ORDER OF THE COURT
11 January 2000 *

In Case C-295/98,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato, and G. Castellani Pastoris, Ambassador, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by F.P. Ruggeri Laderchi, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28) in so far as it makes financial adjustments to certain expenditure declared by the Italian Republic,

THE COURT,

composed of: G.C Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward, L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm, M. Wathelet (Rapporteur) and V. Skouris, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court on 28 July 1998, the Italian Republic sought, pursuant to Article 173, first paragraph, of the EC Treaty (now, after amendment, Article 230, first paragraph, EC), the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund

(EAGGF) (OJ 1998 L 163, p. 28) ('the contested decision') in so far as it makes financial adjustments to certain expenditure declared by the Italian Republic.

2 Pursuant to Article 91 of the Rules of Procedure, the Commission, by separate document of 30 November 1998, raised an objection to the admissibility of the application.

3 According to the Commission, under the combined provisions of Article 173, fifth paragraph, of the Treaty, Article 81 of the Rules of Procedure and Annex II to the Rules of Procedure, the period within which an action for annulment must be brought is two months from notification of the measure being challenged, to which, in the case of Italy, 10 days must be added by reason of distance. In this case, the letter from the Commission's General Secretariat notifying the Italian authorities of the contested decision is dated 15 May 1998, with the result that the application for annulment, which was lodged on 28 July 1998, is inadmissible as being out of time.

4 At the Court's request, the Commission produced the acknowledgment of receipt of the contested decision by the Office of the Permanent Representative of Italy to the European Union, from which it is clear that that decision was indeed notified on 15 May 1998.

5 That being so, the objection raised by the Commission must be upheld.

6 The action brought by the Italian Republic must therefore, pursuant to Article 92 of the Rules of Procedure, be dismissed as being manifestly inadmissible.

Costs

7 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 Italian Republic has failed in its submissions, and the Commission has asked that costs be awarded against it, the Italian Republic must be ordered to bear the costs.

On those grounds,

THE COURT

hereby orders:

1. The action is dismissed as being manifestly inadmissible.

2. The Italian Republic shall bear the costs.

Luxembourg, 11 January 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President