Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

15 September 2015*

(Agriculture — Common organisation of the markets — Fruit and vegetable sector — National financial assistance granted to producer organisations — Commission implementing decision concerning the reimbursement by the European Union of national financial assistance granted by Hungary to its producer organisations — Article 103e of Regulation (EC) No 1234/2007 — Article 97 of Regulation (EC) No 1580/2007)

In Case T-346/12,

Hungary, represented initially by M. Fehér and K. Szíjjártó, and subsequently by M. Fehér, acting as Agents,

applicant,

v

European Commission, represented by B. Béres, N. Donnelly and B. Schima, acting as Agents,

defendant,

APPLICATION FOR ANNULMENT of Commission Decision C(2012) 3324 of 25 May 2012 on national financial assistance granted to producer organisations,

THE GENERAL COURT (Second Chamber),

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

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 11 November 2014,

gives the following

* Language of the case: Hungarian.

Judgment

Legal context

Single CMO Regulation

1 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('the Single CMO Regulation') (OJ 2007 L 299, p. 1) lays down general principles governing national financial assistance, both as regards its grant and reimbursement by the European Commission.

2 Article 103b of the Single CMO Regulation empowers producer organisations to set up operational funds as follows:

'1. Producer organisations in the fruit and vegetables sector may set up an operational fund. The fund shall be financed by:

(a) financial contributions of members or of the producer organisation itself;

(b) [EU] financial assistance which may be granted to producer organisations.

…'

3 Article 103d of the Single CMO Regulation governs '[EU] financial assistance' and provides:

'1. [EU] financial assistance shall be equal to the amount of the financial contributions referred to in Article 103b(1)(a) as actually paid but limited to 50% of the actual expenditure incurred.

2. [EU] financial assistance shall be capped at 4.1% of the value of the marketed production of each producer organisation.

However, that percentage may be increased to 4.6% of the value of the marketed production provided that the amount in excess of 4.1% of the value of the marketed production is used solely for crisis prevention and management measures.

…'

4 Article 103e of the Single CMO Regulation governs 'national financial assistance', to which the dispute exclusively relates.

5 Prior to its amendment by point 29 of Article 4 of Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007 (OJ 2009, L 30, p. 1), Article 103e of the Single CMO Regulation provided, in the version amended by Council Regulation (EC) No 361/2008 of 14 April 2008 (OJ 2008 L 121, p. 1):

'1. In regions of the Member States where the degree of organisation of producers in the fruit and vegetables sector is particularly low, Member States may be authorised by the Commission, on a duly substantiated request, to pay producer organisations national financial assistance equal to a maximum of 80% of the financial contributions referred to in Article 103b(1)(a). This assistance shall be

additional to the operational fund. In regions of Member States where producer organisations market less than 15% of the value of fruit and vegetable production and whose fruit and vegetable production represents at least 15% of their total agricultural output, the assistance referred to in the first subparagraph may be reimbursed by the [European Union] at the request of the Member State concerned.

2. By way of derogation from Article 180 of this Regulation, Articles 87, 88 and 89 of the Treaty shall not apply to the national financial assistance authorised pursuant to paragraph 1.'

6 Regulation No 72/2009 moved paragraph 2 above on the applicability of Articles 87 EC, 88 EC and 89 EC into a new Article 180, worded as follows:

'Articles 87, 88 and 89 of the Treaty shall apply to the production of, and trade in, the products referred to in points (a) to (k) and points (m) to (u) of Article 1(1) and in Article 1(3) of this Regulation.

However, Articles 87, 88 and 89 of the Treaty shall not apply to payments made under Articles 44, 45, 46, 47, 48, 102, 102a, 103, 103a, 103b, 103e, 103ga, 104, 105 and 182 of this Regulation by Member States in conformity with this Regulation.'

7 Recital 20 of Regulation No 72/2009 gives the following reasons for this approach:

'In the interests of legal certainty, and simplicity it is appropriate to clarify and harmonise the provisions on the non-application of Articles 87, 88 and 89 of the Treaty to payments made by Member States in conformity with Regulation (EC) No 1234/2007 … In this context, the provisions of those Regulations which otherwise would or might, under certain circumstances, fall within the notion of State aid within the meaning of Article 87(1) of the Treaty should be excluded from the application of State aid rules. The provisions concerned contain appropriate conditions for the granting of support to prevent the undue distortion of competition.'

8 Article 103g of the Single CMO Regulation lays down provisions on the approval of operational programmes:

'1. Draft operational programmes shall be submitted to the competent national authorities, who shall approve or reject them or request their modification in line with the provisions of this subsection.

2. Producer organisations shall communicate to the Member State the estimated amount of the operational fund for each year and shall submit appropriate reasons therefore based on operational programme estimates, expenditure for the current year and possibly expenditure for previous years and, if necessary, on estimated production quantities for the next year.

3. The Member State shall notify the producer organisation or association of producer organisations of the estimated amount of [EU] financial assistance in line with the limits set out in Article 103d.

…'

9 Article 103h of the Single CMO Regulation provides:

'The Commission shall establish the detailed rules for the application of this section, in particular:

…

(b) the proportion of and rules on the reimbursement of the measures referred to in Article 103e(1);

…’

Regulation No 1580/2007

10 Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 350, p. 1) sets out the detailed rules for the application of the Single CMO Regulation in the fruit and vegetable sector and provides, in particular, for the partial reimbursement by the Commission of national financial assistance.

11 Article 56 of Regulation No 1580/2007 provides for the communication by producer organisations to the Member State concerned of their estimates regarding the amount of the operational fund:

‘Producer organisations shall communicate the estimated amounts of [EU] contribution, and the contribution of its members and of the producer organisation itself to the operational funds for the following year to the Member State by 15 September at the latest, together with the operational programmes or requests for approval of their amendments.

Member States may set a later date than 15 September.

