, in paragraphs 55 to 60 above, that the two parts of this plea are intrinsically linked. The Kingdom of the Netherlands contests, through both of those parts, the basis of the financial correction applied in respect of non-declaration of interest relating to old claims on the ground, in essence, that, at the time those claims arose, there was no obligation, either under the provisions of EU law (first part) or under the principle of equivalence (second part), to account for interest on those claims. Also, contrary to the view expressed by the Kingdom of the Netherlands at the hearing in response to a question posed by the Court, the claim, in the first part of this plea, that the financial correction had no legal basis since there was no obligation, in EU law, to account for interest cannot, even if well founded, lead to the partial annulment of the contested decision unless it is established, at the end of the examination of the second part of that plea, that the Kingdom of the Netherlands was also not required to account for interest under the principle of equivalence.

62 Therefore, the two parts of this plea must be examined together, and it is stated, moreover, that, in reply to a question raised by the Court at the hearing, the Kingdom of the Netherlands did not object to such a joint examination.

63 It should be noted at the outset that, as is apparent from the Commission's pleadings and as the Commission stated at the hearing in reply to a question posed by the Court, it based the financial correction applied to the Kingdom of the Netherlands in respect of non-declared interest on the combined provisions of Article 32(1) and (5) of Regulation No 1290/2005 and the principle of equivalence. It considers that those provisions and that principle reveal the obligation of that Member State to account for interest on old claims.

64 More particularly, as regards the obligation to account for interest relating to old claims, the Commission, during the clearance procedure, considered, in essence, that the interest, should have been declared in the table in Annex III to Regulation No 885/2006 and that the Kingdom of the Netherlands was required to charge interest on the old claims under the principle of equivalence. More specifically, it is apparent from the final position that, according to the Commission, recovery of the sums at issue had to be effected in the same way as that of unpaid national taxes, in respect of which Netherlands law provided that interest was to be accounted for. The distinction, as drawn by the Kingdom of the Netherlands, between, on the one hand, export refunds and additional levies and, on the other hand, national taxes, having regard to their different legal regimes and objectives is purely formalistic and such as to jeopardise the benefit of the principle of equivalence. On the contrary, the Commission considered that, although export refunds and additional levies do indeed differ initially from national taxes, the fact remains that, once they have been classified as sums wrongly paid, the former change in nature and become amounts which must be recovered and assigned as income for the Union budget, thus feeding that budget in the same way as taxes levied by national law would do. It refers, in that regard, to Article 18(1)(f) of Regulation No 1605/2002. As regards additional levies on milk, the Commission added that the income from those constituted own resources of the Community under Article 2 of Decision 70/243/ECSC, EEC, Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (OJ, English Special Edition 1970(I), p. 224). It follows that, from the point of view of the Union, the aim of recovery of additional levies and export refunds wrongly paid is the same as that of recovery of national taxes, which leads to the conclusion that the procedures are the same.

65 In those circumstances, the Commission applied a financial correction in respect of undeclared interest in respect of old claims since, because they were not included in the table in Annex III to Regulation No 885/2006, that interest had not been taken into account during clearance of the principal amounts of the old claims in accordance with Article 32(5) of Regulation No 1290/2005.

66 By this plea, the Kingdom of the Netherlands essentially contests the basis of that financial correction by disputing that it was under an obligation to account for interest on old claims. It concludes that, since there was no such obligation, the Commission could not impose a financial correction on it in respect of that undeclared interest.

67 In order to examine, as the principal argument, the merits of the contested decision in the light of those arguments, it is therefore necessary to ascertain whether there was, in the present case, an obligation for the Kingdom of the Netherlands to charge interest on old claims.

68 First, it should be pointed out that, as the parties agree, and as, furthermore, confirmed at the hearing in response to a question put by the Court, which was noted in the minutes of the hearing, the sectoral regulations did not provide, in their respective versions applicable during the period during which the old claims arose, for any obligation to charge interest on those claims.

69 It should be noted that the old claims relating to additional levies arose before 1 April 1993. The old claims relating to export refunds were constituted before 1 April 1995.

70 First, as regards the additional levies in the milk sector, only Regulation No 536/93 provided, in Article 3(4) and in Article 4(4), that, where the time limit for payment was not met, the sums due would bear interest at a rate per annum fixed by the Member State and which could not be lower than the rate of interest which the latter applied for the recovery of wrongly paid amounts. That regulation became applicable, in accordance with the second subparagraph of Article 10 thereof, from the 12-month period commencing on 1 April 1993. On the other hand, Regulation No 1546/88, which was repealed and replaced by Regulation No 536/93, contains no provision relating to the imposition of interest at the time of recovery of additional levies paid late.

71 Second, as regards export refunds, the beneficiary's obligation, in the event of payments wrongly made, to reimburse, as well as the amount wrongly paid, interest on that amount was introduced by Article 11(3) of Regulation No 3665/87, in the version resulting from Regulation No 2945/94. The latter regulation was applicable, in accordance with the second subparagraph of Article 2 thereof, to exports for which the formalities referred to in Article 3 or Article 25 of Regulation No 3665/87 had been completed from 1 April 1995. On the other hand, as regards export refunds unduly paid for which those formalities had been completed before 1 April 1995, Regulation No 3665/87 contained no obligation for the beneficiary to reimburse interest on the amounts unduly paid.

72 Secondly, as regards the provisions of Article 32 of Regulation No 1290/2005, it should be pointed out in the first place that that article relates to Member States' obligations as regards the recovery of sums from beneficiaries who have committed irregularities or demonstrate negligence (judgment in *Italy* v *Commission*, cited in paragraph 37 above, EU:T:2010:154, paragraph 35).

