JUDGMENT OF THE COURT (Sixth Chamber)

12 June 2003 *

In Case C-148/01,

Hellenic Republic, represented by V. Kontolaimos and C. Tsiavou, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by

Federal Republic of Germany, represented by W.-D. Plessing and M. Lumma, acting as Agents,

and by

Kingdom of Spain, represented initially by M. López-Monís Gallego and subsequently by S. Ortiz Vaamonde, acting as Agents, with an address for service in Luxembourg,

interveners,

* Language of the case: Greek.

Commission of the European Communities, represented by M. Condou-Durande, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for partial annulment of Commission Decision 2001/137/EC of 5 February 2001 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2001 L 50, p. 9),

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen, V. Skouris, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 4 April 2001, the Hellenic Republic brought an action under Article 230 EC for annulment of Commission Decision 2001/137/EC of 5 February 2001 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2001 L 50, p. 9, 'the contested decision'), in so far as it imposed a financial adjustment on the Hellenic Republic in respect of default interest for late payment of the additional levy payable in respect of the 1995/96 marketing year calculated for the period from February 1997 to December 2000 ('the contested adjustment').

2 By orders of the President of the Court of Justice of 4 October 2001, the Federal Republic of Germany and the Kingdom of Spain were given leave to intervene in support of the Hellenic Republic.

Legal background

Regulation (EEC) No 729/70

3 The first subparagraph of Article 5(2)(a) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English

Special Edition 1970 (I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), ('Regulation No 729/70') provides:

'The Commission, after consulting the Fund Committee:

(a) shall decide on monthly advances against the allocations of expenditure effected by the accredited paying agencies. Expenditure for October shall be attributed to October if it is effected from 1 to 15 October and to November if it is effected from 16 to 31 October. Advance payments shall be made to the Member State not later than the third working day of the second month following that in which the expenditure is effected.'

4 Article 8(1) and (2) of Regulation No 729/70 reads:

'1. The Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

— satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;

— prevent and deal with irregularities;

— recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.

2. In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

The sums recovered shall be paid to the accredited paying agencies and deducted by them from the expenditure financed by the Fund. The interest on sums recovered or paid late shall be paid into the Fund'.

Regulation (EC) No 296/96

5 Article 1(1) of Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5), provides:

'After approval of the advances, in accordance with the last subparagraph of Article 5(2)(a) of Regulation (EEC) No 729/70, the Commission shall place at the disposal of the Member States, within the framework of the budget appropriations, the funds needed to cover expenditure to be financed by the EAGGF Guarantee Section, on an account opened for that purpose by each Member State with its Treasury or any other financial institution.'

6 Article 4(1) and (2) of the same regulation provides:

'1. On the basis of data sent in accordance with Article 3, the Commission shall adopt decisions and make the monthly advances against booking of expenditure, without prejudice to the provisions of Article 13 of Decision 94/729/EC.

2. Advances against booking shall be reduced for expenditure effected after the deadlines laid down as follows:

...

The reductions referred to in this article shall be made in accordance with the rules laid down in Article 13 of Decision 94/729/EC.'

Decision 94/729/EC

7 Article 13 of Council Decision 94/729/EC of 31 October 1994 on budgetary discipline (OJ 1994 L 293, p. 14) provides:

'1. Payment of the monthly EAGGF Guarantee Section advances by the Commission shall be effected on the basis of the information supplied by the Member States in regard to expenditure in each chapter.

2. If the declarations of expenditure or the information submitted by a Member State do not enable the Commission to establish whether the commitment of funds is in conformity with the relevant Community rules, the Commission shall request the Member State to supply further information within a period which it shall determine according to the seriousness of the problem.

In the event of a reply which is deemed unsatisfactory or which indicates manifest non-compliance with the rules and a clear misuse of Community funds, the Commission may reduce or provisionally suspend the monthly advances to Member States.

Such reductions and suspensions shall be without prejudice to the decisions which will be taken in connection with the clearance of accounts.