Calculation of the estimated amount of operational funds shall be based on the operational programmes and the value of marketed production. The calculation shall be split between expenditure for crisis prevention and management measures and other measures.’

12 Article 64 of Regulation No 1580/2007 provides for the submission of operational programmes and states:

‘Operational programmes shall be submitted for approval by the producer organisation to the competent authority in the Member State in which the producer organisation has its headquarters by 15 September at the latest of the year preceding that in which they are to be implemented. However, the Member States may postpone that date.’

13 Article 65 of Regulation No 1580/2007 governs the approval of operational programmes by national authorities:

‘1. The competent national authority shall, as appropriate:

(a) approve amounts of funds and programmes which meet the requirements of Regulation (EC) No 1182/2007 and those of this Chapter;

(b) approve the programmes, on condition that certain amendments are accepted by the producer organisation; or

(c) reject the programmes or part of the programmes.

2. The competent national authority shall take decisions on programmes and funds by 15 December at the latest of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December at the latest.

However, for duly justified reasons, the competent national authority may take a decision on operational programmes and funds by 20 January at the latest following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.'

14 However, point 8 of Article 1 of Commission Regulation (EC) No 1327/2008 of 19 December 2008 amending Regulation No 1580/2007 (OJ 2008 L 345, p. 24) inserts special provisions as regards 2009. These provisions are as follows:

'8. In Article 152, the following paragraphs are added:

"9. By way of derogation from the third subparagraph of Article 65(2) of this Regulation, the Member States may, for duly justified reasons, take a decision on the 2009 operational programmes and funds by 1 March 2009 at the latest. The approval decision may stipulate that expenditure is eligible from 1 January 2009 onwards.

…"'

15 Article 99 of Regulation No 1580/2007 governs the communication by the Member States of required data concerning operational programmes. Paragraph 2 of this provision provides more specifically that 'Member States shall communicate to the Commission not later than 31 January the total amount of the operational fund approved that year for all operational programmes', that 'this communication shall make clear both the total amount of the operational fund and also the total amount of [EU] financing of that operational fund', and that 'these figures shall be further broken down between amounts for crisis prevention and management measures and other measures'.

16 Article 67 of Regulation No 1580/2007 governs amendments to operational programmes for the year under way:

'1. Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them.

2. Producer organisations may be authorised by the competent national authority, during the year to:

(a) implement their operational programmes in part only;

(b) change the contents of the operational programme, including if necessary the extension of its duration up to a total duration of five years;

(c) increase the amount of the operational fund by a maximum of 25%, and decrease it by a percentage to be fixed by Member States, of the amount initially approved provided the overall objectives of the operational programme are maintained. Member States may increase this percentage in case of mergers of producer organisations as referred to in Article 31(1) and in case of application of Article 94a.

3. Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent national authority. These changes are only eligible for aid if they are communicated by the producer organisation to the competent authority without delay.'

17 Chapter IV of Title III of Regulation No 1580/2007 contains, inter alia, the following specific provisions on national financial assistance.

18 Article 93 of Regulation No 1580/2007 clarifies the condition set out in Article 103e of the Single CMO Regulation relating to the 'particularly low' degree of organisation of producers in a given region, justifying the grant of national financial assistance:

'For the purposes of [Article 103e of the Single CMO Regulation], the degree of organisation of producers in a region of a Member State shall be considered as particularly low where producer organisations, associations of producer organisations and producer groups have marketed less than 20% of the average value of fruit and vegetable production in the last three years for which the data are available.'

19 Article 94 of Regulation No 1580/2007, as amended by Commission Regulation (EC) No 590/2008 of 23 June 2008 amending Regulation No 1580/2007 and derogating from that regulation (OJ 2008 L 163, p. 24), governs the conditions relating to the authorisation, by the Commission, of the payment of national financial assistance:

'1. Member States shall submit a request to the Commission for authorisation to grant national financial assistance pursuant to the first subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 for operational programmes to be implemented in any given calendar year by 31 January of that year.

The request shall be accompanied by evidence showing that the degree of organisation of producers in the region concerned is particularly low, as defined in Article 93 of this Regulation, as well as details of the producer organisations concerned, the amount of assistance concerned and the proportion of financial contributions being made pursuant to [Article 103b(1)(a) of the Single CMO Regulation].

2. The Commission shall approve or refuse the request within three months of its submission. If the Commission does not reply within this period the request shall be considered to have been approved.'

20 Article 94a of Regulation No 1580/2007, as inserted by Regulation No 590/2008, provides:

'A producer organisation wishing to apply for national financial assistance shall, if necessary, modify its operational programme pursuant to Article 67.'

21 Article 96 of Regulation No 1580/2007 establishes the maximum proportion of national financial assistance that may be reimbursed by the European Union:

'The proportion of [EU] reimbursement of national financial assistance shall be 60% of the national financial assistance granted to the producer organisation.'

22 Article 97 of Regulation No 1580/2007, as amended by Regulation No 590/2008, lays down the procedure for the reimbursement of national financial assistance and provides:

'1. Member States shall request [EU] reimbursement of approved national financial assistance actually paid to producer organisations, before 1 January of the second year following the year of implementation of the programme.

The request shall be accompanied by evidence showing that the conditions set out in the second subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 have been fulfilled in three of the previous four years, as well as details of the producer organisations concerned, the amount of assistance actually paid and a description of the operational fund broken out between total amount, contributions from [the European Union], Member State (national financial assistance) and producer organisations and members.

2. The Commission shall take a decision to approve or refuse the request.

3. Where [EU] reimbursement of the assistance has been approved, the eligible expenditure shall be declared to the Commission in accordance with the procedure set out in Article 5 of Commission Regulation (EC) No 883/2006.'

Implementing Regulation No 543/2011

23 On 7 June 2011, the Commission adopted Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of the Single CMO Regulation in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1).

24 This regulation repeals Regulation No 1580/2007. Like Regulation No 1580/2007, it sets out the detailed rules for the application of the Single CMO Regulation in the fruit and vegetables sector.

25 Implementing Regulation No 543/2011 follows the same approach as Regulation No 1580/2007 in taking the 'approved … assistance actually paid' as the basis for reimbursement by the European Union (Article 95(1) of Implementing Regulation No 543/2011 and Article 97(1) of Regulation No 1580/2007). Article 95(2) of that regulation provides that 'the request [for reimbursement] shall be refused where the rules on the authorisation and reimbursement of national financial assistance have not been complied with'.

Background to the dispute

26 On 15 September 2008, producer organisations wishing to receive Hungarian financial assistance submitted requests for approval of their operational programmes to the Vidékfejletési Minisztérium (Hungarian Ministry for Rural Development; 'the VM').

27 On 15 November 2008, they notified their estimates of operational funds intended to finance operational programmes. These programmes and estimates were approved at national level between mid-January and the beginning of March 2009.

28 By letter of 30 January 2009, the VM submitted to the Commission, in accordance with Article 94 of Regulation No 1580/2007, a request for authorisation to pay national financial assistance to 29 producer organisations having set up operational programmes, approved in 2009. The VM stated that the estimated maximum amount of national financial assistance should be, in total, EUR 3 487 518.

29 By letter of 11 March 2009, the VM sent corrections to its earlier letter of 30 January 2009. The VM explained that while it only had estimates of the operational funds on 30 January 2009, it now had finally approved data based on the approval given in the intervening period to the programmes and operational funds. In that letter, the VM made changes to the beneficiary regions of the assistance and the Eastern and Western regions were designated as new beneficiaries of national financial assistance. The VM stated that it intended to pay national financial assistance to 27 producer organisations in the Eastern region and to 3 producer organisations in the Western region. It reiterated the point made in its previous letter that the estimated maximum amount of national financial assistance to be paid should not exceed, in total, EUR 3 487 518. The VM included a breakdown of these data in an annex to its letter setting out the approved amount of the financial contributions of the members of the producer organisation and the approved amount of the operational fund. It explained these figures in its letter as follows: 'The detailed data of the operational funds is enclosed as an annex. We have approved the amounts we had envisaged financing out of possible national assistance within the framework of the financial contribution of the producer organisations'.

30 Following the letter of 11 March 2009, the Commission contacted the Hungarian authorities by telephone in order to obtain more specific data on the amount of national financial assistance notified, asking for a breakdown of the assistance by producer organisation.

31 The VM supplied the data by email of 12 March 2009 ('the amounts of assistance notified'). The VM stated that these were only estimates of the national financial assistance to be granted, based on the assumption that EUR 3.5 million would be available in the State budget to finance such measures. The VM made it clear that no decision had yet been taken on the State budget available to spend on national financial assistance.

32 By letter of 3 April 2009 ('the letter of authorisation'), the Commission informed the VM that, in the regions concerned (the Western and Eastern regions), the degree of organisation of producers had to be classified as particularly low, that the envisaged State aid did not exceed 80% of the contribution of members or of the producer organisation set out in the request for authorisation to grant national financial assistance, and that it had no other comments to make, as the request for authorisation to pay national financial assistance to the producer organisations concerned was duly substantiated.

33 By letter of 7 December 2010, the VM submitted a request to the Commission for partial reimbursement by the European Union of the national financial assistance actually paid in the Eastern region in 2009. In its request, the VM stated that in 2009 it had paid national financial assistance of 891 847 925 Hungarian forints (HUF) (EUR 3.2 million) to producers in the Eastern region and asked the European Union to reimburse 60% of that amount (HUF 535 108 755 or EUR 1.9 million).

34 By letter of 27 June 2011, the Commission asked the VM to send it additional information and to that end attached to its letter six tables to be completed with, in particular, data broken down by producer organisation, summarising the differences between the amounts of national financial assistance notified to the Commission in the request for authorisation and the amounts of national financial assistance actually paid.

35 On 30 June 2011, the VM forwarded the requested data by email.

36 By email of 21 November 2011, the Commission asked the VM why there was a discrepancy between the amount of national financial assistance referred to in the 2009 request for authorisation and the amount of national financial assistance actually paid, since the former was lower than the amount actually paid for some producer organisations.

37 The VM replied by email of 29 November 2011, stating that the difference between the amounts of national financial assistance notified and those actually paid was due to the fact that the data set out in the request for authorisation were based on estimates supplied by the producer organisations in November 2008. The VM made it clear that the producer organisations were able to make changes to their operational programmes during the year, particularly where actual revenues exceeded the estimates. The VM explained that, in most cases, the members of the operational funds contributed a specific percentage of their revenues, with the result that the actual contributions of members might differ from the estimated contributions notified by the producer organisations to the VM the year before. The VM thus stated that the national financial assistance was approved and paid having regard to the actual contribution, up to the limit of 80%, which nonetheless applied in all cases.

38 By letter of 9 March 2012, the Commission stated that it intended to reimburse part of the amount paid as national financial assistance, per producer organisation, up to the amounts notified by Hungary in its request for authorisation, which it had granted by letter of 3 April 2009. The Commission explained that the national financial assistance granted over and above these amounts was not covered by the exception to the application of the rules on State aid set out in Article 180 of the Single CMO Regulation. The Commission concluded that the sums paid to the producer organisations in excess of the sums notified and authorised by the Commission, for each producer

organisation, could be regarded as unlawful aid whose compatibility with the internal market might have to be examined in the light of Articles 107 TFEU and 108 TFEU. The Commission recalled that it was entitled to order the recovery of unlawful aid.

