JUDGMENT OF THE COURT (Fifth Chamber)

18 September 2003 *

In Case C-331/00,

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

applicant,

v

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 2000/449/EC of 5 July 2000 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 2000 L 180, p. 49), in so far as its concerns the Hellenic Republic,

* Language of the case: Greek.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr and A. Rosas, Judges,

Advocate General: A. Tizzano,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 6 February 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 11 September 2000, the Hellenic Republic brought an action under the first paragraph of Article 230 EC for the partial annulment of Commission Decision 2000/449/EC of 5 July 2000

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 2000 L 180, p. 49) (hereinafter 'the contested decision'), in so far as it lays down financial corrections at the expense of the Hellenic Republic for the financial years 1996, 1997 and 1998.

Legal framework

Community legislation

Financing of expenditure under EAGGF

2 Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ 1970 L 94, p. 13), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1, hereinafter 'Regulation No 729/70'), provides in Articles 1(2)(b) and 3(1) that the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) is to finance interventions intended to stabilise the agricultural markets, undertaken according to Community rules within the framework of the common organisation of agricultural markets.

3 Article 1(4) of Regulation No 729/70 states:

'Expenditure relating to administrative costs and personnel borne by Member States and by recipients of aid from the Fund shall not be taken over by the Fund.'

4 Under Article 5(2)(c) of Regulation No 729/70:

'The Commission, after consulting the Fund Committee:

...

(c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community.

...'

5 Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as amended by Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5) (hereinafter 'Regulation No 1663/95') sets out, among other things, the obligations of coordinating bodies which are the sole representatives of the Member State before the Commission. Those bodies must hold at the disposal of the Commission a full record of all requisite accounting information in a form which allows the Commission to carry out the necessary checks.

6 Article 8(1) and (2) of Regulation No 1663/95 states:

'1. If, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it shall notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance.

... The Member State shall reply within two months and the Commission may modify its position in consequence....

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community.... [The Commission] shall formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC... [T]hat communication shall include an evaluation of any expenditure the Commission intends to exclude under Article 5(2)(c) of Regulation (EEC) No 729/70.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force....

2. The decisions referred to in Article 5(2)(c) of Regulation (EEC) No 729/70 shall be taken after an examination of any report drawn up by the conciliation body according to the provisions laid down in [Decision] 94/442/EC.'

7 The Annex to Regulation No 1663/95 provides the administrative and accounting rules which must be complied with by Member State paying agencies in order to provide assurance that the eligibility of claims has been efficiently checked and that the corresponding payments comply with Community rules.

8 In accordance with paragraph 2(ii) of that annex, the paying agency performs, in respect of EAGGF-Guarantee expenditure, the function of executing payments, which is to issue instructions to the agency's bankers or, in appropriate cases, a governmental payments office, to pay the authorised amount to the claimant or his assignee.

9 Paragraph 6 of the Annex to Regulation No 1663/95 sets the procedures with which the paying agency must comply in order to ensure the effectiveness of checks. In particular, paragraph 6(v) states:

'Procedures should ensure that payment is made only to the claimant, to his bank account or to his assignee. The payment shall be executed by the agency's banker, or, as appropriate, a governmental payments office, or the cheque mailed, within five working days of the date of charge to the EAGGF. Procedures shall be adopted to ensure that all payments for which transfers are not executed, or cheques not cashed, are recredited to the Fund. No payments shall be made in cash. The approval of the authorising official and/or his supervisor may be made by electronic means, provided an appropriate level of security over these means is ensured, and the identity of the signatory is entered in the electronic records.'

10 Article 4(2) 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 Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5 provides that monthly advances against booking are to be

reduced for expenditure effected by a Member State after the deadlines laid down by Community law according to the rules which it sets out. That provision is worded as follows:

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

(a) where expenditure effected after the deadlines is equal to 4% or less of the expenditure effected before the deadlines, no reduction shall be made, irrespective of the number of months delay,

(b) above the threshold of 4%, all further expenditure effected with a delay of up to:

— one month shall be reduced by 10%,

— two months shall be reduced by 25%,

— three months shall be reduced by 45%,

— four months shall be reduced by 70%,

— five months or more shall be reduced by 100%.

However, the Commission will apply a different time scale and/or lower reductions or none at all, if exceptional management conditions are encountered for certain measures, or if well-founded justifications are introduced by the Member States.

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.'

11 Pursuant to the third subparagraph of Article 4(2) of Regulation No 296/96 and Article 13 of Council Decision 94/729/EC of 31 October 1994 on budgetary discipline (OJ 1994 L 293, p. 14), reduction of the monthly advances as the result of late payments by the Member States is decided by the Commission following a procedure *inter partes* in the presence of the Member State concerned.

12 Under Article 4(4) of Regulation No 296/96:

'Any reductions made pursuant to Article 13 of Decision 94/729/EC and particularly those resulting from overruns of deadlines shall be made without prejudice to the subsequent accounts clearance decision.'

Conciliation body

13 Article 1(1) of 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) states:

'For the purposes of the clearance of EAGGF Guarantee Section accounts, a Conciliation Body, hereinafter referred to as the "Body", is hereby set up in the Commission. Its tasks shall be:

(a) to examine any matter referred to it by a Member State which, following inspections pursuant to Article 9 of Regulation (EEC) No 729/70 and bilateral discussion of the findings of such inspections, receives formal notification from the competent Commission departments, with reference to this Decision, of the conclusion that certain items of expenditure incurred by that Member State are not chargeable to the EAGGF Guarantee Section,

(b) to try to reconcile the divergent positions of the Commission and the Member State concerned,

and

(c) at the end of its investigations, to draw up a report on the outcome of its efforts at reconciliation, making any remarks it deems useful should all or some of the points of dispute remain unresolved.'