73 In particular, according to Article 32(1) of Regulation No 1290/2005, sums recovered following the occurrence of irregularity or negligence and the interest on these shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.

74 According to the case-law, Article 32(1) of Regulation No 1290/2005 thus provides that the interest on sums recovered following an irregularity or negligence is to be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received. However, that provision, which merely contains a straightforward rule for the budgetary assignment of such revenue, does not place an obligation on the Member States to charge interest on such recovered sums (judgment of 29 March 2012 in *Pfeifer & Langen*, C-564/10, ECR, EU:C:2012:190, paragraph 44).

75 Also, Article 32(5) of Regulation No 1290/2005 relates to specific situations in which a Member State has not recovered sums, either within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts. In such situations, under that provision 50% of the financial consequences of non-recovery shall be borne by the Member State concerned and 50% by the Union budget (judgment in *Italy* v *Commission*, cited in paragraph 37 above, EU:T:2010:154, paragraph 36).

76 According to the case-law, the division, in equal parts, of the financial responsibility between the Member State concerned and the Union budget, as laid down in Article 32(5) of Regulation No 1290/2005, applies to all the effects of a financial nature linked to non-recovery of sums irregularly paid, which include inter alia the principal sums and interest thereon which should have been paid pursuant to Article 32(1) of that regulation (see, to that effect, judgment in *Italy* v *Commission*, cited in paragraph 37 above, EU:T:2010:154, paragraphs 39, 41 and 44).

77 It follows that the Commission is, in principle, authorised to include, in the sums owing pursuant to Article 32(5) of Regulation No 1290/2005, interest on the claims for which recovery has not taken place within the time limit, depending on the circumstances, of four or eight years fixed in that provision (see, to that effect, judgment in *Italy* v *Commission*, cited in paragraph 37 above, EU:T:2010:154, paragraph 46).

78 However, it should be pointed out that the inclusion, in the sums owing pursuant to Article 32(5) of Regulation No 1290/2005, of interest on the claims for which recovery has not taken place within the time limit, depending on the circumstances, of four or eight years fixed in that provision is necessarily subject to the existence, in the case concerned, of an obligation for the Member State concerned to require payment of interest on the sums at issue. In the light of the case-law set out in paragraph 76 above, it is only if such an obligation exists that the financial consequences of non-recovery of the sums at issue, within the meaning of that provision, may cover interest as well as the principal amount of those sums.

79 It also follows that the application, in the present case, of a financial correction in respect of non-declared interest relating to old claims is subject to the Kingdom of the Netherlands being under such an obligation.

80 In the second place, it should be pointed out that Article 32(1) and (5) of Regulation No 1290/2005 contains no obligation for the Member States to charge interest on claims to be recovered.

81 First and, moreover, following the example of the second subparagraph of Article 8(2) of Regulation No 729/70, in the version resulting from Regulation No 1287/95, to which the Commission refers, Article 32(1) of Regulation No 1290/2005 contains, as has already been pointed out in paragraph 74 above, only a straightforward rule of budgetary assignment of the sums recovered following an irregularity or negligence, and does not provide that Member States are under an obligation to charge interest on such recovered sums.

82 It must also be considered that Article 32(5) of Regulation No 1290/2005 also does not establish any obligation, for Member States, to charge interest on the sums to be recovered, since that provision contains only a rule for sharing the financial responsibility for the consequences of non-recovery of the sums at issue, beyond the time limits laid down by that provision.

83 That interpretation of Article 32(5) of Regulation No 1290/2005 is required *a fortiori* because, according to the case-law, that provision must be read in the light of Article 32(1) of that regulation, which constitutes the general framework as regards reimbursement to the Union of amounts payable as a result of irregularity or negligence in the use of funds (judgment in *Italy* v *Commission*, cited in

paragraph 37 above, EU:T:2010:154, paragraph 41). As is apparent from paragraphs 74 and 81 above, the latter provision cannot be interpreted as placing an obligation on Member States to charge interest on the sums recovered.

84 Secondly, that reading of the provisions of Article 32(1) and (5) of Regulation No 1290/2005 is unaffected by the considerations expressed in paragraph 44 of the judgment in *Italy* v *Commission*, cited in paragraph 37 above (EU:T:2010:154), cited by the Commission.

85 Admittedly, the Court considered, in paragraph 44 of the judgment in *Italy* v *Commission*, cited in paragraph 37 above (EU:T:2010:154), that it was apparent from the preamble to Regulation No 1290/2005, and in particular from recitals 25 and 26 of that regulation, that the system of shared financial responsibility established by Article 32(5) of the regulation was designed to protect the financial interests of the Union budget by a partial charging to the Member State concerned of sums payable as a result of irregularities and not recovered within reasonable deadlines and that the obligation to recover the interest outstanding from the time when the irregularity was discovered to the time when the sums in question were actually recovered was compensatory in nature in so far as the interest relates to the temporary damage suffered by the Union budget as a result of the fact that it has not been in receipt of a credit entered in its favour. The Court concluded that the exclusion of interest from the sum to be recovered, and therefore a reduction in the amount charged to the Member State concerned, would be incompatible with the protection of the financial interests of the Union budget as that budget would thus bear most of the financial consequences of non-recovery, within reasonable periods, of amounts payable as a result of irregularity.