3. The Commission shall inform the Member State concerned before taking its decision.

The Member State shall make its position known within 10 days.

The Commission's decision, stating the reasons on which it is based, shall be taken after the EAGGF Committee has been consulted and must be in keeping with the principle of proportionality.'

Regulation (EEC) No 3950/92

8 Article 1 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1) reads:

'For seven new consecutive periods of twelve months commencing on 1 April 1993, an additional levy shall be payable by producers of cow's milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.

The levy shall be 115% of the target price for milk.'

9 Article 2(1) to (3) of Regulation No 3950/92 reads:

'1. The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3. It shall be shared between the producers who contributed to the overrun.

In accordance with a decision of the Member State, the contribution of producers towards the levy payable shall be established, after the unused reference quantities have been reallocated or not, either at the level of the purchaser, in the light of the overrun remaining after unused reference quantities have been

allocated in proportion to the reference quantities of each producer, or at national level, in the light of the overrun in the reference quantity of each individual producer.

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

...

3. As regards direct sales, the producer shall pay the levy payable to the competent body of the Member State before a date and in accordance with rules to be laid down.'

10 Article 10 of the same regulation provides:

'The levy shall be considered as intervention to stabilise agricultural markets and shall be used to finance expenditure in the milk sector.'

Regulation (EEC) No 536/93

11 The fifth recital in the preamble to Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12) reads:

'... experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy have prevented the arrangements from being fully effective;... therefore, lessons should be learned from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines and providing for penalties where deadlines are not met'.

12 Article 3(4) of that regulation provides:

'Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.

Where the time-limit for payment is not met, the sums due shall bear interest at a rate per annum fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.'

13 Article 5(2) of Regulation No 536/93 provides:

'Member States shall take any additional measures necessary to ensure payment of levies due to the Community within the time-limit laid down.

Where the set of documents referred to in Article 3(5) of Commission Regulation (EEC) No 2776/88, which the Member States must transmit to the Commission each month, shows that this time-limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure in proportion to the amount due or an estimate thereof.

Interest paid pursuant to Article 3(4) and Article 4(4) shall be deducted by the Member States from expenditure on milk and milk products.'

Facts

14 By letter of 2 August 2000 the Commission notified the Greek authorities of its final position regarding the negative financial adjustments it was proposing to make in respect of the additional levy in the milk and milk products sector for the

1995/96 marketing year in the context of a decision for the clearance of accounts to be taken during December that year. Those adjustments were as follows:

Additional levy for milk and milk products

Budget Item		GRD
2071.102	Milk deliveries — 1995/96 marketing year	- 20 568 862
2071.122	Interest for late payment of additional levy	- 72 063 780

15 The above financial adjustments were proposed in the context of an inspection conducted by the Commission which revealed that during the 1995/96 marketing year the quota had been exceeded in Greece by 7 423 986 kg. Although the amount of the additional levy in respect of that quantity was GRD 824 656 365, a total of GRD 804 087 503 had already been credited to the EAGGF, so the outstanding balance payable was GRD 20 568 862. The Commission maintained that since the additional levy had not been paid by 1 September 1996 GRD 72 487 562 was payable by way of default interest. As GRD 423 782 had already been credited to the EAGGF the amount of interest outstanding was GRD 72 063 780.

16 The Commission described the method used to calculate the default interest in a letter dated 26 May 2000. That letter states that the interest had been calculated up to December 2000, but it would be reduced if the Greek authorities paid the EAGGF the additional levy or the interest payable, however much that might be, before October that year.

17 Since the amount of the adjustment proposed by the Commission was less than EUR 500 000 the Hellenic Republic did not refer the matter to the Conciliation Body established under Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section (OJ 1994 L 182, p. 45).

18 The Hellenic Republic objected to the financial adjustment in respect of the interest payable for late payment of the additional levy for the 1995/96 marketing year in so far as that interest related to the period from February 1997 to December 2000.