14 Under Article 1(2)(a) of the Decision, 'the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts'.

Flat-rate corrections

15 Commission working Document VI/216/93 of 3 June 1993, and Commission Document VI/5330/97 of 23 October 1997 which replaced it, sets out the guidelines which the institution intends to follow when applying financial corrections in the context of the clearance of EAGGF Guarantee accounts. According to those guidelines, when the actual amounts of irregular payments cannot be established and it is therefore not possible to quantify the financial loss suffered by the Community, the Commission applies flat-rate financial corrections amounting, in general, to 2%, 5%, 10% or 25% of the declared expenditure, depending on the extent of the risk of loss. The 25% rate is applicable where implementation of the checking system has been non-existent or seriously inadequate and there are indications of very frequent irregularities and negligence in combating irregular or fraudulent practices.

16 As is apparent from Document VI/5330/97, those guidelines distinguish between two categories of checks:

'— Key controls are those physical and administrative checks required to verify substantive elements, in particular the existence of the subject of the claim, the quantity, and the qualitative conditions including the respect of time-limits, harvesting requirements, retention periods, etc. They are performed on-the-spot, and by cross-checks to independent data such as land registers.

— Ancillary controls are those administrative operations required to correctly process claims, such as verification of the respect of time-limits for their submission, identification of duplicate claims for the same subject, risk analysis, application of sanctions and appropriate supervision of the procedures.'

17 Document VI/5330/97 makes clear that:

'When one or more key controls are not applied or applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, then a correction of 10% is justified, as it can reasonably be concluded that there was a high risk of wide-spread loss to the Fund.

When all key controls are applied, but not in the number, frequency or depth required by the regulations, then a correction of 5% is justified, as it can reasonably be concluded they do not provide sufficient level of assurance of the regularity of claims, and that the risk to the Fund was significant.

When a Member State has adequately performed the key controls, but completely failed to operate one or more ancillary controls, then a correction of 2% is justified in view of the lower risk of loss to the Fund, and in view of the lesser seriousness of the infringement.'

18 Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1), adopted as part of the reform of the common agricultural policy and direct subsidies to producers, provides that each Member State is to set up an integrated administration and control system (hereinafter 'IACS') which applies, *inter alia*, to the support systems established by Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12) and Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal (OJ 1968 L 148, p. 24).

19 Article 2 of Regulation No 3508/92 states:

'The integrated system shall comprise the following elements:

(a) a computerised database;

(b) an alphanumeric identification system for agricultural parcels;

(c) an alphanumeric system for the identification and registration of animals;

(d) aid applications;

(e) an integrated control system.'

20 Article 3(1) of Regulation No 3508/92 provides:

'The computerised database shall record, for each agricultural holding, the data obtained from the aid applications. This database shall in particular allow direct and immediate consultation, through the competent authority of the Member State, of the data relating at least to the previous three consecutive calendar and/or marketing years.'

21 Pursuant to Article 4 of Regulation No 3508/92:

'The alphanumeric identification system for agricultural parcels shall be established on the basis of land registry maps and documents, other cartographic references or of aerial photographs or satellite pictures or other equivalent supporting references or on the basis of more than one of these elements.'

22 Article 5 of Regulation No 3508/92 provides:

'The system for the identification and registration of animals to be taken into account for the granting of aid governed by this Regulation shall be set up in accordance with Articles 4, 5, 6 and 8 of Directive 92/102/EEC.'

23 Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals (OJ 1992 L 355, p. 32) requires, in particular in Articles 4(1)(a), 5, 6 and 8, that any keeper of bovine animals keeps a register stating the number of animals present on the holding and that each animal carry an identification mark bearing an alphanumeric code. As from 1 July 1997, those requirements were completed, for bovine species, by the provisions of Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1), in particular Articles 4 and 5 thereof, which provide for the use of new eartags bearing a uniform identification code established at Community level and the creation of a computerised database intended to gather the information relating to the animal, the agricultural undertaking and the animal's movements.

24 Article 7 of Regulation No 3508/92 states:

'The integrated control system shall cover all aid applications submitted, in particular as regards administrative checks, on-the-spot checks and, if appropriate, verification by aerial or satellite remote sensing.'

25 As regards checks, Article 8 of Regulation No 3508/92 states:

'1. Member States shall carry out administrative checks on aid applications.

2. Administrative checks shall be supplemented by on-the-spot checks covering a sample of agricultural holdings. For all these checks, Member States shall draw up a sampling plan.

3. Each Member State shall designate an authority responsible for coordinating the checks provided for in this Regulation.

4. National authorities may, under conditions to be laid down, use remote sensing to determine the area of agricultural parcels, identify crops and verify their status.

5. Where the competent authorities of the Member State delegate some aspects of the work to be carried out pursuant to this Regulation to specialised agencies or firms, they must retain control over and responsibility for that work.'

26 Pursuant to Article 13(1) of Regulation No 3508/92, aid applications, the alphanumeric system for the identification and registration of bovine animals and the integrated control system provided for under the IACS are to apply from 1 February 1993, while the other elements of the IACS are to be operational from 1 January 1996. The latter date was extended to 1 January 1997 by Council Regulation (EC) No 2466/96 of 17 December 1996, amending Regulation No 3508/92 (OJ 1996 L 335, p. 1).

27 The criteria and technical rules for administrative and on-the-spot checks which must be carried out by Member States in the framework of the IACS are defined by Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying

down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36). According to Article 6(1) to (5) of that regulation:

'1. Administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms under which aids and premiums are granted.

2. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year without justification.

3. On-the-spot checks shall cover at least a significant percentage of applications. The significant percentage shall represent at least:

— 10% of "livestock" aid applications or participation declarations,

— 5% of "area" aid applications. However, this percentage shall be reduced to 3% for area aid applications numbering more than 700 000 per Member State in the calendar [year].

