OPINION OF ADVOCATE GENERAL LÉGER

delivered on 26 September 2002 [1]

1. By this action, brought under the first paragraph of Article 230 EC, the Italian Republic is seeking the partial annulment of Commission Decision 2000/197/EC of 1 March 2000 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). [2]

2. The Italian Republic challenges the contested decision inasmuch as it imposes five sets of financial adjustments in respect of expenditure declared with regard to 1995. That expenditure relates to the costs of managing and supervising the public storage of cereals. The adjustments imposed are as follows:

— specific financial adjustments of ITL 3 358 746 955, ITL 807 967 249 and ITL 22 116 046 015 in respect of expenditure relating to storage costs for durum wheat;

— specific financial adjustments totalling ITL 54 518 294 818 in respect of expenditure relating to storage costs for durum wheat;

— a financial adjustment of ITL 1 923 101 478 corresponding to the amount of the security which should have been recovered in connection with the sale of durum wheat to Algeria;

— a financial adjustment of ITL 9 965 368 843 corresponding to the value of the discrepancies found in the stocks of common wheat, barley and maize between the end of the 1994 financial year and the start of the 1995 financial year, and

— a financial adjustment of ITL 2 502 127 250 corresponding to the amount of the adjustments made by the Commission in an earlier monthly declaration concerning common wheat, barley and maize.

1 — Original language: French.

2 — OJ 2000 L 61, p. 15, 'the contested decision'.

3. The Italian Republic also challenges the Commission decision refusing to grant it the sum of ITL 11 952 457 079 in respect of the regularisation of invoices for the sale of cereals into public intervention.

4. The grounds for the adjustments imposed are summarised in the Consolidated Report on the results of the inspections for the clearance of the accounts of the Guarantee Section of the EAGGF for 1995. [3] I shall consider the specific aspects of those various adjustments in turn (points I to VII).

I — Specific financial adjustments of ITL 3 358 746 955, ITL 807 967 249 and ITL 22 116 046 015 in respect of expenditure relating to storage costs for durum wheat

A — *Facts*

5. During inspections carried out on the spot the Commission found considerable discrepancies in intervention stocks of durum wheat between the annual declaration made by the Italian authorities for 1995 and the actual situation with regard to those stocks. On the basis of the available evidence the Commission decided:

— to reduce the expenditure declared in respect of budget item 1011.003 by ITL 3 358 746 955;

— to reduce the expenditure declared in respect of budget item 1012.003 by ITL 807 967 249, and

— to increase the expenditure declared in respect of budget item 1013.003 by ITL 22 116 046 015.

B — *The arguments of the Italian Republic*

6. The Italian Republic contends that the contested adjustment is unlawful. It puts

3 — Document VI/6462/98, consolidated text of 12 January 1999 ('the Consolidated Report') (extracts attached as Annex 1 to the defence).

forward the following arguments in support of its contention: [4]

'... the quantity of cereals stored as it was reconstituted on 1 October 1994 (at the start of the 1995 financial year) [was] 715 241.791 tonnes [and] was broken down as follows:

Stock recorded at 1 October 1994 (based on inventory checks)
639 282.836 t

+ Stock with Casillo
91 664.845 t

+ Stock with Federconsorzi
117.980 t

+ Stock with Molini Nuova Daunia
7 681.500 t

Minus quantities missing at CO.GE.A
23 505.900 t

Stock at 1 October 1994
715 241.251 t

The Commission staff noted with regard to that stock as declared by the Italian authorities that it was 174 640.558 tonnes greater than the quantity which appeared previously in the EAGGF tables at 30 September 1994 (the date on which the 1994 financial year ended), which was 540 601.233 tonnes; they put that discrepancy down to the Italian authorities having increased the stocks by 198 146.458 tonnes and reduced the same stocks by 23 505.900 tonnes.

It should be observed that, irrespective of the grounds for the specific adjustments that were made, the Commission staff,... in their letter No 4014 of 9 February 2000..., declared that they had accepted the increase of 174 640.558 tonnes in the stocks of durum wheat from the 1995 financial year, even though they confirmed the negative adjustment subsequently.