86 However, contrary to what the Commission maintains, it should be noted that it cannot be inferred from those considerations that there is a general principle according to which Member States are required to charge interest when sums due owing to irregularity are recovered, which must be taken into account in the application of Article 32(5) of Regulation No 1290/2005. It is apparent from paragraph 48 of the judgment in *Italy* v *Commission*, cited in paragraph 37 above (EU:T:2010:154), that the Court ruled, in the judgment, on the sole question of whether interest must be taken into account under Article 32(5) of Regulation No 1290/2005 but was not, however, called upon to rule on the very basis of the obligation to charge interest.

87 The Commission likewise cannot rely on paragraph 45 of the judgment in *Italy* v *Commission*, cited in paragraph 37 above (EU:T:2010:154). Admittedly, the Court stated 'that the principle that interest is ancillary to the principal amount and follows the same accounting regime is of general application in the context of the rules relating to the [Union] budget as is evidenced by Article 86(1) of Regulation No 2342/2002, implementing Article 71(4) of the financial regulation, which states that "without prejudice to any specific provisions deriving from the application of sectoral rules, any amount receivable not repaid … shall bear interest"'. However, it should be pointed out that the mere fact that interest is ancillary to the principal amount cannot constitute the basis for the existence in the present case of an obligation for the Kingdom of the Netherlands to account for interest. Also, and in any event, it should be noted that the Commission merely reproduced, in the rejoinder, the considerations expressed by the Court in paragraph 45 of that judgment without drawing any conclusion in the present case and that, at no time, either during the administrative procedure or before the Court, did it rely on Article 86(1) of Regulation No 2342/2002, assuming that that provision is applicable to the circumstances of the present case.

88 In any event, it should be pointed out that the opposite interpretation, according to which there is an obligation under Article 32(1) and (5) of Regulation No 1290/2005 for Member States to charge interest when recovering sums due owing to irregularity and, therefore, the automatic inclusion of that interest in the financial consequences referred to in Article 32(5) conflicts with the interpretation by the Court of Justice of Article 32(1), as recalled in paragraphs 74 and 81 above, which, as is apparent from paragraph 83 above, must be taken into account in the interpretation of Article 32(5).

89 It is also important to add that, as regards the very principle of the charging of interest referred to in Article 32(1) of Regulation No 1290/2005, the Court of Justice, on the basis of Article 4(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the [Union's] financial interests (OJ 1995 L 312, p. 1), under which, in essence, the withdrawal of the advantage wrongly obtained may also be subject to interest, where so provided for, did not lay down any general principle under which the recovery of advantages wrongly obtained is necessarily accompanied by interest. On the contrary, after having ruled out the existence of such an obligation in the relevant provisions of the applicable regulations, the Court sought such an obligation in national law for the purposes of applying the principle of equivalence (see, to that effect, judgment in *Pfeifer* & *Langen*, cited in paragraph 74 above, EU:C:2012:190, paragraphs 41 to 47).

90 Moreover, it should be noted that the Commission itself pointed out at the hearing that it is only in conjunction with the principle of equivalence that Article 32 of Regulation No 1290/2005 justifies the application of a financial correction in respect of undeclared interest on old claims, as is apparent, in essence, from paragraph 63 above.

91 Thirdly, in the absence, both in the sectoral regulations and in Regulation No 1290/2005, of any obligation to charge interest on old claims, it is therefore necessary to examine whether such an obligation could, in the present case, legitimately be founded on the principle of equivalence.

92 In that regard, it should be pointed out that, under Article 325(2) TFEU, Member States are required to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests (judgments of 28 October 2010 in *SGS Belgium and Others*, C-367/09, ECR, EU:C:2010:648, paragraph 40; *Pfeifer & Langen*, cited in paragraph 74 above, EU:C:2012:190, paragraph 52, and of 26 February 2013 in *Åkerberg Fransson*, C-617/10, ECR, EU:C:2013:105, paragraph 26). It follows, according to the case-law, that Member States are required, in the absence of Union legislation and where their national law provides for the collection of interest when recovering advantages of the same type wrongly received from their own budget, to collect interest in the same way when recovering advantages wrongly received from the Union budget (judgment in *Pfeifer & Langen*, cited in paragraph 74 above, EU:C:2012:190, paragraph 52). It must be considered that the same applies with regard to financial charges which the authorities of the Member States are responsible for receiving of behalf of the Union (see, to that effect, judgment of 27 March 1980 in *Meridionale Industria Salumi and Others*, 66/79, 127/79 and 128/79, ECR, EU:C:1980:101, paragraph 17).

93 In the present case, as has been pointed out in paragraph 63 above, it is established that, in the administrative proceedings, the Commission considered, in essence, that, in accordance with the principle of equivalence, recovery of the claims at issue was to be effected in the same way as that of unpaid national taxes. That view is, in essence, based on a broad interpretation, which the Kingdom of the Netherlands contests by the second part of this plea, of the concept of advantage of the same type within the meaning of the case-law cited in paragraph 92 above. Also, the Commission maintained at the hearing that, according to the information provided by the Kingdom of the Netherlands during the administrative proceedings, there was a possibility, under Netherlands private law, of recovering interest on claims consisting of wrongly granted national agricultural subsidies, a possibility on which that institution relied in the alternative.

94 In the circumstances, it is necessary to ascertain whether the recovery of old claims may be regarded as comparable to the recovery of unpaid national taxes in the light of the case-law referred to in paragraph 92 above, before examining, if necessary, the Commission's alternative argument, as summarised in paragraph 93 above.

95 In the first place, as regards the comparability of old claims with national tax debts, it is necessary, having regard to their respective characteristics, to examine separately old claims relating to additional levies and old claims relating to export refunds.