Should on-the-spot checks reveal significant irregularities in a region or part of a region the competent authority shall make additional checks during the current year in that area and shall increase the percentage of applications to be checked in the following year.

4. Applications subjected to on-the-spot checking shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The risk analysis shall take account of:

— the amount of aid involved,

— the number of parcels and the area or number of animals for which aid is requested,

— changes from the previous year,

— the findings of checks made in past years,

— other factors to be defined by the Member State.

5. On-the-spot checks shall be unannounced and cover all the agricultural parcels and animals covered by one or more applications. Advance warning limited to the strict minimum necessary may however be given, although as a general rule, this should not exceed 48 hours.

At least 50% of the minimal checks on animals shall be made during the retention period...'

28 Under Article 7(1) of Regulation No 3887/92:

'Should a Member State decide to use remote sensing on all or part of the sample referred to in Article 6(3) it shall:

— perform photo interpretation of satellite images or aerial photographs of all parcels to be checked with a view to recognising the ground cover and measuring the area,

— check on the spot all applications for which photo interpretation does not verify the accuracy of the declaration to the satisfaction of the competent authority.'

29 In accordance with the first subparagraph of Article 12 of Regulation No 3887/92:

'Every inspection visit must be the subject of a report setting out, in particular, the reasons for the visit, the persons present, the number of parcels visited, those measured, the measuring methods used, the number of animals of each species found and, where applicable, their identity numbers.'

30 Article 17(1) of Regulation No 3887/92 provides:

'In cases where by virtue of Article 13 of Regulation (EEC) No 3508/92 certain features of the integrated system are not yet in application each Member State shall take whatever administrative and control measures are necessary to ensure compliance with the terms on which the aids concerned are granted.'

Aid for producers of certain arable crops

31 Article 15(3) of Regulation No 1765/92 states:

'The payments referred to in this regulation are to be paid over to the beneficiaries in their entirety.'

32 Article 8 of Commission Regulation (EC) No 658/96 of 9 April 1996 on certain conditions for granting compensatory payments under the support system for producers of certain arable crops (OJ 1996 L 91, p. 46) provides that Member States are to 'communicate provisional information by 15 September of the marketing year in progress and definitive information by the following 15 January at the latest'.

Aid for beef and veal producers

33 Article 3 of Council Regulation (EC) No 1357/96 of 8 July 1996 providing for additional payments to be made in 1996 with the premiums referred to in Regulation No 805/68 and amending that regulation (OJ 1996 L 175, p. 9) provides:

'Producers whose entitlement to premiums in respect of the calendar year 1996 relates to more animals than their entitlement in respect of the calendar year 1995 shall be eligible for further additional payments. Such payments shall only be made:

— to the extent that additional payments made to producers who were not eligible for them are repaid or recovered in the Member State concerned,

and

— pro rata to the additional number of premiums received in respect of the 1996 calendar year.'

34 Article 4(a) of Regulation No 1357/96 provides that Member States may 'use the amounts set out in the Annex to make payments to producers in the beef and veal sector who are facing acute problems as a result of the market situation, which are not fully addressed by the measures referred to in Articles 1, 2 and 3'. The

administrative and accounting rules which must be complied with in order for aid to be granted are defined in the Annex to Regulation No 1663/95.

35 Pursuant to Article 7 of Regulation No 1357/96:

'The measures introduced by this regulation, with the exception of the national aid referred to in Article 4, shall be deemed to be intervention intended to stabilise agricultural markets within the meaning of Article 3(1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy....

The Community shall finance the expenditure incurred by Member States in relation to the payments referred to in Article 1 and Article 4(a) and Article 5 only where such payments are made by them by 15 October 1996 at the latest.'

Aid for early retirement from farming

36 In the framework of the accompanying measures for the reform of the support mechanisms for agricultural markets undertaken in 1992, Council Regulation (EEC) No 2079/92 of 30 June 1992 instituting a Community aid scheme for early retirement from farming (OJ 1992 L 215, p. 91) provides that Member States may institute a Community aid scheme for early retirement from farming, part-financed by the Guarantee section of the EAGGF. Under Article 4 thereof, Member States are to implement that scheme by means of multiannual programmes drawn up at national or regional level.

National legislation

37 Article 2 of Law No 1409/83 of 30 September 1983 on the granting of financial aid to agriculture, husbandry, forestry and fisheries provides:

'In order to meet the administrative and management costs resulting from the payment of financial aid, cooperatives may, when paying producers the amount which they have received, deduct on their own behalf up to 2% of the financial aid due to each producer.'

38 That provision was amended by Article 37 of Law No 2538/97, which came into force on 1 December 1997 and added a new subparagraph under which '[t]he deduction of the percentage provided for in the preceding subparagraph shall not apply to amounts paid to the EAGGF account unless Community legislation provides otherwise'.

39 Article 3 of the Decree of the Ministers for National Economy and for Agriculture of 10 November 1993 defines the obligations of agricultural cooperative associations (hereinafter 'ACAs') as regards the management of aid granted to producers. Articles 3 and 4 of the Decree make clear that those organisations are an integral part of the mechanism for the payment of aid and that, in practice, they play the principal role in managing Community aid. The Greek payment agency, Didagep, sends payment orders to the ACAs and pays aid to those associations, which in turn pay the recipients.

40 Joint Ministerial Order No 407756/6081 of the Ministers for Finance, for National Economy and for Agriculture of 20 September 1994, adopted pursuant

to Law No 2237/94 for the implementation of Regulation (EEC) No 2079/92 and legislation on related questions, entrusts the implementation of the programme for early retirement from farming to the Agricultural Bank of Greece (hereinafter 'ATE'), which functions as the authorised agent of the State. ATE is responsible for holding a full record for each recipient and for carrying out sample checks.