39 By letter of 16 April 2012, the VM stated that it disagreed with the Commission's decision to base the amount of reimbursable assistance on the amounts of national financial assistance notified in the request for authorisation. The VM referred to the fact that the producer organisations were able to make changes to the operational programme for the year under way, as well as to the amounts of members' contributions. Therefore, the actual amount of financial contributions might differ from the amount that the Member State notified to the Commission in the request for authorisation, based on estimates from producer organisations. The VM recalled that the Single CMO Regulation did not tie the grant of national financial assistance to the amount of assistance notified based on the data forwarded by the producer organisations, but rather to the ceiling of 80% of the financial contribution of members or of the producer organisation. This limit had not been exceeded in view of the content of the letter of authorisation, since the letter authorised the grant of national financial assistance, not a specific amount of national financial assistance (an amount which, moreover, was not included in the decision). The VM asked the Commission to reconsider its position by granting its request for partial reimbursement of the assistance actually paid over and above the assistance notified and by declining to examine the compatibility of the aid granted in the light of the applicable State aid rules.

40 On 20 April 2012, the Commission organised a consultation of experts in Brussels (Belgium).

41 On 25 May 2012, the Commission, in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets, adopted Decision C(2012) 3324 on national financial assistance to producer organisations ('the contested decision').

42 Relying in particular on Article 103e of the Single CMO Regulation in the citations of the contested decision, the Commission stated:

— in recital 13, that 'pursuant to Article 95(2) of Regulation (EC) No 543/2011, the request is to be refused where the rules on the authorisation and reimbursement of national financial assistance have not been complied with';

— in recital 14, that 'the amounts of National Financial Assistance paid by Hungary to some producer organisations for the operational programmes implemented in the year 2009 were superior to the amounts indicated in the authorisation request and approved by the Commission', that 'those amounts, in so far as they exceed the amounts approved by the Commission are considered to be ineligible for reimbursement', and that, 'however, regarding the amounts paid per producer organisation up to the level of the amounts declared in the request for authorisation, the request for reimbursement is considered admissible';

— in recital 15, that 'the national financial assistance awarded by Hungary to its producer organisations up to the amounts declared in the authorisation request for each operational programme implemented in 2009 should therefore be partially reimbursed at the level of 60%'.

43 In Article 1 of the contested decision, the Commission made the following finding:

'The Union shall reimburse the national financial assistance actually paid by Hungary to producer organisations for operational programmes implemented in 2009 for the sum of EUR 1 190 927, in accordance with Article 103e(1) of Regulation (EC) No 1234/2007.'

44 The decision was received by the Permanent Representation of Hungary to the European Union on 29 May 2012.

Procedure and forms of order sought by the parties

45 By application lodged at the Court Registry on 1 August 2012, Hungary brought the present action.

46 Hungary claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

47 The Commission contends that the Court should:

— dismiss the action;

— order Hungary to pay the costs.

Law

48 Hungary essentially raises two pleas in law alleging, first, an *ultra vires* application of Article 103e of the Single CMO Regulation and Article 97 of Regulation No 1580/2007 and, secondly, an error of assessment in the application of Article 97 of Regulation No 1580/2007.

The first plea in law, alleging an ultra vires application of Article 103e of the Single CMO Regulation and Article 97 of Regulation No 1580/2007

49 Hungary's first plea in law consists of two parts.

50 In the first part, Hungary claims that the Commission could not, in the absence of a legal basis permitting it to do so, set a ceiling on the reimbursement of national financial assistance corresponding to the amounts of national financial assistance notified by each producer organisation.

51 In the second part, it argues that the Commission, by limiting reimbursement to the amounts of assistance notified, infringed the provisions enabling changes made to national financial assistance during the financial year to be taken into account for the purpose of reimbursement by the European Union.

The first part of the first plea in law, alleging lack of a legal basis enabling the Commission to limit reimbursement by the European Union to the amounts of assistance notified

52 Hungary submits, as its principal argument, that the Commission's decision to tie the amount of reimbursement to the amounts of assistance notified has no legal basis whatsoever.

53 First, Hungary invokes Article 103e of the Single CMO Regulation. It states that this article merely provides, as the only ceiling on the amount of national financial assistance, that such assistance may not exceed 80% of the financial contributions of members or of the producer organisation itself to the operational fund. This article does not therefore establish any ceiling tied to the amounts of assistance notified, up to 80%, during the procedure for authorisation of the assistance.

54 Hungary also claims that, under Article 103e of the Single CMO Regulation, Commission authorisation to grant national financial assistance must be confined to checking that the conditions set out in that article are met, in particular that the level of organisation of producers in the region concerned is particularly low and that the national financial assistance applied for does not exceed 80% of the

financial contributions of members or of the producer organisations themselves to the operational fund. If these conditions are met, the Commission should authorise the grant of national financial assistance. This authorisation does not, however, entail the fixing of one or more specific amounts; it only involves the grant of assistance.

55 Secondly, Hungary contends that this interpretation is supported by Article 94(2) of Regulation No 1580/2007, under which the Commission has no other alternative but to 'approve or refuse the request' for authorisation to pay national financial assistance and is not allowed to set an upper limit in terms of the amount. Hungary observes, in this respect, that under Article 94(1) thereof, the Member States request authorisation to grant national financial assistance, not authorisation relating to an actual amount of assistance.

56 Thirdly, Hungary claims that the reimbursement by the European Union cannot apply to the amounts of assistance notified. It is the task of the Commission, once the national financial assistance has been granted, to reimburse the sums 'actually paid', within the meaning of Article 97(1) of Regulation No 1580/2007, up to 60% of the national financial assistance.

57 Fourthly, in its reply Hungary argues, as an incidental point, that Article 94 of the Hungarian version of Regulation No 1580/2007, in force when the request for reimbursement was made, required notification of the proportion of the national financial assistance (in relation to the 80% ceiling), but not the amount of such assistance, which confirms that reimbursement by the European Union is tied to compliance with the 80% ceiling and not to the declared amount of planned assistance.