96 First, as regards old claims relating to additional levies, it should be pointed out that, according to the case-law, the purpose of the levy system is to re-establish, by limiting milk production, the balance between supply and demand in the milk market, which is characterised by structural surpluses. That purpose therefore falls within the ambit of the objectives of rational development of milk production and, by contributing to a stabilisation of the income of the agricultural community affected, that of ensuring a fair standard of living for the agricultural community (judgments of 17 May 1988 in *Erpelding*, 84/87, ECR, EU:C:1988:245, paragraph 26; 25 March 2004 in *Cooperativa Lattepiù and Others*, C-231/00, C-303/00 and C-451/00, ECR, EU:C:2004:178, paragraph 73, and *Azienda Agricola Ettore Ribaldi and Others*, C-480/00, C-482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00, ECR, EU:C:2004:179, paragraph 57). The additional levy on milk amounts to a restriction arising from market policy rules or structural policy (judgments in *Cooperativa Lattepiù and Others*, EU:C:2004:178, paragraph 74, and *Azienda Agricola Ettore Ribaldi and Others*, EU:C:2004:179, paragraph 58). It is one of the interventions designed to stabilise agricultural markets and is to be used to finance expenditure in the milk sector. It follows that, apart from its obvious aim of requiring milk producers to observe the reference quantities allocated to them, the additional levy has an economic objective too, in that it is intended to bring to the Community the funds necessary for disposal of milk produced by producers in excess of their quotas (judgments in *Cooperativa Lattepiù and Others*, EU:C:2004:178, paragraph 75; *Azienda Agricola Ettore Ribaldi and Others*, EU:C:2004:179, paragraph 59; and of 15 July 2004 in *Gerekens and Procola*, C-459/02, ECR, EU:C:2004:454, paragraph 37).

97 It follows that, although, as the Commission states, in essence, the additional levies are intended to acquire funds for the Union budget, the fact remains, however, that, as the Kingdom of the Netherlands has pointed out, those levies are characterised by their function of regularising the agricultural markets.

98 On the other hand, as the Kingdom of the Netherlands maintained, in essence, taxes or charges under a national taxation system, levied on the population as a whole, are characterised by their principal, if not only, function which is to generate income for the national budget. Moreover, in the present case, the Commission has not established or even claimed that the Netherlands taxes which it took into account for the purpose of the application of the principle of equivalence pursued any objective similar to that of the additional levies, namely the regularisation of the markets.

99 It therefore appears that, as the Kingdom of the Netherlands maintains, in essence, the function of regularising the markets, which is the role of the additional levies, is unrelated to national taxes. Moreover, as the Kingdom of the Netherlands states, the agricultural levies are received from a strictly defined category of liable persons and not from the population as a whole and the revenue from the additional levies is used to finance expenditure in the milk sector and, more specifically, to dispose of milk produced by producers in excess of their quotas.

100 By analogy with the case-law, according to which it is necessary, for the purpose of the application of the principle of equivalence, to verify the similarity between actions based on an infringement of Union law and those based on an infringement of national law from the point of view of their purpose, cause of action and essential characteristics (see, to that effect, judgment of 19 July 2012 in *Littlewoods Retail and Others*, C-591/10, ECR, EU:C:2012:478, paragraph 31 and the case-law cited), it must be considered, as regards in the present case verification of the similarity between Union claims and national claims, that, in the light of the particular purpose and assignment of additional levies, the old claims relating to the latter cannot be regarded as claims which are equivalent (of the same type) to national tax debts.

101 Also, and in any event, even if it is apparent from the case-law that it cannot be precluded that, as the Commission claims in essence, additional levies, as financial charges which the authorities of the Member States are responsible for levying on behalf of the Union, may be regarded as comparable to national taxes or charges (see, to that effect, judgments of 14 July 1994 in *Milchwerke Köln* v

*Wuppertal*, C-352/92, ECR, EU:C:1994:294, paragraph 23 and the case-law cited, and 15 January 2004 *Penycoed*, C-230/01, ECR, EU:C:2004:20, paragraphs 36 and 37 and the case-law cited), it must be added that, even in that situation, it is necessary to ascertain whether those national taxes or charges are equivalent to or of the same type as the additional levies (see, to that effect, judgment of 27 May 1993 in *Peter*, C-290/91, ECR, EU:C:1993:220, paragraph 11).

102 In the present case, as is apparent in essence from paragraph 98 above, there is nothing in the file to support the conclusion that the Commission sought to verify whether, in the taxes and charges established under Netherlands law, there were taxes or charges of the same type as the additional levies.

103 In those circumstances, it must be concluded that the Commission was wrong to consider that the old claims relating to additional levies were to be treated in the same way as fiscal debts.

104 Secondly, as regards old claims relating to export refunds, it should be pointed out that, according to the case-law, the purpose of the export refund scheme is to enable Community products to be exported where that course would not otherwise be financially viable for the exporter (see judgment of 19 November 1998 in *France* v *Commission*, C-235/97, ECR, EU:C:1998:556, paragraph 80 and the case-law cited).

105 Export refunds were, under Article 1(2)(a) of Regulations No 729/70 and No 1258/1999, financed by the EAGGF, Guarantee Section, and are now, under Article 3(1)(a) of Regulation No 1290/2005, which has been applicable since 1 January 2007, financed by the EAGF.

106 Accordingly, by their very nature, export refunds, which constitute an advantage given to farmers, differ, as the Commission indicated, moreover, in the administrative proceedings and at the hearing, from national taxes. Whilst the former are financed by the Union budget, the latter feed the national budget.

107 However, the Commission considered, in the clearance procedure, that claims relating to export funds wrongly received by farmers and having to be recovered by the Member State concerned were comparable to fiscal debts since, in essence, the sums recovered were entered as revenue in the Union budget, so that they feed that budget in the same way as national taxes feed the budget of the Member State concerned. It took the view that the effectiveness of the principle of equivalence required old claims, as regards the charging of interest at the time of recovery, to be treated in the same way as fiscal debts.

108 That analysis by the Commission is incompatible with the case-law, cited in paragraph 92 above, which, in the absence of Union legislation, makes the obligation for the Member States to charge interest on advantages wrongly obtained from the Union budget conditional on their national law providing for interest to be charged in relation to the recovery of advantages of the same type wrongly received from their national budget.

109 Admittedly, it should be pointed out, as the Commission has done, that the sums wrongly paid and reimbursed constitute revenue, within the meaning of Article 18(1)(f) of Regulation No 1605/2002, which is used to fund specific expenditure.

110 However, even if the sums relating to export refunds wrongly granted and recovered are thus entered as revenue in the Union budget, the fact remains that the sums corresponding to those export refunds should never have been paid to the farmers.

111 In other words, unlike the recovery of national taxes, the recovery of export refunds unduly paid do not specifically feed the Union budget but repay amounts which should never have been paid.

112 In the light of the foregoing, it must be concluded that the Commission was wrong to hold that old claims relating to export refunds were comparable to fiscal debts.

113 The conclusions drawn in paragraphs 103 and 112 above cannot be called into question by the Commission's arguments alleging that, in essence, a strict interpretation of the concept of advantages of the same type, in which recovery of unpaid national taxes and recovery of old claims are not considered comparable, disregards both the damage caused to the Union budget owing to non-recovery of interest and the effectiveness of the principle of equivalence.

114 In that regard, admittedly, it has already been held that recovery of the interest outstanding for the period from the time when the irregularity was discovered to the time when the sums in question were actually recovered was compensatory in nature in so far as the interest related to the temporary damage suffered by the Union budget as a result of the fact that it had not been in receipt of a credit entered in its favour (judgment in *Italy* v *Commission*, cited in paragraph 37 above, EU:T:2010:154, paragraph 44).

115 It is also true that, under Article 325(2) TFEU, as pointed out in paragraph 92 above, Member States are to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

116 However, a broad interpretation of the concept of advantage of the same type, as suggested by the Commission, is incompatible, owing to its particularly wide scope, with the premisses of the application of the principle of equivalence, which operates, as is clearly apparent from the judgment in *Pfeifer & Langen*, cited in paragraph 74 above (EU:C:2012:190, paragraph 45), only in the absence of sectoral rules providing for the recovery of interest. Furthermore, it is unequivocally apparent from the case-law cited in paragraph 92 above that it is only when national law provides for the collection of interest in connection with the recovery of advantages of the same type wrongly received from the national budget that Member States are required to collect interest in a similar way when recovering advantages wrongly received from the Union budget.

117 The broad interpretation proposed by the Commission amounts, in the end, to considering that, even in the context of the application of the principle of equivalence, it is still necessary to charge interest where the revenue from the recovery of sums wrongly paid is entered in the Union budget within the meaning of Article 18(1)(f) of Regulation No 1605/2002, if national law provides for the charging of interest in any procedure for the recovery of any type of national advantage wrongly paid or unpaid national taxes, without having regard to their comparability with the Union claims at issue.

118 That consideration is dictated *a fortiori* by analogy with established case-law, according to which the principle of equivalence cannot be interpreted either as obliging a Member State to extend its most favourable rules governing recovery under national law to all actions for repayment of charges or dues levied in breach of Union law (judgments of 15 September 1998 in *Edis*, C-231/96, ECR, EU:C:1998:401, paragraph 36, and 28 November 2000 *Roquette Frères*, C-88/99, ECR, EU:C:2000:652, paragraph 29), or as requiring a Member State to extend its most favourable rules to all actions brought in a certain area of law (see judgment in *Littlewoods Retail and Others*, cited in paragraph 100 above, EU:C:2012:478, paragraph 31 and the case-law cited).

119 In the light of the foregoing considerations, it must be concluded that the Commission was wrong to consider that the old claims could be compared with fiscal debts. Accordingly, the Commission was also wrong to infer the existence, under the principle of equivalence, of an obligation on the Netherlands authorities to account for interest on the old claims.

120 In those circumstances, in the second place, it is necessary to assess the alternative argument raised by the Commission at the hearing, alleging, in essence, that the application of a financial correction in respect of undeclared interest relating to old claims was justified since Netherlands private law

provided for the possibility of recovering interest relating to national agricultural subsidies wrongly granted, so that, under the principle of equivalence, such interest could have been obtained in respect of the recovery of old claims.

121 In that regard, it should be noted that, in reviewing the legality of acts under Article 263 TFEU, the Court has jurisdiction in actions brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers. Article 264 TFEU provides that, if the action is well founded, the act concerned must be declared void. The Court cannot therefore, under any circumstances, substitute its own reasoning for that of the author of the contested act (see judgment of 28 February 2013 in *Portugal* v *Commission*, C-246/11 P, EU:C:2013:118, paragraph 85 and the case-law cited).

122 In the present case, first, it is apparent from the material in the file that, in the letter of 11 February 2011, sent in response to the minutes of the bilateral meeting, the Netherlands authorities referred to the absence, in Netherlands public law, of any obligation to charge interest when recovering national agricultural subsidies wrongly granted and to the possibility of nevertheless obtaining such interest under Netherlands private law. Those authorities stated, however, in that letter, that in practice that possibility was hardly ever implemented.

123 It should also be pointed out that, in the administrative proceedings, the Commission drew no argument from that alleged possibility under Netherlands private law to justify its conclusion that the Kingdom of the Netherlands was required to account for interest in respect of old claims.