41 Article 6 of Ministerial Order No 407756/6081 provides that the authority responsible for implementing the measure is to carry out sample checks on 5% of recipients, in the form of on-the-spot or logistical checks of both the recipient of the early retirement aid and his successor.

42 An order of the Minister for Agriculture of 31 January 1985 entrusts ACAs with the payment of all types of financial aid. It sets the percentages for deductions, which range from 2% to 0.5% according to how long it takes ACAs to present proof of payment. Recital (d) in the preamble thereto states:

'... the 2% maximum deduction provided for by the abovementioned provisions was established with a view to hasten payments in order for producers to derive maximum profit from the receipt in good time of any financial aid due to them.

On this view, cooperatives which are late in presenting proof of payment or in paying producers although they have received the amounts which are intended for the latter cannot deduct the abovementioned amount, since that would be contrary to the purpose intended by the legislature.'

43 Ministry of Agriculture Circular No 144903 of 5 March 1997 provides that subsidies must be paid to recipients in their entirety and that any deduction or reduction is contrary to Community law.

Facts of the case and the pre-litigation procedure

Support scheme for producers of certain arable crops

44 During a mission carried out in Greece from 24 to 26 April 1996, seeking to examine the implementation of the support system for producers of certain arable crops, the Commission observed significant shortcomings and deficiencies in the management and monitoring of aid in the arable crops sector for the 1995 to 1997 harvests, corresponding to the financial years 1996 to 1998, primarily with respect to the following points:

— failure fully to implement the IACS, in the absence of a computerised inventory of parcels;

— regional departments of the Ministry of Agriculture without access to the databases of cooperatives, owing to a lack of computers;

— incorrect criteria for choosing holdings for the purposes of on-the-spot checks;

— delays in carrying out checks;

— impossibility of distinguishing between wheat and hard wheat crops;

— rate for checking applications less than 10%;

— data relating to payments forwarded by the Greek Government and tables and statistical data showing appreciable and unexplained gaps as regards the number of applications, on-the-spot checks and checks by remote sensing;

— deduction of 2% of the total aid paid to the ACAs;

— farmers given four to five days' advanced warning of visits during the 1995 harvest;

— errors in drawing up risk analyses for the 1995 harvest and delays in the risk analysis for the 1996 harvest;

— failure to carry out cross-checks during the 1996 harvest;

— number of checks carried out during the 1997 harvest fewer than the minimum percentage for checks, which is 20% of the areas declared.

Aid scheme for early retirement from farming

45 Following a check carried out in June 1997, the Commission, by letter of 5 November 1998, informed the Greek authorities that the quality of on-the-spot checks carried out by the ATE with respect to aid for early retirement was insufficient and, in particular:

— the checks by the Greek authorities did not comply with the requirements concerning the annual rate of sample checks provided for by Ministerial Order No 407756/6081;

— in the absence of a visit to the recipient of the early retirement aid and his successor, it was impossible to be sure that the successor was in fact cultivating the areas given over by the farmer taking early retirement and to determine the number of livestock on the holding;

— individual decisions were replaced by lists of recipients per municipality;

— recipients did not receive detailed calculations of the aid;

— data were not computerised, and files were not complete and did not contain any inventory of checks;

— the agronomist for the regional tripartite committee who submits proposals carried out the checks himself.

Premiums for beef and veal producers

46 By letters of 22 July 1997, 12 May and 4 November 1998, and 19 March, 8 April, 10 May and 18 June 1999, the Commission noted:

— a 2% deduction on premiums for bovine animals paid by the ACAs;

— failure to implement the IACS and the system for the identification and registration of bovine animals;

— exceeding of the national ceiling for premiums paid for male bovine animals during the 1996 and 1997 seasons;

— non-compliance with the time-limit for payment, which expired on 15 October 1996, and discrepancies in the accounts for the financial year 1996.

Corrections proposed by the Commission on compensatory payments to producers of arable crops, aid to farm income and aid to early retirement from agriculture, and report of the conciliation body

47 By letter of 23 September 1999, the Commission services notified the Greek authorities that they intended to apply a financial correction:

(1) of GRD 26 482 863 795 in the arable crops sector, on the basis of the delay noted in implementing the IACS, that is:

— a correction of 5% for applications relating to the 1995 to 1997 harvests which were subject to a classical on-the-spot check,

and

— a correction of 2% for applications which were subject to checks by remote sensing, where the requirements concerning on-the-spot inspections were in general complied with but for which delays in carrying out rapid on-site visits were noted;

(2) of GRD 134 771 782, namely a correction of 2%, on aid to income and aid for early retirement, on the ground that the follow-up of the management of that aid and its supervision and control by the central authorities were not up to the standard required by Community legislation.

48 By letter of 2 November 1999, the Greek authorities referred the matter to the Conciliation Body.

49 In its final report of 16 March 2000, the Conciliation Body finds that, as regards arable crops, it is not possible to reconcile the points of view of the two parties and asks the Commission services to re-examine the system of alternative checks applied in Greece and to draw the appropriate conclusions from that examination as to what level of corrections to propose. The Conciliation Body did not examine the case with respect to aid for early retirement because the amount of the proposed correction was less than the minimum amount set for referral of a case.

Corrections proposed by the Commission on the premiums paid to beef and veal producers and report of the Conciliation Body

50 By letter of 18 June 1999, the Commission services notified the Greek authorities that they intended to apply a financial correction of 10% of the expenses relating to the schemes for premiums for bovine animals in the financial years 1996, 1997 and 1998, namely the amount of GRD 2 727 000 000, on the ground that those authorities had not set up an identification and registration system for bovine animals, so that the IACS was not functioning on 1 January 1997, when the time-limit set for its implementation expired, and that payments had been late and out of time. The proposed correction was completed, by letter of 31 August 1999, by an additional correction of GRD 350 000 000.