58 According to settled case-law, it is necessary, in interpreting a provision of EU law, to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments of 7 June 2005 in *VEMW and Others*, C-17/03, ECR, EU:C:2005:362, paragraph 41 and the case-law cited, and 26 October 2010 *Germany* v *Commission*, T-236/07, ECR, EU:T:2010:451, paragraph 44 and the case-law cited). It is, therefore, important to take into account the purpose of EU rules so that they are given an interpretation which ensures that they are fully effective (judgment of 13 July 2004 in *Commission* v *Council*, C-27/04, ECR, EU:C:2004:436, paragraph 74).

59 Consequently, in order to address Hungary's argument that the contested decision has no legal basis, it is necessary, in accordance with the case-law cited in paragraph 58 above, to examine whether the wording of Article 103e of the Single CMO Regulation and Articles 94 and 97 of Regulation No 1580/2007 could confer on the Commission the right to limit reimbursement to the amounts of assistance notified as well as whether Hungary's interpretation of the abovementioned provisions is compatible with their purpose and the objectives they pursue.

60 Article 103e of the Single CMO Regulation gives the Commission discretion when authorising Member States to pay national financial assistance to eligible producer organisations. It provides that 'Member States may be authorised by the Commission, on a duly substantiated request, to pay producer organisations national financial assistance'.

61 This discretion when granting assistance, indicated by the use of the verb 'may', arises at the stage of reimbursement by the European Union, which is the subject matter of this case. Article 103e of the Single CMO Regulation thus provides that 'the assistance … may be reimbursed by the [European Union] at the request of the Member State concerned'.

62 As regards the detailed rules on reimbursement by the European Union, under Article 103h of the Single CMO Regulation the Council of the European Union empowered the Commission to establish 'rules on the reimbursement'.

63 In the case of the fruit and vegetables sector, the Commission established these rules in Regulation No 1580/2007 by providing, in Article 97(1) thereof, that 'Member States shall request [EU] reimbursement of approved national financial assistance actually paid …'.

64 The meaning of 'approved … assistance', referred to in Article 97(1) of Regulation No 1580/2007, is set out in the second subparagraph of Article 94(1) thereof, which governs 'authorisation to pay national financial assistance'. This article provides that 'the request shall be accompanied by evidence showing … [inter alia] the amount of assistance'.

65 It is therefore apparent from the wording of the second subparagraph of Article 94(1) of Regulation No 1580/2007, particularly the use of the word 'amount', that the 'approved … assistance' necessarily includes the declared amount of national financial assistance.

66 In that regard, contrary to Hungary's submissions, the approval of national financial assistance relates to the amounts notified by each producer organisation in receipt of such assistance and not to the total amount of national financial assistance (all producer organisations taken as a whole). Under Article 103e of the Single CMO Regulation, the assistance must not exceed 80% of the financial contributions of the producer organisation concerned, which means that, in accordance with Article 94(1) of Regulation No 1580/2007, the amount of assistance and compliance with the 80% threshold must be checked for each producer organisation and, therefore, the Commission's authorisation relates to the assistance as broken down per producer organisation.

67 It is clear from the foregoing that the Commission had a legal basis to limit reimbursement by the European Union to the amounts of assistance notified in the context of the authorisation procedure under Article 94 of Regulation No 1580/2007, on the basis of both Article 103e of the Single CMO Regulation and Article 97(1) of Regulation No 1580/2007.

68 The arguments put forward by Hungary cannot invalidate this finding, which is the result of a literal interpretation of the provisions.

69 First, Article 103e of the Single CMO Regulation cannot be construed as meaning that, in essence, the Commission is required to reimburse all assistance falling below the threshold of 80% of the contributions of members or of the producer organisation itself, irrespective of the amount of such assistance, where the degree of organisation of producers in the region in question is 'particularly low'.

70 Hungary's proposed interpretation that a Member State may, on the basis of Article 103e of the Single CMO Regulation, pay *ex post* an amount higher than that notified *ex ante* and subsequently obtain reimbursement of the non-notified amount would deprive the procedure for authorising national financial assistance of its effectiveness (see, by analogy, judgment of 4 October 2001 in *Italy* v *Commission*, C-403/99, ECR, EU:C:2001:507, paragraph 28) and render it meaningless (see, by analogy, judgment of 10 April 2014 in *Maatschap T. van Oosterom en A. van Oosterom-Boelhouwer*, C-485/12, ECR, EU:C:2014:250, paragraph 61). As the Commission points out, if the European legislature had wished to free Member States from the formal procedure for the authorisation of assistance, which necessarily entails an assessment of the notified amounts, it could have had recourse to a procedure similar to that laid down in Article 182(6) of the Single CMO Regulation, which allows Member States — provided certain preconditions are met — to pay State aid to producers who are not members of a recognised organisation.

71 Furthermore, that interpretation would be inconsistent with the purpose of the examination of national financial assistance in the light of the law on State aid, since it would mean that the Commission might be required to reimburse sums which, in so far as they were paid over and above the amounts notified, could neither be approved nor, therefore, covered by the authorisation given on the basis of Article 103e of the Single CMO Regulation and Article 97 of Regulation No 1580/2007. National

financial assistance provided for in Article 103e of the Single CMO Regulation is referred to in Article 180 of that regulation as a derogation from the requirements of the Treaty concerning State aid which is permitted, in the context of recital 20 of Regulation No 72/2009, only to the extent that 'the provisions concerned contain appropriate conditions for the granting of support to prevent the undue distortion of competition', which justifies a strict interpretation of the possibility of granting such assistance (see, by analogy, judgment of 27 February 1985 in *Italy* v *Commission*, 56/83, ECR, EU:C:1985:85, paragraph 31 and the case-law cited).