124 Accordingly, following the finding that there was a basis for the financial correction by the Netherlands authorities, in the formal notification the Commission stated that Union claims could not be treated any less favourably than any national claim. It concluded in essence that, if, at the time of the events, the Kingdom of the Netherlands charged interest when recovering any national claim, such as tax debts or national subsidies wrongly granted, the same ought to apply when it recovered Union claims. Also, it is unequivocally apparent from the observations sent by the Commission for the purpose of the conciliation procedure, from the final decision and from the summary report that the Commission considered that the old claims ought to be compared with national tax debts.

125 Finally, it is important to add that the Commission acknowledged at the hearing that that alleged possibility of obtaining interest under Netherlands private law had not been the subject of discussions between the parties during the administrative proceedings.

126 It is apparent from those details that the financial correction applied by the Commission in respect of undeclared interest relating to old claims is, in essence, based on the consideration that those claims were comparable to fiscal debts, so that, since interest was received when the latter were recovered, interest ought also to have been accounted for in respect of the former. On the other hand, at no time did the Commission base that conclusion on the consideration that, since there was a possibility of obtaining interest on national claims arising from national agricultural subsidies wrongly granted, the Kingdom of the Netherlands should have accounted for the interest at issue in respect of the old claims.

127 In those circumstance, to take into consideration, at this stage, that possibility, if confirmed, of obtaining payment of interest under Netherlands private law and to assess whether such a possibility constituted a sufficient basis for recognising, under the principle of equivalence, an obligation on the Kingdom of the Netherlands to account for interest in respect of old claims would be tantamount to substituting the reasons of the contested decision which, however, the Court cannot do, as is apparent from the case-law cited in paragraph 121 above.

128 It follows that the alternative argument raised by the Commission at the hearing must be rejected, and it is not even necessary to rule on its admissibility in so far as it was expressed for the first time at the hearing.

129 In the light of the foregoing, the second plea raised by the Kingdom of the Netherlands must be upheld in its entirety. Since that plea supports the main head of claim, that also must be upheld.

130 Nevertheless, the Court considers it expedient to examine, for the sake of completeness, the third plea raised by the Kingdom of the Netherlands, which supports the second head of claim, submitted in the alternative (see paragraph 51 above).

*The third plea, alleging infringement of the principle of due care, read in conjunction with Article 8(2) of Regulation No 729/70 and Article 5(2) of Regulation No 595/91*

131 By the third plea, the Kingdom of the Netherlands complains that the Commission infringed the principle of due care, read in conjunction with Article 8(2) of Regulation No 729/70 and with Article 5(2) of Regulation No 595/91, in that it did not adopt, before 16 October 2006, a decision relating to the claims in the Centramelk file charging those claims to the Community. In that regard, first, it maintains that the Commission should, in good time, have taken into account the information provided by the Netherlands authorities, in particular, in the letter of 4 October 2006. Since it is apparent from that information that, with the exception of one of the nine individual cases of evasion in the Centramelk file, the claims at issue were irrecoverable, which was established, furthermore, at the date of the special notification of 10 July 2003, the Commission should have adopted a decision before 16 October 2006 in respect of eight of those cases. At least it should have given its reasons for refusing to adopt such a decision. However, the letter of 23 October 2006 contains no reasons at all. Secondly, the Kingdom of the Netherlands maintains that, during the administrative proceedings which led to the adoption of the contested decision, the Commission failed to reconsider its position and merely referred to earlier positions which had become obsolete. It did not exercise due care, in particular with regard to the conciliation procedure. Thirdly, the Kingdom of the Netherlands maintains, in response to the Commission's claim that this plea is inadmissible, that it cannot be criticised for not having brought an action against Decision 2007/327 since that decision concerned only the principal sum and not the interest.

132 The Commission contends, in essence, that the third plea is inadmissible and, in any event, unfounded.

133 As a preliminary point it should be noted, first, that, as regards the claims in the Centramelk file, the Commission, in Decision 2007/327, applied the rule under Article 32(5) of Regulation No 1290/2005. It is apparent, in that regard, from the letter of 21 February 2006 that, according to the Commission's services, recovery of those claims was still ongoing at the date of that letter. In its letter of 23 October 2006, the Commission also informed the Netherlands authorities of the fact that no decision had yet been taken in respect of that file and that cases which were not dealt with before 16 October 2006 would be dealt with in accordance with the provisions of Article 32 of Regulation No 1290/2005.

134 Also, during the administrative proceedings which led to the adoption of the contested decision, the parties discussed, inter alia, the application of Article 32(5) of Regulation No 1290/2005 to the interest relating to the claims in the Centramelk file. That matter was raised, in particular, before the Conciliation Body.

135 In its report, the Conciliation Body pointed out, inter alia, that the Centramelk file had been dealt with, in 2006, in accordance with Article 32(5) of Regulation No 1290/2005. In that context, while pointing out that it might be impossible to re-examine Decision 2007/327, which had become final, the Conciliation Body wondered whether the calculation of interest could be limited to the single individual case of evasion in that file which was in effect the subject matter of recovery proceedings in

2006, with the exception of the other cases in the file, concerning companies which were bankrupt, dissolved or without assets well before the application of the rule under Article 32(5) of Regulation No 1290/2005. In conclusion, the Conciliation Body inter alia invited the Commission to consider that last matter.