The view expressed by the Commission discloses an unjustified enrichment on its

4 — Application (pp. 2 and 3).

part in the light of the various storage costs borne by the Italian State in respect of those stocks throughout the 1995 financial year.

...

It is necessary therefore to cancel ITL 26 282 760 219 of the proposed negative adjustment'.

C — *Assessment*

7. It should be pointed out that under Article 38(1)(c) of the Rules of Procedure of the Court of Justice an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. It is settled case-law [5] that that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself.

8. In this particular case I think the application fails to meet those minimum requirements.

9. The factual and legal grounds on which the Italian Republic bases its application for annulment are not clear from the arguments it puts forward. Although the Commission has been able to submit its defence effectively due to its knowledge of the case documents and the part it played in the pre-litigation procedure, the fact remains that the Court is not in a position to conduct a judicial review solely on the basis of the information provided in the application. In that connection, it is appropriate to point out that the Community judicature cannot take the place of the applicant, or his lawyer, by trying to locate and identify itself among the documents on the file the information which it might regard as supporting the claims formulated in the application. [6]

5 — See, for example, judgments of the Court of Justice in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28 and Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraphs 17 to 19, and judgments of the Court of First Instance in Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraphs 20 to 27; Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraphs 29 and 30; Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraphs 39 to 43. See also orders of the Court of First Instance of 28 April 1993 in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraphs 20 to 26; of 29 November 1993 in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraphs 21 to 24, and of 1 June 1999 in Case T-73/99 *Meyer* v *Council and Commission* [1999] ECR II-1739, paragraphs 7 and 8.

6 — See, for example, the order in *Koelman* v *Commission*, cited above, paragraph 23.

10. I therefore suggest that the Court should declare the first plea inadmissible.

II — Specific financial adjustments totalling ITL 54 518 294 818 in respect of expenditure relating to storage costs for durum wheat

A — *Legal background*

11. Council Regulation (EEC) No 2727/75 of 29 October 1975 [7] is designed to attain the objectives of the common agricultural policy in the sector of cereals and in particular market stability. [8] Article 7 of that regulation provides that the intervention agencies designated by Member States are obliged to buy in cereals which are offered to them provided that the offers comply with conditions regarding the quality of the products. [9] In order to be accepted products must be of 'sound, fair and of marketable quality'. [10] The quality of products is established on the basis of samples taken when the cereals are submitted to the intervention agency. [11]

12. The measures taken by the intervention agencies for the buying in and storage of cereals are financed by the EAGGF [12] in accordance with the detailed rules laid down in Council Regulation (EEC) No 3492/90 of 27 November 1990. [13]

13. That regulation provides that national agencies are required to draw up annual accounts for each product which is subject to public storage intervention measures. [14] The annual accounts must contain in particular the expenditure relating to the storage of products. Article 2 provides that Member States are to take all measures necessary to ensure the proper preservation of products. Article 5 provides that quan-

7 — Regulation on the common organisation of the market in cereals (OJ 1975 L 281, p. 1).

8 — Fourth recital in the preamble.

9 — That obligation was continued by Article 4 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals (OJ 1992 L 181, p. 21), which replaced Regulation No 2727/75 with effect from the 1993/94 marketing year.

10 — Article 2 of Commission Regulation (EEC) No 1569/77 of 11 July 1977 fixing the procedure and conditions for the taking over of cereals by intervention agencies (OJ 1977 L 174, p. 15). Those obligations were continued by Article 2 of Commission Regulation (EEC) No 689/92 of 19 March 1992 fixing the procedure and conditions for the taking over of cereals by intervention agencies (OJ 1992 L 74, p. 18), which replaced Regulation No 1569/77 with effect from 1 July 1992.

11 — Articles 3 and 4 of Regulation No 1569/77, as amended by Commission Regulation (EEC) No 1022/90 of 25 April 1990 (OJ 1990 L 106, p. 11). That principle was continued by Article 3 of Regulation No 689/92.

12 — See Article 1 of Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ 1978 L 216, p. 1).