19 According to the Greek Government, the Commission decided on the amount of the additional levy payable in respect of the said marketing year in decision C(97) 605 final of 5 March 1997, in the context of the procedure provided for in Article 13(2) of Decision 94/729. The Commission reduced the advance payable to the Hellenic Republic to cover expenditure incurred in the milk sector during January 1997 on the ground that it had not received the total amount of the additional levy in that sector for the 1995/96 marketing year within the specified time-limit. In those circumstances, only the financial adjustment relating to the default interest in respect of the months from September 1996 to January 1997, amounting to GRD 24 027 489, is justified under Community law.

20 According to the Commission, the reduction in the advances paid to the Hellenic Republic could not have had any effect on the calculation of the interest concerned, which should still have been paid by solvent purchasers to the competent national authority and credited to the EAGGF.

21 On 5 February 2001 the Commission adopted the contested decision, which provides *inter alia* for the following adjustment:

Sector	Budget item	Reason	Expenditure excluded from Community financing	Reductions made	Financial consequences of the decision	Marketing year
Milk Products	2071	Additional levy and default interest	- GRD 103 197 096	- GRD 10 604 124	- GRD 92 592 972	1996

Substance

Arguments of the parties

22 The Hellenic Republic states that it is not disputing the financial adjustment in respect of the amount of the additional levy payable in respect of the 1995/96 marketing year, nor that in respect of the default interest payable due to failure to pay that amount before the reductions in advances under Decision C(97) 605 finally came into effect.

23 However, the contested adjustment in respect of a similar failure to pay during the months from February 1997 to December 2000 is contrary to Community law. The Commission decided to reduce the advance payable to the Hellenic Republic to finance expenditure in the milk sector during January 1997 by GRD 514 625 072 on the ground that it had not received the total amount of the

additional levy for the 1995/96 marketing year within the specified time-limit. The Hellenic Republic therefore ceased to owe the EAGGF default interest from February 1997 onwards.

24 The Greek Government points out in that connection that in order to ensure the smooth operation of the system of additional levies Article 3(4) and Article 5(2) of Regulation No 536/93 seek, first, to improve and accelerate payment of the additional levy by the purchaser liable for levies to the competent national body and, second, to ensure payment of the levy payable to the Community within the specified time-limit.

25 It is clear from a combined reading of those provisions, in the light of Article 5(2) and Article 8 of Regulation No 729/70, Article 1(1) and (4) of Regulation No 296/96 and Article 13 of Decision 94/729, that where a purchaser liable for the additional levy has not complied with the time-limit for payment of that levy the Commission will impose as a penalty on the Member State concerned a reduction in the advances to cover expenditure in the milk sector in proportion to the actual or estimated amount of the additional levy. Once those advances have been reduced there is thus no longer any delay in paying the additional levy due to the Community for the purposes of Article 5(2) of Regulation No 536/93, nor any risk of a loss of Community resources due to late payment.

26 Moreover, default interest is payable where the person liable for payment is late in paying the additional levy due to his own fault. Settlement of the principal debt means there is no longer any obligation to pay interest. Consequently, when the Commission imposed a reduction on the Hellenic Republic in the advances to cover expenditure in the milk sector which was equal to the amount of the additional levy payable in respect of the 1995/96 marketing year, the improper delay in paying that levy came to an end and default interest was therefore no longer payable to the EAGGF.

27 The Greek Government also maintains that once the Commission had reduced the advances the default interest payable under Article 3(4) of Regulation No 536/93 by purchasers liable for the levy who had not paid the additional levy within the specified time-limit should be paid to the competent national authority and not to the EAGGF. The Commission's argument that sums in respect of default interest are payable to the EAGGF by way of negative expenditure in the monthly declarations and should be deducted from expenditure in the milk sector only applies in respect of default interest payable until reductions in advances are imposed on a Member State, that is to say, while there is still an improper delay in payment of the additional levy.