51 By letter of 14 July 1999, the Greek authorities referred the matter to the Conciliation Body.

52 In its final report of 21 January 2000, the Conciliation Body states that it is not possible to reconcile the positions of the two parties, considers that it could be useful for the Commission services to reconsider the question of the correction for the delay in payment and asks them to re-examine the alternative checks applied in Greece to determine whether or not they satisfy the criteria of general effectiveness.

The contested decision

53 By the contested decision, the Commission decided to exclude GRD 29 689 019 781 from Community financing for expenditure effected for the 1995 to 1997 harvests in the arable crop and the beef and veal sectors, and in the area of aid for early retirement.

54 The Hellenic Republic disputes the refusal of financing by the EAGGF for the following amounts:

— GRD 26 482 863 795 paid as compensatory aid in the arable crops sector, on the basis of deficiencies in the IACS and the irregular deduction of part of the aid (first, sixth and seventh pleas);

— GRD 134 771 782 paid as aid for early retirement from farming, on the basis of the poor quality of checks and monitoring (second and sixth pleas);

— GRD 1 782 487 651 paid as premiums in the beef and veal sector, on the basis of the failure completely to establish or apply the IACS (third and sixth pleas);

— GRD 237 098 402 and GRD 350 000 000 paid as supplementary payments in the beef and veal sector pursuant to Regulation No 1357/96, on the basis of the delay in making those payments (fourth and fifth pleas);

— GRD 560 130 762 paid as premiums in the beef and veal sector, for irregular deduction of part of those premiums (seventh plea);

— GRD 5 326 625 — included in a total correction of GRD 141 667 389 — paid in the arable crops sector, on the basis of a delay in making the corresponding payments (eighth plea).

55 In support of its application, the Hellenic Government in essence states that the contested decision erroneously interprets and applies legislative provisions and is based on errors of fact or an inadequate statement of reasons and that, in imposing the contested corrections, the Commission exceeded the limits of its discretion and infringed the principle of proportionality.

First plea in law

56 The first plea relates to the deficiencies in the application of the integrated system in the arable crops sector.

Arguments of the parties

57 The Greek Government considers that the Commission incorrectly evaluated the facts, infringed the principle of proportionality and misinterpreted Article 4 of Regulation No 3508/92.

58 As regards the alphanumeric system, the identification of parcels by orthophotography was partly used in 10 nomoi (districts) for applications made in 1998, with its full use envisaged as from 1 January 1999. For the previous marketing years, the identification and coding of parcels was carried out using different but equally conclusive methods, such as the aerial photography, maps, diagrams and allocations of the topographical service of the Ministry of Agriculture, and orthophotographs where available. The coding of agricultural parcels by the Greek authorities for the 1997/98 marketing year therefore satisfies the requirements of Article 4 of Regulation No 3508/92 and the weaknesses alleged by the Commission do not amount to a serious problem, given the complexity of the IACS, which requires the use of a large number of different technical methods.

59 As regards the creation of a computerised database, the Greek Government states that new computer equipment has already been installed in the regional departments and that the call for tender for the development of new software has had to be relaunched. The fact that on-line links with the regional departments have not been completed explains the discrepancies observed in the statistical data. The delays found in on-the-spot checks or checks by remote sensing are due to the fact that the work was entrusted to private parties and that calls for tender take some time, as would be the case, for that matter, in any Member State.

60 As regards checks, the Greek Government maintains that duplicate registrations of parcels and applications are cross-checked at the local level, with the results examined by the prefectoral departments, with the possibility of applying penalties as provided for in Community legislation. At all stages of the checks, the local departments of the Ministry of Agriculture work together with the ACAs and, as from the 1998/99 marketing year, checks carried out by those departments are listed in 'checklists' and no order for payment is given until the computer department of that Ministry has cross-checked the information contained in the database with that provided in the payment statements, in accordance with the requirements of Regulation No 1663/95. As of the marketing year 1998/99, the cross-checking of data at national level was carried out prior to payment, while for previous years, where irregularities were observed following payment, the sums wrongly paid had to be recovered. In any case, all checks were reviewed by the local services of the Ministry of Agriculture.

61 As regards the notice given for on-the-spot checks, the Greek Government states that all local services give 48-hours notice and that the case cited by the Commission is a random one unrepresentative of the country as a whole.

62 The imposition of a 2% correction on applications which were subject to checks by remote sensing is therefore incorrect, given the progress which has been made with a view to completing and carrying out the IACS. The imposition of a 5% correction on applications subject to classic on-the-spot checks is contrary to the principle of proportionality and should be withdrawn, or at least reduced to 2%.

63 According to the Commission, it is apparent from the reply by the Greek authorities that, during the marketing years 1995 to 1997, the principal measures of the IACS were not implemented. The risk of financial loss to the EAGGF was extremely high and the gaps observed during checks showed that there was a general weakness in the integrated system, so that the 5% correction could be deemed extremely lenient.

64 As regards the applications subject to checks by remote sensing, the Commission points out that hasty site visits were carried out belatedly and that certain facts observed with the aid of photographs, showing anomalies as regards areas and crops, were not followed up. The Greek authorities failed to investigate on-site, at the appropriate time, whether the products being grown in areas corresponded to those for which aid had been requested. Since on-the-spot visits represent an important part of remote sensing techniques, the Commission is of the opinion that the correction of 2% is proportional to the way in which such gaps are treated in other Member States.