13 — Regulation laying down the factors to be taken into consideration in the annual accounts for the financing of intervention measures in the form of public storage by the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ 1990 L 337, p. 3).

14 — Article 1(1). See also Article 4(1) of Regulation No 1883/78.

tities which have deteriorated because of the physical conditions of storage or by reason of overlong preservation are to be recorded in the accounts as having left the intervention stock on the date when the loss or deterioration was established.

14. The detailed rules for the application of that regulation are laid down in Commission Regulation (EEC) No 3597/90 of 12 December 1990. [15] Article 2(3)(c) provides that in cases of deterioration or destruction of the product as a result of bad conservation conditions the value of the product is to be accounted for in accordance with paragraph 1. Article 2(1) provides that the value of missing quantities is to be calculated by 'multiplying these quantities by the basic intervention price in force for the standard quality on the first day of the current financial year, increased by 5%'. Moreover, Article 7 provides that quantities entering storage which are found not to meet the conditions laid down for storage are to be entered in the accounts as a sale at the price at which they were purchased. Entry, removal and storage costs already entered in the accounts in respect of each of the rejected quantities are to be deducted and taken into account separately. To that end, storage costs are to be calculated by multiplying the rejected quantities by the number of months which elapse between entry and removal, by the standard amount and by the agricultural conversion rate of the month of removal.

15 — Regulation on the accounting rules for intervention measures involving the buying-in, storage and sale of agricultural products by intervention agencies (OJ 1990 L 350, p. 43).

B — *Facts*

15. An inspection conducted in March 1995 by the Consorzio Controlli Integrati in Agricoltura (Agricultural Integrated Inspections Cooperative, 'the CCIA') revealed that 122 709.192 tonnes of durum wheat stored in the warehouses of Coop. San Giorgio [16] were of very poor quality.

16. The Commission found that 84 481.128 tonnes of wheat did not meet the conditions required for admission into intervention. In its view the quality of the product had been poor since it was bought in. Under Article 7 of Regulation No 3597/90 the Commission therefore charged the Italian authorities the buying-in price of the quantities at issue and the storage costs entered in the accounts from the start of the 1990/91 season until the end of the 1995 financial year.

17. As regards the remaining 38 228.064 tonnes, the Commission considered that the deterioration of the product was the result

16 — It should be noted that in Italy the intervention agency, the Azienda di Stato per gli Interventi nel Mercato Agricolo (the State agency for intervention in the agricultural market, 'AIMA') has delegated all the operations for the buying-in and storage of cereals to private operators who are called 'enti assuntori' (see Consolidated Report, p. 89). Coop. San Giorgio is one of those private operators.

of bad conditions of preservation. Under Article 2(3)(c) of Regulation No 3597/90 the Commission charged the Italian authorities the value of that quantity and the storage costs accounted for from March 1995 until the end of the 1995 year. The total amount of the adjustment imposed is ITL 54 518 294 818.

C — *The action*

18. The Italian Republic challenges that adjustment. It relies on two sets of arguments, alleging in turn:

— infringement of Articles 2 and 7 of Regulation No 3597/90, and

— an error of assessment in the calculation of the quantity of products at issue.

19. I shall consider each of those points in turn.

1. Infringement of Articles 2 and 7 of Regulation No 3597/90

20. The Italian Republic contends that at the time it was submitted to the intervention agency the first quantity of 84 481.128 tonnes of durum wheat complied with all the quality requirements laid down by Community legislation. To that end it produces 37 certificates of analyses carried out by a private laboratory, Consulchimica de Crotone (Italy),[17] which confirmed the quality of the product at the time it was bought in by the storer. The Italian Republic considers that in those circumstances the Commission was not entitled to apply Article 7 of Regulation No 3597/90 and charge the costs of acquiring and storage from the date on which the products were acquired. It should have applied Article 2(3)(c) of Regulation No 3597/90 and charged the value and storage costs only from the date on which deterioration of the product was established.

21. Before considering those arguments it is appropriate to recall the principles laid down by the case-law of the Court as regards the burden of proof in disputes concerning the clearance of EAGGF accounts.

22. As we know, only intervention operations undertaken in accordance with the

17 — Annexes B1 to B37 to the application.

Community rules within the framework of the common organisation of agricultural markets are financed by the EAGGF. In the event of any dispute it is for the Commission to prove an infringement of the rules on the common organisation of agricultural markets. [18] The Commission is therefore 'obliged... to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question'. [19]

23. The Member State concerned, for its part, cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. [20] If it is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures. [21]

24. In this case the Commission has provided some evidence to justify the contested adjustment. It is clear from the documents on the file [22] that a quantity of 84 481.128 tonnes of durum wheat stored by Coop. San Giorgio did not comply with the requirements laid down by Regulation No 1569/77. The quality of the wheat was poor when it was acquired by the storer. It is also clear from the file that that finding is based on the result of analyses of samples taken by the CCIA at Coop. San Giorgio in March 1995. [23]

25. Like the Commission, [24] I think that the 37 certificates produced by the Italian Republic are not likely to refute that finding.

26. It is necessary to point out that from the 1990/91 marketing season Regulation No 1022/90 amended Regulation No 1569/77 in order to stress the need to guarantee the independence of the person taking the samples of cereals. The third recital in the preamble to Regulation No 1022/90 states expressly that 'where the intervention agency delegates a third party to carry out checks the agency must ensure that the latter provides all guarantees of independence *vis-à-vis* the offerer'.

18 — See in particular, Cases 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 16; C-281/89 *Italy* v *Commission* [1991] ECR I-347, paragraph 19; C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 13 and C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 14.

19 — Cases C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 23 and C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6.

20 — Cases C-242/96 *Italy* v *Commission* [1998] ECR I-5863, paragraph 59 and C-253/97 *Italy* v *Commission*, cited above, paragraph 7.

21 — Cases C-8/88 *Germany* v *Commission*, cited above, paragraph 28; C-242/96 *Italy* v *Commission*, cited above, paragraph 59 and C-253/97 *Italy* v *Commission*, cited above, paragraph 7.

22 — Consolidated Report (p. 103).

23 — *Idem*.

24 — Defence (paragraphs 24 and 26) and rejoinder (paragraphs 3 to 5).

27. That requirement of independence is not met in the present case. It is common ground [25] that the samples analysed by the private laboratory, Consulchimica de Crotone were taken by the storer himself and not by an independent person. The Italian Republic recognises, moreover, that that fact is such that it damages the objectivity of the results of the analyses, since the storer is answerable to the AIMA for its decision to buy in cereals and for any deterioration in the products during storage.

28. In those circumstances I think that the analysis certificates produced by the applicant are not such that they invalidate the Commission's findings. I therefore suggest that the Court rejects the first complaint.

2. The existence of an error of assessment in the calculation of the quantity of products at issue

29. The Italian Republic contends that the Commission committed an error of assessment in calculating the other quantity of wheat at 38 228.064 tonnes. It states that during the inspection conducted in March 1995 the CCIA expressly recorded that the quantity of wheat held by Coop. San Giorgio was 37 042.795 tonnes, which was 1 185.269 tonnes less than the Commission's figure. Although the Italian authorities sent that figure to the Commission in March 1999 the Commission kept the contested adjustment at the proposed level of 38 228.064 tonnes. The adjustment was therefore not justified to that extent.

30. The arguments of the Italian Government cannot therefore be accepted.

31. It is clear from the documents on the file [26] that during the inspection conducted in March 1995 the CCIA found that the quality of 37 042.795 tonnes of durum wheat being stored by Coop. San Giorgio was poor and that another 1 185.269 tonnes were missing. The Commission therefore imposed a financial adjustment in respect of both those quantities, attributing the same value to the quantity which had deteriorated and to the quantity which was missing.

32. In this particular case the Italian Republic adduces no evidence in support of its arguments. It merely states that the Commission is in possession of the CCIA's report. [27] Since the applicant does not manage to show that the Commission's findings are incorrect it is necessary to reject the second complaint.

25 — See defence (paragraph 26) and reply (pp. 2 and 3).

26 — See, in particular, the Commission's letter No 22783 of 25 March 1999 (paragraph 8) (Annex 5 to the application).

27 — Reply (p. 3).

III — The sale of durum wheat to Algeria

A — *Legal background and facts*

33. Commission Regulation (EEC) No 2131/93 of 28 July 1993 [28] provides that cereals bought in by the intervention agencies must be put up for sale by invitation to tender.

34. By Regulation (EC) No 2668/94 of 31 October 1994 [29] the Commission authorised the Italian intervention agency to put up for sale by tender 148 000 tonnes of durum wheat for export in the form of durum wheat meal to Algeria. Article 11(2) provided that the successful tenderer should lodge a security of ECU 50 per tonne of durum wheat in order to ensure performance of the requirement to export the products and import them into Algeria. That article also provided that an initial amount of ECU 25 per tonne should be lodged at the time the export certificate was issued and a further amount of ECU 25 per tonne should be lodged before the cereals were removed from storage. Article 11(2) stated that the full amount of the security would be released within 15 days of the date on which the successful tenderer provided evidence that the wheat meal had actually arrived in Algeria. Lastly, Article 11(4) stated that payment of the purchase price for the wheat and export of the wheat meal within the specified period constituted a 'primary requirement' within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 of 22 July 1985. [30] That regulation contains the provisions governing the system of securities required by several Community regulations in the context of the common agricultural policy. [31]

35. On 10 March 1995 the Commission amended Regulation No 2668/94 by adopting Regulation (EC) No 545/95. [32] It provided that the full amount of the security would be released within 15 days of the date on which the successful tenderer provided evidence that 'the primary requirement referred to in paragraph 4 had been met'.

36. In this particular case the Commission considered that the Italian administration had released the security lodged by one of the successful tenderers, Italgrani SpA, without the latter providing evidence that the purchase price had been paid for the products. The Commission therefore imposed a financial adjustment of ITL 1 923 101 478, corresponding to the amount of the security which should have been forfeited.

28 — Regulation laying down the procedure and conditions for the sale of cereals held by intervention agencies (OJ 1993 L 191, p. 76).

29 — OJ 1994 L 284, p. 45.

30 — Regulation laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5). See in particular with regard to that term my Opinion, also delivered today, in Case C-177/00 (*Italy* v *Commission*, points 106 and 107) pending before the Court of Justice.

31 — First recital in the preamble.

32 — OJ 1995 L 55, p. 27.

B — *The action*

37. The Italian Republic contends that the Commission infringed the principle of legal certainty. In its view the contested adjustment is based on the fact that the successful tenderer did not comply with the requirements laid down in Article 11(2) of Regulation No 2668/94, as amended by Regulation No 545/95. However, Regulation No 545/95 was not in force at the relevant time. The Commission therefore applied that regulation retrospectively and unlawfully.

38. Like the Commission, I think that that argument is unfounded.

39. It is clear from the documents on the file [33] that, contrary to what the Italian Republic contends, the contested adjustment is not based on infringement of Article 11(2) of Regulation No 2668/94, as amended by Regulation No 545/95. On the contrary, the Commission considered that the Italian authorities were not entitled to release the security lodged by Italgrani SpA unless that company complied with the requirements laid down in Article 11(4) of Regulation No 2668/94. That provision was not, however, amended by Regulation No 545/95, so the complaint alleging retrospective application of Community legislation must be rejected.

33 — Consolidated Report (p. 105).

40. Moreover, information on the file makes it possible to consider that the contested adjustment was legally justified. Article 11(4) of Regulation No 2668/94 provides that payment of the purchase price for wheat and the actual export of the wheat meal within the specified period constituted a primary requirement within the meaning of Article 20 of Regulation No 2220/85. Article 21 of Regulation No 2220/85, which applies in this case, [34] states that the security is to be released once the evidence has been furnished that all primary requirements have been fulfilled. Article 22, however, provides that the security is to be forfeited to the intervention agency where a primary requirement has been breached.

41. In this particular case it is not disputed that Italgrani SpA failed to pay the purchase price for the quantity of durum wheat which it was awarded. [35] Since the successful tenderer did not comply with a primary requirement within the meaning of Article 20 of Regulation No 2220/85 the Italian authorities could not release the security it had lodged.

42. In those circumstances, I suggest that the Court should reject the plea supporting the claim for annulment.

34 — Article 1(a) of Regulation No 2220/85 provides that that regulation applies to securities to be given under Regulation No 2727/75.

35 — See Consolidated Report (p. 105), application (p. 5) and defence (paragraphs 29 and 30).

IV — The financial adjustment of ITL 9 965 368 843 corresponding to the value of the discrepancies found in the stocks of common wheat, barley and maize

A — *The facts*

43. The Commission staff imposed a financial adjustment because they found discrepancies between the stocks of common wheat, barley and maize declared by the Italian authorities at the end of the 1994 financial year and at the start of the 1995 financial year.

44. In the case of common wheat, the quantity declared at the end of the 1994 financial year was 361 tonnes, whereas the quantity declared at the start of the 1995 financial year was 636.3 tonnes (an increase of 275 tonnes). As regards barley, the quantity declared at the end of the 1994 financial year was 80 039.67 tonnes, whereas the quantity declared at the start of the 1995 financial year was 52 195.07 tonnes (a reduction of 27 844.6 tonnes). Lastly, as regards maize, the quantity declared at the end of the 1994 financial year was 27 371.061 tonnes, whereas the quantity declared at the start of 1995 was 62 817.324 tonnes (an increase of 35 446.263 tonnes).

45. The Commission therefore decided to require the Italian authorities to pay the carry-over value of the surplus quantities of common wheat and maize and the equivalent value of the missing quantities of barley. The total amount of the adjustment is ITL 9 965 368 843.

B — *The arguments of the Italian Republic*

46. The Italian Republic considers that the contested adjustments are unfounded. It puts forward the following arguments in support of its contention: [36]

'The Italian Republic would like to point out... that the stock adjustments result from the fact that during October 1994 the Italian administration made the required adjustment to accord with the actual stocks as they were found to exist following the inventory check carried out... by the CCIA.

...

[The Commission's approach is] opportunist since it turns the fact that the Italian administration, correctly, adjusted the

36 — Application (p. 6).

stocks shown on the books to accord with the stocks actually in storage to its own economic advantage. The Commission benefits, on the one hand, from the "carry-over value" as a result of the increase in the stocks of common wheat and maize, without giving the Italian State a similar advantage in return as regards barley... , and, on the other, from the value calculated on the basis of Regulation... No 3597/90 following reduction in the stock of barley which is not due to the actual loss of the product.

... if it was necessary to follow the Commission's reasoning it would also be necessary to credit the Italian administration with the following positive adjustments:

(1) A refund to the Italian State of the reduction in the carry-over value charged to it for the 1994 financial year in respect of 27 844.600 tonnes of barley... ;

(2) [o]f the technical storage costs (budget item 1011.03) due in respect of financial year 1994 on the 35 446.263 tonnes of maize declared in addition and discovered after the analysis of the inventory checks carried out by the CCIA, an increase which resulted from failure to take that quantity into account in the EAGGF tables in respect of the 1994 financial year;

(3) [t]he technical storage costs (budget item 1011.03) due in respect of financial years 1992, 1993 and 1994 on 275 tonnes of common wheat stored because the 5 000 tonnes of common wheat to be supplied as food aid to Albania in full in December 1992 were not delivered.'

C — *Assessment*

47. In my view, the Italian Government's arguments fail to meet the conditions laid down in Article 38(1)(c) of the Rules of Procedure of the Court of Justice. They do not make it possible to identify the factual and legal grounds on which the applicant bases its application. Although the Commission was able to submit its defence as a result of its involvement in the pre-litigation procedure, the Court of Justice is not able to conduct a judicial review solely on the basis of the information provided in the application. In that regard I should like to point out that the Court cannot take the place of the applicant, or his lawyer, by trying to locate and identify itself the information it considers might support the

claims formulated in the application. The fourth plea must therefore be declared inadmissible.

V — The financial adjustment of ITL 2 502 127 250 corresponding to the amount of adjustments made by the Commission in an earlier monthly declaration (common wheat, barley and maize)

A — *Facts*

48. The Commission staff imposed an adjustment of ITL 2 502 127 250 in order to correct an error made by the Italian authorities in the annual declaration. When it drew up the annual EAGGF tables for the 1995 financial year the Italian administration failed to carry over the adjustments made by the Commission in a monthly declaration under Article 9(7) of Commission Regulation (EEC) No 2776/88 of 7 September 1988. [37]

37 — Regulation on data to be sent in by the Member States with a view to the booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1988 L 249, p. 9).

B — *The arguments of the Italian Republic*

49. The Italian Republic considers that in making the contested adjustment the Commission imposed a double penalty on it. It puts forward the following arguments: [38]

'(1) In the 12th monthly declaration for the year 1995 the Italian administration provided the following information in Tables 8, line 1, and 52, line 30:

— maize stocks at 1 October 1994 equivalent to 27 371.061 tonnes;

— technical costs (budget item 1011.006): ITL 472 481 200;

38 — Application (pp. 7 and 8).

— financial costs (budget item 1012.006): ITL 141 376 660;

— other costs (budget item 1013.006): ITL 2 946 864 571;

(2) [b]y letter No 12367 of 19 March 1996 (see document E1), the Commission staff informed the Italian authorities of the need to make, in respect of financial year 1995, the adjustments provided for [by] Regulation... No 2776/88, adjustments resulting from the fact that the Commission did not accept the costs set out above... ; the Commission staff had communicated by letter No 22990 of 14 June 1995 their decision not to accept the 27 371.061 tonnes in question for public intervention due to the fact that they had deteriorated following a natural disaster which affected Cavalli;

(3) [s]ubsequently, during the clearance of the accounts for the year 1994, it was decided, following the conciliation procedure, with regard to the volume of maize stored with Cavalli, to require the Italian administration to pay two "negative" corrections (ITL 448 148 256 and ITL 123 262 537) and a "positive" correction of ITL 8 132 491 172, which were both duly referred to in paragraph 4.5.1.3.2 of the Consolidated Report (Addendum II).

Therefore, the "negative adjustment" proposed for the purposes of Article 9 of Regulation... No 2776/88 is unfounded in that, on the one hand, it conflicts with the decisions adopted during the conciliation procedure for the 1994 financial year and, on the other hand, it imposes a double penalty on the Italian administration, as follows:

— ITL 472 481 200 in respect of budget item 1011.006;

— ITL 141 376 660 in respect of budget item 1012.006, and

— ITL 2 946 864 571 in respect of budget item 1013.006.'

C — *Assessment*

50. The Italian Government's arguments fail to meet the conditions laid down in Article 38(1)(c) of the Rules of Procedure of the Court of Justice. They do not make it possible to identify the legal and factual grounds on which the applicant bases its application. Although the Commission was able to submit its defence as a result of its involvement in the pre-litigation procedure, the Court of Justice is not able to conduct a judicial review solely on the basis of the information provided in the application. As we have seen, the Court cannot take the place of the applicant, or his lawyer, by trying to locate and identify itself the information which might support the claims formulated in the application. The fifth plea must therefore be declared inadmissible.

VI — Regularisation of invoices for the sale of cereals into public intervention

51. The Italian Government raises one last plea which, it admits,[39] does not concern the contested decision. It states that during the conciliation procedure it lodged an application for payment of ITL 11 952 457 079 in respect of the regularisation of invoices for the sale of cereals into public intervention. It contends that if it is not awarded that sum by the Commission it will suffer a double penalty.

52. Under Article 38(1)(d) of the Rules of Procedure of the Court of Justice, an application must state the form of order sought by the applicant. In the present case the plea in law relied on by the Italian Republic concerns a measure of which it is not seeking the annulment. That plea is therefore inadmissible.

VII — Costs

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

39 — Application (p. 8).

VIII — Conclusion

54. In the light of the foregoing I propose that the Court:

(1) dismiss the application;

(2) order the Italian Republic to pay the costs.