28 The Greek Government considers that its interpretation is corroborated by the second subparagraph of Article 8(2) of Regulation No 729/70, which provides that interest is to be paid to the EAGGF only where Member States have recovered sums lost as the result of irregularities or negligence in connection with expenditure financed by the Fund, that is to say, where there has been a loss of Community resources, misuse of such resources or the late payment of amounts owed.

29 By imposing the financial adjustment on the Hellenic Republic the Commission thus incorrectly interpreted and applied the Community legislation. The Greek Government contends in the alternative that the Commission failed to provide adequate reasons for that aspect of the contested decision.

30 The Greek Government adds that the arguments put forward by the German and Spanish Governments in their statements in intervention confirm that its action for annulment is well founded.

31 The Federal Republic of Germany submits, first, that a systematic analysis of the relevant provisions of Regulations Nos 3950/92 and 536/93 shows that the EAGGF is not justified in requiring Member States to pay additional levies and default interest in the event of delay in paying such levies to the EAGGF.

32 In the light of the wording of Article 3(4) and Article 4(4) of Regulation No 536/93, the right to claim default interest arises solely in the context of the relationship existing between the competent national bodies and the 'purchaser[s] liable for levies' or the 'producer[s]', and not that existing between the Community and the Member States. Also, Article 5(2) of Regulation No 536/93 does not provide any legal basis for claiming default interest, but merely requires Member States to take measures in order to 'ensure payment of levies due to the Community within the time-limit laid down'.

33 The German Government argues that it is clear from Case C-277/98 *France* v *Commission* [2001] ECR I-8453, paragraphs 37, 38 and 43), which concerns provisions which previously applied to the additional levy in the milk sector similar to those contained in Regulation No 536/93, that the role of the Member States in relation to that levy is merely to recover it and forward it to the Community. In that regard, the German Government also refers to the Opinion of Advocate General Jacobs in Case C-130/99 *Spain* v *Commission* [2002] ECR I-3005.

34 Since the Member States do not have a principal debt in respect of additional levies they cannot be required to pay default interest, which presupposes the existence of a principal debt. In those circumstances the contested adjustment is unlawful.

35 The German Government maintains, secondly, that the contested adjustment is not justified since the Hellenic Republic has not been found to have failed in its obligation to collect additional levies and default interest from the persons liable to pay such levies and interest.

36 The Court has consistently held that a financial adjustment presupposes in any event that the Commission has established negligence on the part of the Member State concerned (Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 18, Case C-374/99 *Spain* v *Commission* [2001] ECR I-5943, paragraph 15, and *France* v *Commission*, cited above, paragraph 41). In the present case, in its inspection report of 10 October 1997 in respect of 1995 and 1996 the Commission found in fact with regard to the additional levy that no negligence was attributable to the Hellenic Republic.

37 The Kingdom of Spain argues likewise that the Member States' sole obligation is to recover promptly the additional levy for which milk purchasers or producers are liable and, where necessary, default interest. The Commission is wrong to state that the obligation to pay default interest is independent of any reduction in advances. The Member State does not become indebted to the Community in respect of amounts corresponding to that levy and any default interest unless the Commission proves that the failure to recover levies and interest from those liable to pay is due to a lack of diligence on the part of the competent national authorities. For that reason, the Commission is not justified in requiring a Member State to pay in advance sums which persons liable for payment of the additional levy have failed to pay, solely on the ground that it is necessary to offset the effects of late payment on the Community budget. The argument that a Member State should be encouraged to hasten recovery is only relevant if the late payment is attributable to that Member State.

38 In support of that, the Spanish Government points out in particular that in the same way that there is no legal basis permitting the Commission to require a

Member State to pay the amount of a levy which has not yet been collected (*France* v *Commission*, cited above, paragraphs 34 to 43, and the Opinion referred to in paragraph 33 of the present judgment), there is also no legal basis permitting it to reclaim from that Member State, by means of a financial adjustment, interest in respect of that levy which purchasers or producers who are liable for the levy have not yet paid.