72 Consequently, the interpretation put forward by Hungary according to which the Commission is required to reimburse all assistance falling below the ceiling of 80% irrespective of its amount, without being able to exercise the discretion it enjoys under Article 103e of the Single CMO Regulation during the authorisation stage, would also deprive Article 180 of that regulation, read in the light of recital 20 of Regulation No 72/2009, as well as the objectives it pursues relating to competition policy, particularly State aid control, of their effectiveness.

73 Secondly, in so far as Hungary invokes in its reply the Hungarian version of Article 94 of Regulation No 1580/2007 — as worded when it submitted its request for authorisation of national financial assistance — in support of its interpretation that reimbursement by the European Union is tied to compliance with the 80% ceiling and not to the declared amount of planned assistance, it should be noted that, according to the Court's settled case-law, to which the Commission referred in its pleadings, where there is divergence between the various language versions of an EU legal text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see judgments of 19 April 2007 in *Profisa*, C-63/06, ECR, EU:C:2007:233, paragraph 14 and the case-law cited, and 15 December 2011 in *Møller*, C-585/10, ECR, EU:C:2011:847, paragraph 26 and the case-law cited).

74 It is also apparent from the case-law that the need for a uniform interpretation of EU legislation makes it impossible for a given piece of legislation to be considered in isolation and requires that, in case of doubt, it should be interpreted and applied in the light of the versions existing in the other official languages (see judgments of 17 October 1996 in *Lubella*, C-64/95, ECR, EU:C:1996:388, paragraph 17 and the case-law cited, and 31 January 2008 in *Federación de Cooperativas Agrarias de la Comunidad Valenciana* v *OCVV — Nador Cott Protection (Nadorcott)*, T-95/06, ECR, EU:T:2008:25, paragraph 33 and the case-law cited).

75 In the present case, Hungary does not claim that the versions in the other official languages fail to mention the obligation to communicate the amounts of planned assistance, which, indeed, is not the case.

76 It must be noted in that regard, as the Commission recalls, that Hungary communicated the amount of planned assistance in all of its correspondence with the Commission at the stage of authorisation of the national financial assistance.

77 The amount of planned national financial assistance was first communicated generally by letter of 30 January 2009, then by letter of 11 March 2009, before being communicated in the form of a breakdown by producer organisation on 12 March 2009, at the Commission's express request.

78 Hungary cannot therefore reasonably argue that the Hungarian version of Article 94 of Regulation No 1580/2007, as worded when the request for authorisation of national financial assistance was submitted, could not be construed as requiring the communication of the amount of national financial assistance.

79 In any event, it should be noted that the word ‘összeg’ (‘amount’) in Hungarian was inserted into the Hungarian version of Regulation No 1580/2007 after the letter of authorisation, upon publication of Commission Regulation (EC) No 441/2009 of 27 May 2009 amending Regulation No 1580/2007 (OJ 2009 L 129, p. 10), on 28 May 2009.

80 In the light of the foregoing, the Commission was therefore fully entitled to consider that it had a legal basis to make the amount of reimbursement by the European Union contingent on the amounts of assistance notified during the procedure for the authorisation of national financial assistance.

81 Lastly, the Commission refers in its pleadings to Regulation No 1580/2007 and not to Implementing Regulation No 543/2011, even though it refers to the latter regulation in the contested decision.

82 Implementing Regulation No 543/2011 lays down substantive rules on reimbursement, particularly in Article 95, which cannot apply retroactively to the legal situation existing when the request for reimbursement was made (see, by analogy, judgment of 12 November 1981 in *Meridionale Industria Salumi and Others*, 212/80 to 217/80, ECR, EU:C:1981:270, paragraph 9).

83 It must also be stated that Implementing Regulation No 543/2011 does not provide for its retroactive application to requests for reimbursement arising under the old rules (see, by analogy, judgments of 29 January 1985 in *Gesamthochschule Duisburg*, 234/83, ECR, EU:C:1985:30, paragraph 20; 15 July 1993 in *GruSa Fleisch*, C-34/92, ECR, EU:C:1993:317, paragraph 22; and 24 September 2002 in *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, ECR, EU:C:2002:524, paragraph 119).

84 In those circumstances, the parties were right to refer to Regulation No 1580/2007 in their pleadings.

85 Since both regulations pursue identical objectives and lay down identical rules on the basis for reimbursement by the European Union (see paragraph 25 above), the fact that the Commission referred to Implementing Regulation No 543/2011 in the contested decision instead of Regulation No 1580/2007 does not affect the lawfulness of that decision, the outcome being the same regardless of which regulation is taken into consideration (see, by analogy, judgments of 5 June 1996 in *Günzler Aluminium* v *Commission*, T-75/95, ECR, EU:T:1996:74, paragraph 55, and 27 February 1997 in *FFSA and Others* v *Commission*, T-106/95, ECR, EU:T:1997:23, paragraph 199).

86 The first part of the first plea in law, alleging that the Commission had no legal basis to make its reimbursement contingent on the amounts notified during the authorisation procedure, must therefore be rejected.

The second part of the first plea in law, alleging infringement of the provisions enabling changes made to the amount of national assistance during the financial year to be taken into account

– Infringement of Articles 67 and 94a of Regulation No 1580/2007

87 Hungary argues that Articles 67 and 94a of Regulation No 1580/2007 allow producer organisations to modify the amount of the operational fund during the year. It claims that the Commission could not therefore establish a definitive limit on its reimbursement tied to the amounts notified in the context of the authorisation procedure, without infringing Articles 67 and 94a of Regulation No 1580/2007.

88 As regards, first of all, Article 67 of Regulation No 1580/2007, which allows producer organisations to ‘increase the amount of the operational fund by a maximum of 25% … of the amount initially approved’, it must be stated that this provision does not apply to the national financial assistance referred to in Article 103e of the Single CMO Regulation.

89 As the Commission points out, Article 103e of the Single CMO Regulation provides that national financial assistance 'shall be additional to the operational fund', meaning that any subsequent increase in the operational fund, such as that envisaged in Article 67 of Regulation No 1580/2007, is not intended to trigger a consequential increase in the national financial assistance.

90 That distinction between the two assistance schemes is reflected in the structure of Regulation No 1580/2007.

91 Title III of Regulation No 1580/2007 contains, in particular, a Chapter II entitled 'Operational funds and operational programmes', which includes Article 67 and provisions on EU financial assistance, and a Chapter IV entitled 'National financial assistance', which includes Articles 96 and 97 on the reimbursement of national financial assistance.

92 Secondly, as regards Article 94a of Regulation No 1580/2007 invoked by Hungary, which provides that 'a producer organisation wishing to apply for national financial assistance shall, if necessary, modify its operational programme pursuant to Article 67', it must be stated that this provision does not apply here either.

93 It is apparent from the wording of Article 94a of Regulation No 1580/2007 that this regulation does not cover the present situation where an amount of national financial assistance is approved by the Commission and subsequently increased. Instead, it covers the situation where the content of an operational programme is modified before being approved by the national authority.

94 Hungary's argument that Articles 67 and 94a of Regulation No 1580/2007 were infringed must therefore be rejected.

– Infringement of Article 103d of the Single CMO Regulation and Articles 53 and 99 of Regulation No 1580/2007

95 Hungary argues that the provisions on reimbursement of national financial assistance must be interpreted in the light of the provisions on EU financial assistance (particularly Article 103d of the Single CMO Regulation and Article 99 of Regulation No 1580/2007), which allow the assistance to be adjusted depending on the value of the marketed production.

96 However, Article 103d of the Single CMO Regulation does not lay down any procedure for the authorisation of EU financial assistance before the Commission, unlike Article 103e of the Single CMO Regulation.

97 Moreover, Article 103d of the Single CMO Regulation provides that EU financial assistance is to be equal to the amount of the financial contributions 'actually paid', while Article 97(1) of Regulation No 1580/2007 bases reimbursement by the European Union on the 'approved' national financial assistance 'actually paid'.

98 Hungary's argument must therefore be rejected.

99 To conclude, in view of the foregoing, the abovementioned articles — whether they relate to national or EU financial assistance — do not prevent the Commission from authorising the reimbursement requested by Hungary only up to the amounts that were notified and actually paid to producer organisations.

100 The second part of the first plea in law, alleging infringement of the provisions enabling changes made to the amount of assistance during the financial year to be taken into account, must therefore be rejected, as must the first plea in law in its entirety.

The second plea in law, alleging an error of assessment in the application of Article 97 of Regulation No 1580/2007

101 Hungary argues that, even if the Commission were able to limit reimbursement to the amounts of assistance notified, under Article 97(1) of Regulation No 1580/2007, it could do so only by approving those amounts beforehand, in the letter of authorisation, which it did not do in this case.

102 In support of this plea in law, Hungary submits, in the first place, that the Commission did not expressly refer to any amount of assistance in the letter of authorisation, unlike its practice in later decisions, for the 2010 and 2011 marketing years, in which the Commission referred to the overall amount of assistance granted.

103 In the second place, it claims that the letter of authorisation did not take the form of an implicit approval decision, in accordance with Article 94(2) of Regulation No 1580/2007, which is the only decision that would have permitted, due the effect of reciprocity, the implicit approval of the amounts of assistance notified.

104 In the third place, Hungary contends that the Commission was not able to approve amounts of assistance based on data submitted as mere estimates.

105 In the fourth place, it asserts that if the Commission were able to establish a ceiling on the reimbursement of national financial assistance based on amounts of assistance which are not mentioned in the authorisation decision, this 'would give rise to concerns from the standpoint of legal certainty'.

106 It should be recalled that, in recital 14 of the contested decision, the Commission maintained that 'the amounts of National Financial Assistance paid by Hungary to some producer organisations for the operational programmes implemented in the year 2009 were superior to the amounts indicated in the authorisation request and approved by the Commission'. It concluded that 'those amounts, in so far as they exceed the amounts approved by the Commission [were] considered to be ineligible for reimbursement', unlike the amounts paid to producer organisations up to the level declared in the request for authorisation. Based on Article 103e of the Single CMO Regulation, the Commission decided to limit reimbursement to the latter amounts.

107 It is therefore apparent from the contested decision that the Commission limited the amounts eligible for reimbursement to the amounts notified during the authorisation procedure, inasmuch as it considered that the amounts paid over and above the amounts of assistance notified were not 'approved' amounts within the meaning of Article 97(1) of Regulation No 1580/2007.

108 It is thus necessary in the present case to decide whether the Commission was fully entitled to limit the amounts eligible for reimbursement on the ground that the amounts paid in excess of the amounts of assistance notified had not been 'approved' in the letter of authorisation, in accordance with Article 97(1) of Regulation No 1580/2007, in view of the fact that, in particular, the amounts of assistance notified were not expressly mentioned in the letter and the letter did not refer, at least expressly, to the 'approval' of such amounts.

109 First, it must be stated that neither the Single CMO Regulation nor Regulation No 1580/2007 contain any provisions obliging the Commission to refer specifically to the amount of assistance notified in its authorisation decision. Furthermore, it is apparent from Article 103h of the Single CMO Regulation that the Commission has full powers to establish 'rules on the reimbursement'. Accordingly, no provision expressly obliged it, in the absence of any requirement to that effect, to mention the amounts of assistance notified in the letter of authorisation.

110 Secondly, as stated in paragraphs 63 to 66 above, Article 97(1) of Regulation No 1580/2007 shows that the basis for reimbursement by the European Union of national financial assistance is the 'approved national financial assistance actually paid'. 'Approved' national financial assistance necessarily includes the amount of such assistance broken down by producer organisation, communicated for the purpose of authorisation, pursuant to the second subparagraph of Article 94(1) of Regulation No 1580/2007. The fact that the authorisation decision contains no express reference to the amounts of assistance notified cannot therefore result in there being no limit on the amounts of assistance that can be paid up to the 80% threshold, since authorisation to pay assistance is based, under the second subparagraph of Article 94(1) of Regulation No 1580/2007, on such amounts being taken into account.

111 Thirdly, the Commission gave its consent to the assistance notified only after requesting and receiving, by email of 12 March 2009, the amount of national financial assistance broken down by producer organisation (see, by analogy, judgment of 16 December 2010 in *Kahla Thüringen Porzellan* v *Commission*, C-537/08 P, ECR, EU:C:2010:769, paragraph 45). The amount of national financial assistance broken down by producer organisation, on which the Commission based its reimbursement decision, was thus approved by it in the context of the authorisation procedure, having regard to the content of the notification sent by Hungary (see, by analogy, order of 22 March 2012 in *Italy* v *Commission*, C-200/11 P, EU:C:2012:165, paragraph 27 and the case-law cited).

112 Fourthly, the letter of authorisation expressly mentions the 'amount of assistance concerned', as one of the aspects of the second subparagraph of Article 94(1) of Regulation No 1580/2007 on which the letter is based, and states that the assistance is 'duly substantiated'. Therefore, Hungary could not reasonably have been unaware that the amounts of assistance notified had been approved by the Commission within the meaning of Article 97(1) of Regulation No 1580/2007 and would form the basis for its reimbursement.

113 In those circumstances and for the reasons set out above relating to, in particular, the scheme of Article 97 of Regulation No 1580/2007, the content of Hungary's notification and the content of the authorisation letter, it cannot be alleged that the Commission committed an error of assessment of such a kind as to lead to the annulment of the contested decision. For the reasons mentioned in paragraphs 109 to 112 above, the letter of authorisation must be regarded as having approved the amounts of assistance notified, namely the amount broken down by producer organisation, as requested by the Commission and received by email of 12 March 2009, and not the additional amounts paid in excess.

114 The arguments put forward by Hungary cannot invalidate that finding.

115 First, the fact that the Commission altered its practice in subsequent authorisation decisions by specifying the overall amount of national financial assistance notified is irrelevant. It should be noted in this connection that the amount taken into account as reimbursable was the amount of national financial assistance broken down by beneficiary producer organisation (see paragraph 66 above).

116 Secondly, in response to Hungary's argument that the letter of authorisation did not take the form of an implicit approval decision, in accordance with Article 94(2) of Regulation No 1580/2007, which is the only decision that would have permitted, due the effect of reciprocity, the implicit approval of the amounts of assistance notified, suffice it to note that, if the Commission's silence can entail implicit approval of the amounts of assistance as provided for in that provision, *a fortiori*, the same must apply with regard to a letter of authorisation containing express reference to the 'amount of assistance concerned' and the fact that the request was 'duly substantiated'. Indeed, it should be noted that Article 94(2) of Regulation No 1580/2007 invoked by Hungary provides that 'the Commission shall approve or refuse the request', evidencing that the approval of the assistance necessarily and, therefore, implicitly covers the content of the request, which necessarily includes the 'amount of assistance' sought referred to in Article 94(1).

117 Thirdly, as regards the fact that the amounts submitted by Hungary were estimates, which, it is claimed, prevented the Commission from approving those amounts, it appears that the notification of estimates is an inherent part of the authorisation procedure, since national financial assistance depends on members' contributions to the operational fund. These contributions depend, in turn, on members' agricultural production, which becomes known only at the end of the financial year. Consequently, the fact that the amounts notified were estimates is not capable of preventing the Commission from refusing to reimburse the amounts paid over and above the amounts notified, in so far as such estimates must be duly substantiated within the meaning of Article 103e of the Single CMO Regulation. The notification of estimates does not therefore preclude the Commission from using these amounts as the basis for authorising the assistance notified and treating them as a constituent element of its consent to that authorisation.

118 Fourthly, there is no legal or factual basis for Hungary's argument that, if the Commission were able to establish a ceiling on the reimbursement of national financial assistance based on amounts of assistance which are not mentioned in the letter of authorisation, this 'would give rise to concerns from the standpoint of legal certainty'.

119 Hungary does not specify, in particular, who would be the victim of the alleged infringement of the principle of legal certainty (the Member State or the producer organisations in receipt of the assistance).

120 In the absence of any further details, the Court considers that the alleged infringement would primarily concern Hungary, a party to these proceedings.

121 As the Commission points out, since the amounts taken into account by it in the letter of authorisation were notified by the Hungarian authorities themselves, the principle of legal certainty could in no way be affected by the fact that these amounts formed the basis for authorisation of the national financial assistance and, thereafter, the basis for reimbursement. Hungary could not reasonably have been unaware that the amounts broken down by producer organisation, communicated at the Commission's express request, would form the basis for the authorisation (see paragraph 112 above).

122 Accordingly, the lack of any express reference in the letter of authorisation to the maximum amounts notified by Hungary could not be construed as a waiver by the Commission of its right to confine its authorisation and reimbursement of national financial assistance to the amounts of assistance notified.

123 In those circumstances, the second plea in law alleging error of assessment in the application of Article 97 of Regulation No 1580/2007 must be rejected.

124 Since neither plea in law is well founded, the action must be dismissed in its entirety.

Costs

125 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 Hungary has been unsuccessful in its pleas in law, it must, in accordance with the forms of order sought by the Commission, be ordered to pay the costs incurred by the Commission in addition to its own costs.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

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

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 15 September 2015.

[Signatures]

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