136 Finally, the Commission considered that matter in its final position and in the summary report. In that regard, it pointed out, first of all, that, under Article 32(6)(b) of Regulation No 1290/2005, a Member State may decide not to pursue recovery where recovery proves impossible owing to the insolvency, recorded and recognised under the national law of that Member State, of the debtor. Since the Kingdom of the Netherlands did not enter, in the table in Annex III to Regulation No 885/2006 for the financial year 2006, any of the nine claims in the Centramelk file as being irrecoverable, those claims ought, according to the Commission, to be subject to the rule in Article 32(5) of Regulation No 1290/2005. The Commission also rejected the argument that eight of the nine claims in that file were irrecoverable even before the adoption of the clearance decision for the financial year 2006 and ought to be excluded from calculation of the interest. In that regard, it stated that that rule introduced a division of financial responsibility between the Union and the Member State concerned for claims which had not been recovered within a period of four or eight years after the date of the first administrative or judicial finding. According to the Commission, in the light of the information provided by the Netherlands authorities, the irrecoverability of the claim had been established before that time limit in only two of the nine individual cases of evasion concerned. Moreover, it added that, in an enquiry conducted in 2003, its services had concluded that recovery of the claims to which that file applies were still ongoing. Finally, in the light of those considerations and since interest was ancillary to the main claim, it applied the rule in Article 32(5) of Regulation No 1290/2005 to the interest relating to all the claims in the Centramelk file.

137 It is in the light of those considerations that the present plea, as the principal argument, must be examined.

138 In the first place, the Kingdom of the Netherlands claims that the Commission did not exercise due care in that it wrongly failed to adopt, before 16 October 2006, a decision in respect of the claims in the Centramelk file or, at least, to give reasons for its refusal to adopt such a decision before that date.

139 More specifically, the Kingdom of the Netherlands states, in the application, that the Commission wrongly omitted '[to adopt] before 16 October 2006 [a] decision relating to the outstanding claims which had already been the subject [of the special notification of 10 July 2003] seeking to charge the balance to the … Community'. Similarly, in the reply, it criticises the Commission for not having taken a decision, before 16 October 2006, 'concerning the Centramelk [file] on the basis of which the irrecoverable claims in [eight] of the [nine individual cases of evasion] concerned were charged to the Community' and that that institution 'could and should, even before … 16 October 2006 …, as regards [those eight individual cases of evasion], have decided that the financial consequences [ought] to be charged to the Community, in accordance with Article 8(2) of Regulation No 729/70 in conjunction with Article 5(2) of Regulation No 595/91'. Moreover, it adds that the letter of 23 October 2006 contains no statement of reasons.

140 It is therefore apparent from the pleadings of the Kingdom of the Netherlands that, as, furthermore, it confirmed at the hearing in reply to a question put by the Court, which was duly noted in the minutes of the hearing, although the arguments raised in support of the third plea are formally presented as seeking the partial annulment of the contested decision, they relate no less to the application of Article 32(5) of Regulation No 1290/2005 to the claims in the Centramelk file.

141 It is not disputed that, as pointed out in paragraph 133 above, it was by Decision 2007/327 that the Commission inter alia subjected the claims in the Centramelk file to the rule in Article 32(5) of Regulation No 1290/2005.

142 In that regard, it should be noted that, according to the case-law, a decision which has not been challenged by the addressee within the time limit laid down by Article 263 TFEU becomes definitive as against him (see judgment of 14 September 1999 in *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, ECR, EU:C:1999:407, paragraph 57 and the case-law cited). Such a rule is based in particular on the consideration that the purpose of having time limits for bringing legal proceedings is to ensure legal certainty by preventing Union measures which produce legal effects from being called into question indefinitely as well as on the requirements of good administration of justice and procedural economy (judgment in *Commission* v *AssiDomän Kraft Products and Others*, EU:C:1999:407, paragraph 61).

143 In the present case, it is established that the Kingdom of the Netherlands was, as is apparent from Article 3 of Decision 2007/327, an addressee of that decision and that it did not bring an action for annulment of that decision.

144 It follows that, in the light of the case-law cited in paragraph 142 above, Decision 2007/327 became definitive as against the Kingdom of the Netherlands.

145 Therefore, the Kingdom of the Netherlands which, in a possible action for annulment of Decision 2007/327, could have challenged the application of Article 32(5) of Regulation No 1290/2005 to the claims in the Centramelk file, lost any opportunity to contest it subsequently, once the time limit for bringing an action against that decision had expired (see, by analogy, judgment of 5 July 2012 in *Greece* v *Commission*, T-86/08, ECR, EU:T:2012:345, paragraph 50).

146 To allow the Kingdom of the Netherlands, in the context of the present action, to raise arguments concerning the lack of a decision, in respect of the claims in the Centramelk file, before 16 October 2006 and, accordingly, concerning the inclusion of those claims in Decision 2007/327, although there was nothing to prevent it from contesting that decision in an action for annulment, would amount to allowing it to infringe the time limit for bringing proceedings against Decision 2007/327 (see, by analogy, judgment in *Greece* v *Commission*, cited in paragraph 145 above, EU:T:2012:345, paragraph 53).

147 Therefore, the arguments alleging that the Commission ought to have adopted a decision in respect of the claims in the Centramelk file before 16 October 2006 must be declared inadmissible.

148 That conclusion is unaffected by the argument of the Kingdom of the Netherlands that it cannot be criticised for not having brought an action against Decision 2007/327, since that decision related only to the principal amount of the claims in the Centramelk file and not to the interest.

149 In that regard, it should be noted that, according to settled case-law, the strict application of Union rules on procedural time limits serves the requirements of legal certainty and the need to avoid discrimination or arbitrary treatment in the administration of justice (see judgment in *Greece* v *Commission*, cited in paragraph 145 above, EU:T:2012:345, paragraph 54; see also, to that effect, order of 16 November 2010 in *Internationale Fruchtimport Gesellschaft Weichert* v *Commission*, C-73/10 P, ECR, EU:C:2010:684, paragraph 49 and the case-law cited).

150 To endorse the arguments of the Kingdom of the Netherlands and to authorise it to contest now the legality of the considerations in Decision 2007/327 on the sole ground that, by the contested decision, interest on the claims at issue in Decision 2007/327 was subsequently subject to Article 32(5) of Regulation No 1290/2005 would amount to allowing that Member State to circumvent the time limit for bringing an action and would therefore be contrary to the purpose of that time limit, as pointed out in paragraph 149 above.

151 In the light of the foregoing considerations, it is necessary to reject as inadmissible the arguments of the Kingdom of the Netherlands seeking to establish that the Commission failed to exercise due care in that it wrongly omitted to adopt a decision in respect of the claims in the Centramelk file before 16 October 2006.

152 In the second place, the Kingdom of the Netherlands criticises the Commission for also having failed to exercise due care in the administrative procedure which led to the adoption of the contested decision. It maintains that, although both its authorities and the Conciliation Body had criticised the Commission's position, the Commission 'did not reconsider its position and merely referred to earlier positions which had meanwhile been rendered obsolete by new information' and did not 'take the conciliation procedure seriously'.

153 In that regard, it should be pointed out that, as is apparent from the summary, in paragraph 136 above, of the Commission's final position and summary report, in essence it restated its position that the claims in the Centramelk file were to be subject, in Decision 2007/327, to the rule in Article 32(5) of Regulation No 1290/2005 and, in that context, rejected the argument that it had been established, since 2006, that the claims were irrecoverable in eight of the nine individual cases of evasion in that file. Furthermore, in those circumstances and since the interest on the claims in that file were ancillary to those claims, the Commission considered that that rule should be applied and that a financial correction in respect of 50% of the interest on those claims should be imposed on the Kingdom of the Netherlands.

154 It is apparent that the Commission duly examined the matter of whether certain claims in the Centramelk file could be excluded from the calculation of interest. In particular, it considered and expressly rejected the allegation that it had been established, since 2006, that, in eight of the nine individual cases of evasion in that file, the claims were irrecoverable, and also the proposal to exclude from the financial correction the interest relating to those eight separate cases of evasion.

155 It follows that the Commission took note of the arguments put forward by the Kingdom of the Netherlands and of the questions raised by the Conciliation Body and examined them carefully, even if did not consider them persuasive. In the circumstances, there cannot be any infringement of the principle of due care (see, to that effect, judgment of 18 May 2000 in *Belgium* v *Commission*, C-242/97, ECR, EU:C:2000:255, paragraphs 92 and 93).

156 That conclusion is unaffected by the argument put forward by the Kingdom of the Netherlands alleging that the Commission did not reconsider its position and merely referred to earlier positions which had meanwhile been rendered obsolete by new information.

157 Firstly, the fact that the Commission inter alia restated its earlier position, contested by the Kingdom of the Netherlands, that, in the enquiry conducted in 2003, its services had concluded that recovery of the claims in the Centramelk file was still ongoing does not constitute a lack of due care on the part of the Commission when examining the arguments presented by the applicant. On the contrary, that fact is merely an expression of disagreement, between the parties, as to the adequacy of the factors taken into account for the clearance of those claims. Therefore, for the same reasons as those stated in paragraph 155 above, that fact cannot constitute a lack of due care on the part of the Commission.

158 Furthermore, in the light of the considerations stated in paragraphs 142 to 146 above, it is important to add that the Commission's finding that recovery of the claims in the Centramelk file was still ongoing inter alia caused those claims to be subject to the rule in Article 32(5) of Regulation No 1290/2005 and to be included in Decision 2007/327 (see paragraph 133 above) and that the decision and the findings made and considerations expressed by the Commission in that regard became definitive as against the Kingdom of the Netherlands in the absence of an action for annulment brought by the applicant

against that decision. Therefore, it must be considered that the Commission could reasonably and without failing to show due care take those factors as a basis in the procedure leading to the adoption of the contested decision.

159 Secondly, it should be pointed out that the Commission justified the application of Article 32(5) of Regulation No 1290/2005 to the interest on the claims in the Centramelk file by the consideration that that interest, as ancillary to those claims, had to be treated in the same way. It should be noted that the Kingdom of the Netherlands by no means contests that consideration.

160 In the circumstances, it is necessary to reject as unfounded the arguments of the Kingdom of the Netherlands alleging that the Commission failed to exercise due care by failing to take into account the arguments presented, during the proceedings, by that Member State concerning the interest on the claims in the Centramelk file.

161 In the light of the foregoing, the third ground of appeal must be rejected as being partly inadmissible and partly unfounded.

162 In the light of all the foregoing considerations and, in particular of the conclusion in paragraph 129 above, the contested decision must be annulled in so far as the Commission applied to the Kingdom of the Netherlands a financial correction of EUR 4 703 231.78 in respect of undeclared interest on old claims.

**Costs**

163 Under Article 134(1) 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. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Kingdom of the Netherlands.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Annuls Commission Implementing Decision 2013/763/EU of 12 December 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it applied to the Kingdom of the Netherlands a financial correction amounting to EUR 4 703 231.78 in respect of the non-reporting of interest on claims relating to the late payment of additional levies before 1 April 1993 and on export refunds wrongly paid before 1 April 1995;**

2. **Orders the European Commission to bear its own costs and to pay those incurred by the Kingdom of the Netherlands.**

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 24 November 2015.

[Signatures]