39 The Spanish Government argues that, contrary to the argument put forward by the Commission, the system applying in the present case is not different from that at issue in *France* v *Commission*, cited above. In any event, it is clear from the second and fifth recitals in the preamble to Regulation No 536/93 that that regulation seeks to lay down measures making it possible to ensure payment of the levy within the specified time-limit and to impose penalties in order to do so. Those recitals and Articles 3 and 4 of that regulation also refer to the purchaser's obligation to pay. The penalties provided for also apply to the purchaser and consist of the payment of a penalty sum (Article 3(2) and Article 4(2) of Regulation No 536/93) and the payment of interest (Article 3(4) and Article 4(4) of the same regulation).

40 The Commission for its part contends that the imposition of default interest and the reduction in advances constitute two measures which are independent of one another and relate to separate obligations. The reduction in advances which is imposed on a Member State is designed both to offset the effects on the EAGGF budget of a delay in paying the levy payable to the Community and to encourage a Member State to take the necessary measures in order to ensure payment in due time. The payment of default interest due from a purchaser or producer is intended to ensure that those persons comply with the time-limits laid down for the sending of data and the payment of the levy to the competent national body.

41 The Commission observes that Member States are therefore subject to two obligations: first, to take the necessary measures to ensure that the persons who

are liable pay the amount of the levy within the specified time-limit or else pay default interest and, second, to pay the Community the amount of the additional levy within the specified time-limit. The reduction in advances, which is connected with the latter obligation, does not end the obligation on Member States to collect the additional levy and default interest from the persons who are liable to pay.

42 The Commission adds that a reduction in advances is not equivalent to clearance of accounts, which is done on the basis of the amount of the additional levy payable, plus default interest, payments already made and reductions in advances which have been made by the Commission. The reduction in advances does not lead to the removal of a Member State's obligations towards the Community as regards the recovery and payment of the additional levy and default interest, contrary to what happens in the context of the clearance of Community expenditure. Following such clearance, default interest recovered late by a Member State is retained by it.

43 Moreover, a reduction in advances does not cover the full amount corresponding to the additional levy, since it is fixed at 96% of the undeclared amount. Furthermore, it is for the Member State to declare what amounts have been collected from purchasers and producers up to the amount of the reduction, which makes it possible to ensure that Member States continue to collect sums owed by persons liable to levies. Member States are also required to continue to declare levies and interest which they collect by reducing their monthly declarations accordingly.

44 The Commission also points out that under Article 5(2) of Regulation No 536/93 amounts in respect of default interest are to be deducted from expenditure in the milk sector and then attributed to the EAGGF as negative expenditure in the

monthly declarations. In fact those amounts are intended in particular to reduce Community expenditure in that sector (see Article 10 of Regulation No 3950/92).

45 The Commission contends that the Greek authorities' interpretation, whereby once advances have been reduced there is no reason to maintain that there is any delay involving the payment of interest, might also mean that there is no longer any obligation on purchasers or producers to pay default interest in respect of the period concerned, which amounts to the imposition of a penalty. Those purchasers or producers therefore enjoy an unjustified competitive advantage, which is not in accordance with the purposes of that obligation.

46 Similarly, if default interest were to be allocated to the national budget and not deducted from Community expenditure a Member State which had paid the additional levy at the appropriate time would be in a less favourable position than one which had not paid within the specified time-limit and on which a reduction in advances had been imposed. That interest would be calculated on the basis of the rates notified by the Member States depending on the additional levy payable each month, with no account being taken of any reductions in advances or deduction of amounts declared to the EAGGF.

47 Since the penalty sum imposed on a producer is very important as regards achieving the Community objective of stabilising the market in milk products, failure to recover that penalty sum within the specified time-limit constitutes an infringement of the provisions of Regulation No 536/93 that justifies an adjustment of the expenditure declared. That mechanism is reflected in the provisions of Article 5(2) of Regulation No 536/93, which stipulate that interest must be deducted from declared expenditure, so as to ensure that Member States recover the amounts in question.