Findings of the Court

65 It should be recalled that Article 8(1) of Regulation No 729/70 imposes on the Member States the obligation to take the measures necessary to satisfy themselves

that the transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence, even if the specific Community act does not expressly provide for the adoption of particular supervisory measures (Case C-373/99 *Greece* v *Commission* [2001] ECR I-9619, paragraph 9).

66 In addition, although the Commission is required to justify its decision to refuse to charge expenditure effected by a Member State to the EAGGF Guarantee section by providing evidence of serious reasonable doubt as to the existence or appropriateness of checks carried out in that Member State, it is nevertheless not obliged to provide details of the inadequacy of those checks or the inaccuracy of the data provided by the Member State. It is the latter which is best placed to collect and verify the data required and to provide proof concerning the genuineness of the checks and the inaccuracy of the Commission's claims (see to that effect Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 35; Case C-247/98 *Greece* v *Commission* [2001] ECR I-1, paragraph 7; and Case C-377/99 *Germany* v *Commission* [1999] ECR I-7421, paragraph 95).

67 Pursuant to that case-law, it is for the Greek Government to shown that, during the financial years 1996 to 1998, the Hellenic Republic implemented a reliable and effective system of checks, corresponding to the 1995 to 1997 harvests, and that the complaints drawn up by the Commission as a result of the substantive investigations carried out by its services were unfounded.

68 As regards the implementation of the IACS, the Greek Government admits that the computerised database provided for in Articles 2 and 3 of Regulation No 3508/92 was not set up within the prescribed period and was not functioning during the financial years at issue.

69 Although the Greek Government states that it carried out the alphanumeric identification of agricultural parcels using cartographic methods, it has not demonstrated that this was done on the basis of aerial photographs or spatial imaging and, in any event, it has not shown that all the agricultural parcels had been identified when the prescribed period for implementing the IACS expired on 1 January 1997.

70 In addition, the Greek Government does not deny the delays and deficiencies attributed to it as regards the statistical data which must be sent to the Commission under Article 8 of Regulation No 658/96.

71 Nor does the Greek Government deny the delays in carrying out checks by remote sensing and on-the-spot checks — delays which are the cause of other deficiencies such as difficulties in identifying the crops being grown on certain parcels.

72 As regards the monitoring carried out by the ACAs, the Greek Government has not demonstrated that those databases can be directly accessed by computer.

73 Given the importance of setting up the IACS and the extent of the deficiencies in carrying out checks, the flat-rate corrections of 5% and 2% appear consistent with the guidelines set down by the Commission in its working Documents VI/216/93 and VI/5330/97.

74 In the light of the foregoing considerations, the first plea must be rejected as unfounded.

Second plea in law

75 The second plea relates to shortcomings in the control and monitoring of aid for early retirement from farming.

Arguments of the parties

76 The Greek Government is of the view that the procedure as a whole and the implementation of the programme for early retirement from farming comply with the requirements of Regulation No 2079/92 and the Annex to Regulation No 1663/95. The first payments at national level began in July 1995, since there were only 3 559 recipients in that year, so that some of the sampling checks scheduled for 1996 were carried out in 1997, with 305 recipients, namely 8.5% of the total, being checked in 1996. During 1997, 543 sample checks were carried out, namely 6.6% of the total of 8 263 recipients for the year 1996. The records of those checks, including dates and the signatures of the competent officials, are held in the ATE's offices and are available to any control body.

77 The Greek Government states that the faults observed during the Community inspection carried out at the ATE office in Edessa (Greece) were primarily administrative in nature and did not relate to any substantial gap in the documents which make up the files of the recipients who are dependent on that agency — files which the Commission services found failed to comply with good administrative performance in various ways.

78 The Commission points out that the Greek authorities have provided neither proof for nor the dates of checks. It points out that, although the agronomist went to the local area concerned, he did not visit the farmer taking early retirement or his successor.

Findings of the Court

79 The Greek Government does not dispute the findings of the Commission services but refers to the national legislation relating to the management of early retirement, although it does not put forward any proof of its implementation.

80 Accordingly, doubts persist as to the number and frequency of checks, the more so since the documents relating to financial expenditure by the EAGGF are absent from the files or are difficult to consult and errors concerning the identity of recipients or the area of holdings have been found.

81 In those circumstances, the second plea must be rejected as unfounded.

Third plea in law

82 The third plea concerns the absence or incomplete creation of the IACS, delays in payment or payment out of time in the beef sector.

Arguments of the parties

83 The Greek Government states that, while it is true that Community legislation requires setting up the IACS and a system for the identification and registration of bovine animals before 1 January 1997, it is also the case that their actual implementation, full development and operation, immediately and at national level, are made more difficult by the specific characteristics of Greece, namely the predominance of mountainous areas and the distance of breeders from urban centres, lengthening the time required for the training and education of breeders with a view to implementing the procedures laid down in the IACS.

84 The Greek Government considers that the flat-rate correction of 10% of advances in relation to the expenditure on premiums for bovine animals declared for the marketing year 1997, as the result of the failure to implement the computerised database and the system for the identification and registration of bovine animals, is not justified in so far as the identification of bovine animals by means of new earmarks is almost complete and the failure to complete the central on-line system by 1 January 1997 has not prevented the partial implementation of computer systems which have made it possible to carry out cross-checks with the same results. The Greek authorities carry out on-the-spot checks for 100% of applications for aid, which averts any possibility that premiums will be paid for ineligible animals.

85 The Commission considers that the correction applied is justified in the light of the failure to implement the system for the identification and registration of bovine animals, the failure to implement the IACS and all the deficiencies of the existing national system for administration and control. According to the Commission, even if the claim by the Greek authorities that 100% of applicants have been checked is correct — a claim not supported by any proof — this is

not a sufficient basis for considering that those checks were reliable and complied with the relevant Community legislation. It is not possible to implement cross-checks if, contrary to the requirements of Directive 92/102, bovine animals are not identified.

Findings of the Court

86 It must be noted that the Greek Government does not deny the failure to set up the computerised database referred to in Article 3 of Regulation No 3508/92 or the failure completely to implement the system for the identification and registration of bovine animals.

87 In that regard, suffice it to point out that the lack of a reliable system for the identification and registration of bovine animals entails an increased risk of loss for the Community budget.

88 Similarly, the failure to set up a computerised database making it possible to check all information also entails an increased risk of loss for the Community budget.

89 The third plea must therefore be rejected as unfounded.

Fourth and fifth pleas in law

90 The fourth and fifth pleas relate to the corrections applied on the basis of the delay in carrying out the additional payments provided for in Regulation No 1357/96, which was adopted in order to deal with the serious disturbances of the market as a result of the appearance of bovine spongiform encephalopathy. Those corrections are based on the fact that the Hellenic Republic effected additional payments after 15 October 1996, namely the payments made to the ACAs after that date for the purpose of their subsequent payment to claimants, in the amount of GRD 311 006 387 (amount finally reduced to GRD 237 098 402 as the result of the Conciliation Body's report) and the payments made to the ACAs before 15 October 1996 but paid to claimants after that date, in the amount of GRD 350 000 000.

Arguments of the parties

91 The Greek Government claims that the financial correction applied is not justified because it is based on an incorrect legal premiss and constitutes a disproportionate penalty, contrary to the objective of compensating the financial losses experienced by producers owing to the serious disturbance of the market for beef and veal as a result of the appearance of bovine spongiform encephalopathy. It was not possible by 15 October 1996 to have available all the data necessary to establish the right to a premium for the calendar year 1996. In fact, once they had collected all the data for 1996, the Greek authorities brought proceedings to recover payments of undue amounts. After the data were finalised, it appeared necessary to pay certain amounts after 15 October 1996, namely, the premiums paid to producers who declared a higher number of eligible animals in 1996 than in 1995 and were therefore entitled to new additional payments. This was not a question of late payments but rather a book-keeping regularisation of credit or debit balances.

92 The Greek Government states that the second subparagraph of Article 7 of Regulation No 1357/96 must be interpreted to mean that additional payments can be deemed to have been 'made' by Member States by 15 October 1996 at the latest if the competent authorities have by that date sent the payment orders to the institutions which are responsible for paying recipients and, accordingly, if the corresponding right to payment is established by the latter, independently of whether the amounts in question have in fact been paid or not. The contrary interpretation which is supported by the Commission runs counter to the objective of Regulation No 1357/96 in cases where it is not possible to pay the amounts owing to subjective factors linked to the persons recognised as recipients. The contested amount of GRD 350 000 000, corresponding to the financial year 1996, is made up of small amounts paid to small breeders after 15 October 1996 because it was impossible for the ACAs in charge of payments to communicate with them as a result of the mountainous and inaccessible nature of the breeding regions, although the payment orders had been given by the authorities before 15 October 1996.

93 The Commission takes the view that the time-limit laid down in Article 7 of Regulation No 1357/96 relates to expenses which can be financed by the Community until 15 October 1996 at the latest, so that payments made after that date are not financed. That time-limit concerns the date on which the recipients of the payment must have received the subsidies and not the date on which those amounts were sent to the cooperative associations. Significant amounts of aid, although they might have been sent to those associations before 15 October 1996, had still not reached those to whom they were addressed several months later.

94 The Commission adds that the claimant under Regulation No 1357/96 is the breeder and not the cooperative, so that payment of the amount to the ACAs cannot be considered a procedure complying with the requirements of that regulation.

Findings of the Court

95 It must be recalled that Article 7 of Regulation No 1357/96 explicitly provides that expenses incurred by Member States under Articles 1 and 4(a) of the Regulation, that is to say, special payments in addition to the premiums due in respect of animals eligible in the 1995 calendar year, are financed by the Community only if they take place 'by 15 October 1996 at the latest'. That provision therefore assumes, as the Advocate General pointed out in point 107 of his Opinion, that the data necessary for payment of the aid must to a very large extent be already available before that date.

96 In that regard, paragraphs 2(ii) and 6(v) of the Annex to Regulation No 1663/95 define the execution of payments as the issuing of an instruction to a bank or a governmental payments office to pay the amount which is due to the recipient, which requires a direct payment to the latter.

97 Moreover, the Greek Government did not provide documents which were able to establish that the amount of GRD 311 006 387 was paid by 15 October 1996 at the latest or that the amount of GRD 350 000 000 was paid to the recipients by that date at the latest. As regards the first amount, the Greek Government merely calculated the additional payments which it could legitimately pay to breeders, without, however, taking into account the payments made, of GRD 299 240 392 for the year 1995, which amounted to the limit for additional payments which could be made for the year 1996 under Article 3 of Regulation No 1357/96. As regards the second amount, the interpretation suggested by the Greek Government, that the rebate to the ACA before 16 October 1996 of the amount of the additional payments with a view to paying these to recipients after that date complies with the requirements of Regulation No 1357/96, cannot be accepted. Article 7 of that regulation clearly requires payments to be made to recipients before that date.

98 Since the corrections made by the Commission correspond to the amount of the expenditure which was found not to comply with Regulation No 1357/96, the fourth and fifth pleas cannot be upheld.

Sixth plea in law

99 The sixth ground relates to the principle of proportionality and the importance of the flat-rate corrections laid down by the Commission in the arable crop and beef and veal sectors and in the area of aid for early retirement from farming.

Arguments of the parties

100 The Greek Government considers that the Commission services did not find deficiencies which were serious enough to amount to an infringement of specific Community rules in the implementation and management of the IACS in the arable crop and beef and veal sectors or in the quality of the checks on aid for early retirement from farming and to justify the imposition of the contested financial corrections. The Commission has therefore infringed Article 5(2)(c) of Regulation No 729/70 and the criteria for flat-rate correction, exceeded the limits of its discretion and infringed the principle of proportionality, so that the proposed corrections should be annulled or reduced to 2%.

101 The Commission contends that the Greek Government's challenge of the deficiencies and weaknesses observed in respect of the failure to comply with Community legislation is not well founded.

Findings of the Court

102 First of all, it is necessary to take into account the fact that the Greek Government has not succeeded in establishing that the Commission's findings are incorrect, or the existence of a suitable and efficient system of monitoring and control measures.

103 Secondly, the Greek Government has not demonstrated that the observed irregularities do not affect or only slightly affect the Community budget.

104 It must therefore be held that the Greek Government has not demonstrated that the corrections applied by the Commission were arbitrary or in conflict with Article 5(2)(c) of Regulation No 729/70.

105 That plea must therefore be rejected as unfounded.

Seventh plea in law

106 The seventh plea relates to the 2% deduction for expenses and administrative costs made by the ACAs from the amount of aid paid to recipients. That practice prompted financial corrections equal to 2% of the expenditure declared by the Hellenic Republic in the arable crops sector for the financial years 1996 to 1998 and in the beef and veal sector for the financial years 1996 and 1997.

Arguments of the parties

107 The Greek Government claims that the deduction, the rate of which varies between 0.5% and 2%, was voluntary, agreed to in writing by the parties concerned and decided by the ACAs in compensation for the services which they provided their members, for example, the services of an agronomist, a legal advisor or an economic advisor, the opportunity to have recourse to veterinary services, to benefit from advice, etc. In addition, the Greek authorities cannot intervene in matters where freedom of contract in relations between agricultural cooperatives and their members applies.

108 The Greek Government relies on Circular No 144903 of 5 March 1997, which specifies that subsidies must be paid to recipients in their entirety and that any deduction or reduction is contrary to Community law. The deduction made by the ACAs pursuant to Article 2 of Law No 1409/83 was revoked by Article 37 of Law No 2538/97, which came into force on 1 December 1997, so that the financial correction was imposed on the basis of an erroneous interpretation of the provisions of domestic law and must therefore be annulled. In the alternative, since the deductions varied between 0.5% and 2%, the correction should be set as the average of those figures, namely 1.25%.

109 The Commission points out that the involvement of ACAs in the management and payment of compensatory aid to recipients in the arable crop sector is obligatory and that, in practice, they are responsible for monitoring data, checking reliability, setting up a computerised list of payments and paying aid to farmers, whether or not the latter are members of a cooperative, so that the services which they provide cannot be considered to be independent.

110 The Commission points out that under the case-law of the Court the Member States are required not only to refrain from imposing or maintaining in force measures which allow deductions, but also to adopt the necessary measures in order to prohibit any deductions being made. However, in the present case, the Greek authorities simply added a new legislative provision under which deductions do not relate to the amounts paid at the expense of the EAGGF, thereby creating legal uncertainty, and failed to take adequate measures to end the practice of deductions, which is all the more serious since ACAs involvement in the payment and management of compensatory aid for arable crops is mandatory.

Findings of the Court

111 It is appropriate to point out that in Case C-247/98 *Greece* v *Commission* (paragraphs 18, 19 and 32) and Case C-373/99 *Greece* v *Commission* (paragraphs 36 to 39), cited above, which relate to the financial years 1994 and 1995, respectively, the Court already dismissed the arguments put forward by the Hellenic Republic to justify the practice of deductions.

112 The Greek Government has not put forward any relevant new information to invalidate that conclusion, even taking into account the amendment to Article 2 of Law No 1409/83 by Article 37 of Law No 2538/97 and Circular No 144903 of 5 March 1997. Those legislative texts do not demonstrate that the practice of making deductions has in fact ceased or that the deductions made before March 1997 were reimbursed. In that regard, the complaints made by the Commission services to the Greek authorities that the ACAs were continuing the practice of deductions in spite of the legislative amendment was not refuted by any evidence put forward by those authorities.

113 Since the Greek authorities did not comply with the obligations relating to the payment of the entirety of aid to recipients which result from Regulations No 1765/92, 1357/96 and 805/68, and in the absence of information which could have precisely quantified the extent of those deductions, the correction of 2% must be found to be justified, so that the seventh plea must be rejected.

Eighth plea in law

114 The eighth plea relates to the financial corrections of GRD 5 326 625 resulting from the failure to comply with the time-limits for payment laid down in Article 4 of Regulation No 296/96 in the arable crop sector for the financial year 1998.

Arguments of the parties

115 Without denying that the expenditure in question was made after the prescribed period had expired, the Greek Government states that those payments were effected in four specific cases, in the context of legal proceedings or the carrying out of specific controls or administrative checks for the purpose of forestalling irregularities in the operation of the EAGGF.

116 The Commission points out that only exceptional difficulties in a large number of cases would constitute valid justification for precluding the reductions to advances provided for in Article 4 of Regulation No 296/96.

Findings of the Court

117 It must be held that the Greek Government, which refers to two letters setting out the grounds for delays in payment, has not provided any evidence confirming the correctness of those grounds or demonstrating that the delays did not exceed reasonable limits.

118 Therefore, the eighth plea must also be rejected and, accordingly, the application by the Hellenic Republic must be dismissed.

Costs

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

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Hellenic Republic to pay the costs.**

Edward La Pergola Jann

von Bahr Rosas

Delivered in open court in Luxembourg on 18 September 2003.

R. Grass — Registrar

M. Wathelet — President of the Fifth Chamber