48 Article 8(2) of Regulation No 729/70, mentioned by the Greek Government, governs cases of irregularities and is not applicable in the present case, which is governed by the special provisions of Regulation No 536/93.

49 In response to the statements in intervention of the German and Spanish Governments, the Commission asserts that the principles set out in *France* v *Commission*, cited above, cannot be transposed to the present case.

50 First, the provisions applying to financial adjustments are different. Second, in the present case, contrary to what was the case in *France* v *Commission*, cited above, the Member State is not disputing its obligation to pay additional levies to the Community, it is only objecting to the financial adjustment relating to the amount of default interest in respect of the period following a reduction in advances. Lastly, in *France* v *Commission* the Court ruled that a financial adjustment could not be imposed in the event of failure to collect levies where a Member State pleaded that it was impossible to collect them and the Commission failed to establish negligence on the part of that Member State. In the present case, however, the Greek Government has admitted that it failed to take all the necessary measures to ensure the recovery of the levies and the relevant default interest.

Findings of the Court

51 It is not necessary to consider the argument put forward by the Greek Government to the effect that the reduction in advances due to the late payment

of the additional levy payable in respect of the 1995/96 marketing year precludes the Commission requiring the Hellenic Republic to pay default interest on the amount of that levy for the period following that reduction, since in any event there were no valid grounds for the Commission to base the contested adjustment on Article 5(2) of Regulation No 536/93.

52 In paragraph 101 of the judgment in *Spain* v *Commission*, cited above, the Court held that Article 3(4) of Regulation No 536/93 makes purchasers liable to pay interest, as from 1 September of each year, to the competent body in case of late payment of the additional levy and that Article 5(2) of that regulation makes Member States responsible for deducting interest paid from the applications for reimbursement of expenditure on milk and milk products submitted to the EAGGF.

53 In the present case it is agreed that the Greek authorities did not collect the default interest referred to in those provisions.

54 In paragraph 101 of the judgment in *Spain* v *Commission* the Court also held that the fact that certain sums due remain unpaid, or were paid belatedly, does not of itself constitute failure to fulfil obligations imposed on the Member States by Community law.

55 Consequently, Article 5(2) of Regulation No 536/93 does not apply in the present case.

56 It is true, as is made clear in paragraph 102 of the judgment in *Spain* v *Commission*, that the Commission may apply an adjustment where it is able to show that the EAGGF suffered a loss as a result of a negligent failure, attributable to the national authorities, to recover the disputed sums.

57 However, in the present case, it is agreed that the Commission based the contested adjustment exclusively on Article 5(2) of Regulation No 536/93. It confirmed that fact before the Court by excluding any reference to Article 8(2) of Regulation No 729/70 as a basis for the contested decision.

58 The Commission based the contested adjustment on an incorrect legal basis, and so on that ground alone it is appropriate to grant the application by the Greek Government for annulment of the contested decision in so far as it imposes that adjustment.

Costs

59 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. The Hellenic Republic has not applied for costs to be awarded against the Commission. It follows that, although the Commission has been unsuccessful, the parties must be ordered to pay their own costs.

60 Under the first subparagraph of Article 69(4) of those Rules, the Federal Republic of Germany and the Kingdom of Spain, which intervened in the proceedings, must be ordered to pay their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Annuls Commission Decision 2001/137/EC of 5 February 2001 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), in so far as it imposes on the Hellenic Republic a financial adjustment in respect of default interest due to the late payment of the additional levy payable in respect of the 1995/96 marketing year calculated for the period from February 1997 to December 2000;**

2. **Orders the Hellenic Republic and the Commission of the European Communities to pay their own costs;**

3. **Orders the Federal Republic of Germany and the Kingdom of Spain to pay their own costs.**

Puissochet Schintgen Skouris

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 12 June 2003.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber