JUDGMENT OF THE COURT (Second Chamber)

9 September 2004 *

In Case C-332/01,

ACTION for annulment under Article 230 EC brought on 3 September 2001,

Hellenic Republic, represented by V. Kontolaimos and I. Chalkias, 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,

* Language of the case: Greek.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar

having regard to the written procedure and further to the hearing on 13 November 2003,

after hearing the Opinion of the Advocate General at the sitting on 22 January 2004,

gives the following

Judgment

1 By its application the Hellenic Republic seeks the annulment of Commission Decision 2001/557/EC of 11 July 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 200, p. 28, 'the contested decision'), in so far as it concerns the applicant.

Legal background

The financing of expenditure under the EAGGF

2 Regulation (EEC) No 729/70 of the Council 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, under Articles 1(2)(b) and 3(1), that the Guarantee Section of the EAGGF is to finance interventions intended to stabilise agricultural markets undertaken according to Community rules within the framework of the common organisation of agricultural markets.

3 Article 5(2)(c) of Regulation No 729/70 provides:

'The Commission, ...

...

(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.

A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned. ...'

4 Article 9(1) of Regulation No 729/70 provides:

'Member States shall make available to the Commission all information required for the proper working of the [EAGGF] and shall take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot.

Member States shall communicate to the Commission provisions laid down by law, regulation or administrative action which they have adopted for the application of legal acts of the Community relating to the common agricultural policy insofar as those acts have financial consequences for the [EAGGF]. '

5 Pursuant to Article 9(2) of Regulation No 729/70, officials appointed by the Commission to carry out inspections on the spot are to have access to the books and all other documents relating to expenditure financed by the EAGGF.

6 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) lays down, inter alia, obligations on the coordinating bodies which are the sole representatives of the Member State concerned before the Commission. Those bodies must hold at the disposal of the Commission a full record of all accounting information required in a form enabling the Commission to carry out the necessary controls.

7 The annex to Regulation No 1663/95 lays down detailed administrative and accounting rules which must be followed by the paying agencies of the Member States so as to ensure effective control of the eligibility of claims for aid and compliance with the Community rules on the corresponding payments.

8 Commission Document No VI/5330/97 of 23 December 1997 contains guidelines which the Commission intends to follow when applying financial corrections in the context of the clearance of the EAGGF accounts. According to those guidelines, where the actual level of irregular payments cannot be determined and, consequently, it is impossible to quantify the amount of financial loss suffered by the Community, the Commission is to apply fixed-rate financial corrections generally amounting to 2%, 5%, 10% or 25% of the declared expenditure according to the magnitude of risk of loss.

9 That document also makes clear that those guidelines distinguish between two categories of controls:

— 'Key controls, which are the 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 observance 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 the administrative operations required to process claims correctly, such as verification that they were submitted in time, identification of duplicate claims for the same subject, risk analysis, application of sanctions and appropriate supervision of the procedures.'

10 Document No VI/5330/97 provides in this connection that:

'When one or more key controls are not applied or are applied so poorly or so infrequently that they are ineffective in determining whether claims are eligible or preventing irregularities, a correction of 10% is justified as it can reasonably be concluded that there is 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 legislation, a correction of 5% is justified as it can reasonably be concluded both that they do not provide the expected degree of assurance that claims are regular and that the risk to the Fund is significant.

When a Member State has adequately performed the key controls but completely failed to carry out one or more ancillary controls, a correction of 2% is justified since there is less risk of loss to the Fund and the infringement is less serious.

...

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, a correction of 25% is justified since the fact that claims may be submitted with impunity where there is no entitlement may reasonably be assumed to involve extremely high losses for the Fund.'

The cotton sector

11 Article 8(1) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton (OJ 1989 L 123, p. 23), as

amended in particular by Commission Regulation (EC) No 1437/96 of 23 July 1996 (OJ 1996 L 184, p. 29) ('Regulation No 1201/89'), provides:

'All cotton growers shall, before a date set by the Member State concerned and, except in cases of force majeure, not later than 1 July, send an annual declaration of the areas sown.

However, for the year 1996, in the case of Greece, the date 1 July is replaced by 1 August.'

12 Article 12(1)(a) of Regulation No 1201/89 provides:

'The agency appointed by the producer Member State shall verify ... the accuracy of the declarations of areas sown, on the basis of random inspections relating to not less than 5% of the declarations.'

The olive oil sector

13 Article 1(1) of Regulation (EEC) No 154/75 of the Council of 21 January 1975 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1975 L 19, p. 1), as amended by Council Regulation (EEC) No 3453/80 of 22 December 1980 (OJ 1980 L 360, p. 15) ('Regulation No 154/75'), requires the Member States concerned to establish a register of olive cultivation to cover all olive-growing holdings within their territory.

14 Article 1(2) of Regulation No 154/75 provides that the register of olive cultivation is to furnish the following information for each holding:

— the total olive-growing area, together with the cadastral reference of the parcels comprising it;

— the total number of olive trees;

— the names of the owners of each parcel;

— the proportion of specialised and mixed areas of olive-cultivation;

— the distribution of the olive trees according to variety;

— the system of cultivation employed;

— the age of the trees and the state of cultivation and production;

— the number of trees under irrigated cultivation.

15 Under that same provision, the register of olive cultivation in Greece was to be established by 31 October 1988.

16 Article 16(1) of Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations (OJ 1984 L 208, p. 3), requires each producer Member State to draw up and keep up to date permanent computerised files of olive and olive oil production data.

17 Article 11(1) of Commission Regulation (EEC) No 3061/84 of 31 October 1984 laying down detailed rules for the application of the system of production aid for olive oil (OJ 1984 L 288, p. 52) as amended by Commission Regulation (EEC) No 98/89 of 17 January 1989 (OJ 1989 L 14, p. 14) ('Regulation No 3061/84'), provides that the Member States are to enter in the computerised files the data contained in the register of olive cultivation, as soon as such data become available.

18 In accordance with Article 11(2) of Regulation No 3061/84, the files were to be operational before 31 October 1990.

The dried grape sector

19 Article 3 of Commission Regulation (EEC) No 2911/90 of 9 October 1990 laying down detailed rules of application for aid for the production of certain varieties of grapes for drying (OJ 1990 L 278, p. 35), as amended by Commission Regulation (EC) No 2475/94 of 13 October 1994 (OJ 1994 L 264, p. 6), and Commission Regulation (EC) No 2614/95 of 9 November 1995 (OJ 1995 L 268, p. 7) ('Regulation No 2911/90'), lays down the information and data which must be included in cultivation declarations.

20 Article 3(1) of Regulation No 2911/90 provides:

'By 30 April each year in respect of the following marketing year, cultivation declarations shall be submitted ...'

...

21 Article 3(2) of that regulation states:

'Cultivation declarations shall include at least the following:

(a) the surname, forenames and address of the applicant;

(b) the areas planted with vines producing the product(s) concerned (in hectares and in areas) with the land registry reference or an indication recognised as equivalent by the body responsible for checking areas;

(c) the grape variety used and, in the case of sultanas, a statement as to whether the vineyard is affected by phylloxera or has been replanted in the last five years;

(d) a declaration by the producer that none of the areas in question nor the products harvested therefrom are the subject of an application for aid under other schemes, in particular under Regulation (EEC) No 797/85;

(e) a crop estimate;

(f) the status and type of occupancy of the holding'.

22 Article 6 of Regulation No 2911/90 defines the checks which the Member States must carry out. The first subparagraph of paragraph 2 of that article states:

'Member States shall organise on-the-spot checks in accordance with paragraph 3 covering a representative percentage of declarations submitted in each competent administrative unit. That percentage may not be less than 10% and shall be increased to at least 15% where a significant number of incorrect declarations is discovered.'

23 Commission Regulation (EC) No 1456/97 of 25 July 1997 fixing for the 1997/98 marketing year the amount of the aid for the cultivation of grapes intended for the production of certain varieties of dried grapes (OJ 1997 L 199, p. 4), fixes the minimum yields below which no aid can be paid. Article 1(3) provides that the Member States are to take all measures necessary for checking this minimum yield.

24 Article 16 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1), lists the information contained in the inventory of production potential. Paragraph 2 of that article states that a Member State may provide that the inventory may be drawn up on a regional basis. However, in this case, all regional inventories are to be drawn up by 31 December 2001.

25 Article 2(3) of Commission Regulation (EC) No 1621/1999 of 22 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards aid for the cultivation of grapes to produce certain varieties of dried grapes (OJ 1999 L 192, p. 21), which replaced Regulation No 2911/90 from the 1999/2000 marketing year, provides:

'For the purposes of administering the aid scheme, a computerised alphanumeric database known as a "database", containing the information referred to in Articles 4 and 8(4) shall be introduced. The system of alphanumeric identification of plots shall be that used for the integrated system referred to in Article 4 of Council Regulation (EEC) No 3508/92 supplemented, where appropriate, to cover the wine-growing areas covered by this aid scheme.'

26 Article 13(1) of Regulation No 1621/1999 provides:

'The Member States must have set up the database referred to in Article 2(4) before the start of the 2002/03 marketing year. During the 1999/2000, 2000/01 and 2001/02 marketing years, the obligation to register in the database shall be replaced by an obligation to submit an application for registration in the database in accordance with Article 4(2) before 1 September 1999; the references relating to the area and

identification of plots shall be the land-registry references or other indications recognised as equivalent by the body responsible for checks on the areas.'

The sheepmeat and goatmeat sector

27 Article 5(1) of 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), provides:

'Without prejudice to the requirements pertaining to application for aid under individual schemes the "livestock" aid application shall contain all necessary information, in particular:

— the identity of the farmer,

...

— the number of animals of each species in respect of which any aid is applied for,

— where applicable, an undertaking by the applicant to keep these animals on his holding during the retention period and information on the location or locations where the animals will be held including, where applicable, the period or periods concerned and, for cattle, the identity numbers of the animals; when the location changes during that period the farmer is obliged to inform the competent authority in writing in advance,

— where applicable, the individual limit or individual ceiling for the animals concerned,

...

— a statement by the farmer that he is aware of the requirements pertaining to the aids in question.

...'

28 Article 6 of the same regulation provides:

'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.

...

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,

...

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

...'

29 Under Article 10(5) of Regulation No 3887/92:

'In cases where owing to the impact of natural circumstances the farmer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period he shall be entitled to the premium for the number of eligible animals actually kept throughout the period, provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals.'

30 Article 12 of that regulation states as follows:

'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.

It will be open to the farmer or his representative to sign the report. He may either merely attest his presence at the inspection or also add his observations.'

31 The first and second subparagraphs of Article 1(3) of Commission Regulation (EEC) No 2700/93 of 30 September 1993 on detailed rules for the application of the premium in favour of sheepmeat and goatmeat producers (OJ 1993 L 245, p. 99), as amended by Commission Regulation (EC) No 279/94 of 8 February 1994 (OJ 1994 L 37, p. 1) ('Regulation No 2700/93'), provides:

'The retention period during which the producer undertakes to keep on his holding ... the number of ewes and/or she-goats in respect of which the premium is requested shall be 100 days starting on the last day of the period for the submission of applications referred to in paragraph 2.

Before all or some of that number of ewes and/or she-goats in respect of which the premium is requested are placed in agistment during the retention period, the animals concerned must be identified. ...'

32 Article 4 of Regulation No 2700/93 provides:

'1. On-the-spot inspections shall be carried out in accordance with Article 6 of Regulation (EEC) No 3887/92, and the system for the permanent recording of livestock movements must comply with the rules laid down by Article 4 of [Council] Directive 92/102/EEC [of 27 November 1992 on the identification and registration of animals (OJ 1992 L 355, p. 32)].

However, for the 1994 marketing year, if a Member State has not yet implemented the recording system referred to in the first subparagraph, it may introduce a recording system capable of permanently and clearly reflecting the actual livestock situation. ...

2. For each marketing year Member States shall draw up an inventory of sheep producers marketing sheep's milk and sheep's milk products. ...'

33 Under the second paragraph of Article 9 of Regulation No 2700/93, that regulation applies from the 1994 marketing year.

Facts and procedure

34 The grounds on which the operations covered by the contested decision are considered to be irregular are set out in the Summary Report AGRI/17537-01-EN-FINAL of the Commission of 19 June 2001 ('the Summary Report').

35 In the cotton sector, the Commission found, for the 1995/96 marketing year, a failure to carry out on-the-spot checks of the declarations of the areas of cotton sown in the prefectures (administrative regions) of Serres and Drama whereas Article 12(1) of Regulation No 1201/89 requires that such checks should cover a minimum of 5% of the declarations of areas sown. The Commission also found that the checks of the areas sown were carried out late, between December 1996 and March 1997. It therefore applied a fixed rate of correction of 10% in respect of all those errors, in the total sum of GRD 4 163 259 550.

36 In the olive oil sector, the inspections carried out in Greece revealed various shortcomings in the system of checks, the most important being the lack of a register of olive cultivation and of any computerised files. In 1999 the Greek authorities presented evidence of improvements introduced. After a meeting with those authorities in Brussels on 23 September 1999 the Commission stated that, whilst it appreciated those improvements, they were insufficient to remedy the shortcomings observed. Consequently, the Commission applied a financial correction of 5% of the expenditure declared for the 1997 and 1998 financial years (corresponding to the 1995/96 and 1996/97 marketing years respectively), in the sum of GRD 17 308 535 972.

37 In the dried grape sector, following its inspection in 1998 in the prefecture of Heraklion, the Commission found three types of infringement: first, in the checks on areas cultivated and the eligibility of grape varieties for Community aid; second, in the checks on the minimum yield and on the eligibility of grape varieties and, lastly, in the adoption and application of the systems of checks. In respect of the first two types of infringement, the Commission imposed a financial correction of 5% of the expenditure declared for the 1997, 1998 and 1999 financial years for the prefecture of Heraklion. A correction of 2% was applied to expenditure relating to the whole of Greece for the same financial years in respect of the third type of infringement. Those corrections were in the total sum of GRD 3 144 838 970.

38 In the sheepmeat and goatmeat sector, following two audits carried out in 1997 and 1998 the Commission considered that the inspection system applied in Greece to the sheepmeat and goatmeat premium scheme did not comply with the Community legislation and had various shortcomings such as the lack of a livestock movement register, very few on-the-spot checks in certain prefectures, unreliable inspection statistics, poor quality inspection reports, delays in data processing, lack of risk analysis, failure to notify the place of retention, failure to mark animals and merely

oral notification of losses. On that basis, in respect of the expenditure declared for 1995, 1996 and 1997, the Commission imposed a correction of 25% of that expenditure for the prefecture of Rethymnon (Crete) because of a total failure to inspect, 10% in respect of certain other prefectures and 5% for the rest of Greece. The total amount of those corrections was in the sum of GRD 11 863 933 000.

39 By the contested decision, the Commission excluded from Community financing the amounts referred to in paragraphs 35 to 38 of the present judgment on the ground that they failed to comply with Community law.

40 By the present action, the Hellenic Republic asks the Court to annul or at least amend the contested decision in so far as that decision imposes those financial corrections on that Member State.

41 The Commission contends that the Court should dismiss the action and order the Hellenic Republic to pay the costs.

The correction in respect of production aid for cotton

Arguments of the parties

42 The Greek Government claims that the Commission errs in its interpretation of Article 12(1)(a) of Regulation No 1201/89, in that that article requires inspections in respect of 5% of the declarations of areas sown with cotton, not in each prefecture but nationally, as occurred in Greece. Whilst that regulation requires that the inspections must make it possible to check the truthfulness and accuracy of the

declarations of areas sown, by means of a representative sample, nothing requires the prefecture to be taken as the administrative unit of reference.

43 The Commission contends that the representativeness of the inspections must be assessed in relation to each administrative region in which cotton is cultivated since the inspections are intended to ensure the accuracy of the declarations. Those declarations would be treated with caution if no inspections at all were carried out in certain high-yielding regions. The failure to carry out inspections in the two prefectures in question, which the Hellenic Republic does not deny, thus constitutes a high-risk factor for the Community's resources.

44 As for the criticism that it delayed in carrying out the inspections, the Greek Government submits that Regulation No 1201/89 does not set any time-limits for carrying out on-the-spot inspections, failure to comply with which entails financial corrections. Inspections may be carried out not only until November, but also until March or April of the year following the harvest provided that the cotton stalks remain in the ground. Moreover, the delays in the present case were due to force majeure, namely, strikes.

45 The Commission contends that the inspections should have been carried out before the harvest, that is to say, in October at the latest. It adds that there can be no force majeure where notice of a strike is given.

Findings of the Court

46 Article 12(1)(a) of Regulation No 1201/89 provides that the appointed agency must carry out 'random inspections relating to not less than 5% of the declarations'.

47 In requiring that the inspections should relate to not less than 5% of the declarations, that provision is intended to ensure that the inspections are representative. It does not state that, in Greece, those 5% must be ascertained in respect of each prefecture rather than on the basis of larger administrative regions. On the other hand it does require those inspections to be 'random'.

48 It is clear from the evidence in the file before the Court that, during the 1995/96 marketing year, the Greek authorities randomly selected 1 101 of the 10 874 declarations made in the prefecture of Serres and 325 of the 3 222 declarations made in the prefecture of Drama. It is, however, not in dispute that during that marketing year, no on-the-spot inspections were carried out in either of those prefectures.

49 It follows that, in those prefectures, random inspections were not carried out, as required by Article 12(1)(a) of Regulation No 1201/89.

50 As for the Greek Government's argument that the failure to carry out inspections in those two nomoi during the 1995/96 marketing year was an isolated event, due to a temporary lack of staff, it should be noted that it is for the authorities of the Member States to implement a reliable and operational supervisory system organised in such as way as to prevent such shortcomings arising (see, to that effect, Case C-157/00 *Greece* v *Commission* [2003] ECR I-153, paragraph 18).

51 As for the Commission's finding that the inspections of areas sown with cotton during the 1996/97 marketing year were carried out late, it should be noted that it is for the Member State concerned to adduce the most detailed and comprehensive evidence that it has made checks or that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect (*Greece* v *Commission*, paragraph 17).

52 It is clear from the information provided to the Court that, notwithstanding the Commission's repeated requests, the Greek authorities did not adduce in due time any information or document to show that such inspections had been carried out, whether before or after the harvest in the marketing year in question.

53 Consequently, the Greek Government's argument relating to the belated inspections of areas must be rejected without its being necessary to decide whether it would have been in accordance with Article 12(1)(a) of Regulation No 1201/89 to carry out such inspections in the months following the harvest rather than before it, or whether a strike can constitute force majeure justifying the delay in carrying out those inspections.

54 In the light of the foregoing, the Greek Government's arguments in respect of the financial correction imposed on the production aid for cotton must be rejected in their entirety as unfounded.

The correction in respect of production aid for olive oil

First plea: infringement of the fourth subparagraph of Article 5(2)(c) of Regulation No 729/70

Arguments of the parties

55 The Greek Government claims that the application of a financial correction of 5% to the expenditure declared for the 1997 and 1998 financial years infringes the fourth

subparagraph of Article 5(2)(c) of Regulation No 729/70 because the Commission extrapolated the findings made during the inspections carried out between 20 and 24 May 1996 to those financial years on the sole ground that it had not remedied the failure to put in place a register of olive cultivation and computerised files of olive and olive oil production data, for which the Hellenic Republic had already been reproached in 1996. The correction was all the more unfounded since the lack of a register of olive cultivation may be overcome by using another equally reliable system of checks. Moreover, the Commission committed an abuse of process as an action for failure to fulfil obligations would have been more appropriate because the correction may be regarded as a penalty for delay in setting up that register.

56 The Commission submits that the failure to establish a register of olive cultivation does not necessarily have to be the subject of an action for failure to fulfil an obligation and that, in the context of EAGGF expenditure, such a financial correction is not a penalty. The correction cannot be less than 5% since the register of olive cultivation and the computerised files constitute the mainstay of the Community system of checks.

Findings of the Court

57 It is to be noted that, in accordance with Article 1(2) of Regulation No 154/75, the Greek Republic was required to establish a register of olive cultivation by 31 October 1988 at the latest.

58 It is not in dispute that the Hellenic Republic has not complied with that time-limit and that, in the 1998 financial year, the register of olive cultivation had still not been established.

59 In accordance with Regulations Nos 2261/84 and 3061/84, the Hellenic Republic was required to implement the computerised files of olive and olive oil production data before 31 October 1990.

60 The Hellenic Republic did not comply with that time-limit and, during the 1998 financial year, the computerised files had still not been put in place.

61 In those circumstances, there is no need in the present case for the Commission to adduce any other evidence of the lack of a register of olive cultivation and computerised files for the 1997 and 1998 financial years, other than that which it had adduced for the 1996 financial year, but it is rather for the Member State concerned to show that, since the 1996 financial year, it in fact implemented the register of olive cultivation and the computerised files (see, to that effect, *Greece* v *Commission*, paragraph 18). Since the Hellenic Republic has adduced no such evidence, a financial correction was justified in that regard.

62 Even if alternative inspections had been organised, it is to be noted that where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective (see Case C-130/99 *Spain* v *Commission* [2002] ECR I-3005, paragraph 87).

63 As regards the Greek Government's argument that an action for a declaration of failure to fulfil obligations would have been more appropriate in penalising the delay in establishing the register of olive cultivation, it should be noted that an action for failure to fulfil obligations under Article 226 EC and the procedure for the clearance of the EAGGF accounts pursue different aims and are governed by different rules. In

the latter procedure, the Commission is under an obligation to carry out a financial correction if the expenditure in respect of which financing has been requested has not been carried out in accordance with Community rules. Such a financial correction is designed to avoid the EAGGF's being burdened with amounts that have not served to finance an objective pursued by the Community legislation in question and therefore, contrary to what the Greek Government maintains, does not constitute a penalty (see Case C-247/98 *Greece* v *Commission* [2001] ECR I-1, paragraphs 13 and 14).

64 It follows that the first plea in respect of production aid for olive oil must be rejected as unfounded.

Second plea: lack or inadequacy of the statement of reasons for the contested decision

Arguments of the parties

65 The Greek Government alleges a failure to state reasons in breach of Article 253 EC, on the ground that the Commission failed to take account of the efforts made to improve the system of checks and the payment of production aid for olive oil. Various controls were implemented, such as requiring olive producers to lodge a declaration of cultivation subject to three checks, stating the number of olive trees and their location, requiring pressers to provide a 'monthly business statement', and a check known as a 'company audit' carried out by means of posting lists of producers of olive oil and their characteristics (identity, claim made and declaration of cultivation) which are checked by the oil producers themselves. The Greek Government considers that no item of expenditure in issue should be excluded; in

any event, the shortcomings which remain are merely isolated incidents of an administrative nature and, in accordance with the principle of proportionality, do not justify a correction of more than 2%.

66 According to the Commission, the improvements made do not justify reducing the amount of the correction for the 1997 and 1998 financial years from 5% to 2%. It submits that as long as the two principal forms of control, namely the register of olive cultivation and the computerised files, are unimplemented, the risk of loss for the Community remains high and the corrections are justified.

Findings of the Court

67 On the duty to state reasons, the Court has consistently held that, in the particular context of the preparation of decisions relating to the clearance of accounts, the statement of reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was sufficiently involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the EAGGF (Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraph 95, and Case C-118/99 *France* v *Commission* [2002] ECR I-747, paragraph 54).

68 In the present case, it is clear from the file that the Greek Government was involved in the process of drawing up the contested decision. The failure to establish a register of olive cultivation and the computerised files gave rise to financial corrections during earlier marketing years and, for the years in question, the reasons for which the Commission intended to make a financial correction were set out, in particular at the meeting of 23 September 1999, which took place as part of the conciliation procedure, and in the Summary Report.

69 In those circumstances, the statement of reasons for the contested decision must be regarded as sufficient.

70 As for the 5% figure imposed by the Commission in its calculation of the correction in respect of production aid for olive oil, it should be noted that the register of olive cultivation and the computerised files are fundamental components of the Community system of control of aid. As long as those components have not been introduced, it is in principle justified to impose the correction rate of 10% laid down by the Commission's guidelines, as set out in its Document No VI/5330/97.

71 Nevertheless, the Commission admitted that the measures adopted by the Greek authorities since 1996 are improvements, without however providing effective control equivalent to the system of control laid down by the Community rules. It therefore considered it appropriate to reduce the rate of correction from 10% to 5%.

72 The Commission's guidelines do not permit a reduction of the rate of correction to below 5% as long as the register of olive cultivation and the computerised files have not been put in place, given that these are the key components of the Community system of control. The opposing arguments of the Greek Government must therefore be rejected.

73 Consequently, the second plea concerning production aid for olive oil must be rejected as unfounded.

The correction in respect of production aid for dried grapes

First plea: misinterpretation and misapplication of Article 16(2) of Regulation No 1493/1999 and of Articles 2 and 13(1) of Regulation No 1621/1999 and inadequate statement of reasons based on an erroneous assessment of the facts

Arguments of the parties

74 In response to the Commission's findings of infringements in relation to the controls of areas under cultivation and of eligible grape varieties, the Greek Government submits that Article 16(2) of Regulation No 1493/99 and Articles 2 and 13(1) of Regulation No 1621/1999 expressly accord the Member States the option to use indications, other than land-registry references, recognised as equivalent by the body responsible for checks on the areas in order to provide references relating to the area and identification of plots on which dried grapes are produced. In any event, the lack of certain land-registry data was compensated for by the data held for 12 years by the Rural Development Directorates.

75 According to the Commission, the measures referred to by the Greek Government do not guarantee the lawfulness of the expenditure in the same way as the land register, in so far as they lack objective data for the identification of areas. It stresses moreover that the corrections imposed are not linked to the failure to establish the register of vineyards but to the location of the area and identification of plots which were carried out in breach of Article 13 of Regulation No 1621/1999.

76 The Greek Government claims that the adoption, by the Directorate-General for the Administration of Purchases of Agricultural Produce, of additional instructions and model forms reduced the significance of the lack of accompanying documents concerning the form and measurement of plots, which was in any event merely an administrative oversight.

77 The Commission submits that the absence of such documents cannot be treated merely as an administrative oversight, but as a serious failure which prevents inspections being made on a sound basis.

Findings of the Court

78 The financial correction covered by the present plea concerns the 1997, 1998 and 1999 financial years, which correspond to the 1996/97, 1997/98 and 1998/99 marketing years. According to the second subparagraph of Article 82 of Regulation No 1493/1999, that regulation applies from 1 August 2000. According to the second subparagraph of Article 16 of Regulation No 1621/1999, that regulation applies from the 1999/2000 marketing year. It follows that the merits for the financial correction in question cannot be assessed on the basis of those two regulations which did not apply at the time of the facts in the present case.

79 Consequently, the first plea must be rejected in so far as it is based on the provisions of those regulations.

80 Moreover, it is to be noted that Article 3(2) of Regulation No 2911/90, which applied at the relevant time, provides that cultivation declarations established for the purposes of granting production aid for dried grapes must include inter alia 'the areas planted with vines producing the product(s) concerned ... with the land

registry reference or an indication recognised as equivalent by the body responsible for checking areas'.

81 The Greek Government submits in essence that, in the absence of a land register, the measures implemented by the Greek authorities ensure checks equivalent to those provided by such a register.

82 However, during on-the-spot checks, the Commission found numerous shortcomings in respect of the controls of areas and the eligibility of grape varieties. The Summary Report notes inter alia the following shortcomings: the information relating to areas in the inspection reports and the cultivation declarations did not correspond to the reality on the ground; no signs were used on the ground to facilitate identification of the areas referred to and identification of the plots was impossible unless the beneficiary was present. There was moreover no documentary evidence of the form of the plots allegedly measured or the measurement data; certain inspectors were unaware of the instructions for carrying out their duties; the inspection reports were post-dated to a date after that of the delivery of the grapes, and lastly, the inspection reports of the national inspectors matched perfectly the declarations of the beneficiaries, whereas the on-the-spot checks carried out by the Commission revealed a mismatch in almost all cases.

83 Faced with a series of infringements as serious as those found by the Commission, it is for the Member State concerned to adduce the most detailed and comprehensive evidence that the Commission's findings are incorrect. That Member State cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system (see Case C-157/00 *Greece* v *Commission*, paragraphs 17 and 18).

84 In the present case, it must be held that the Greek Government has not established that it had implemented a reliable and operational supervisory system or demonstrated that the Commission's findings are incorrect.

85 Consequently, the first plea concerning the production aid for dried grapes must be rejected as unfounded.

Second plea: erroneous assessment of the facts and inadequate statement of reasons

Arguments of the parties

86 As regards the Commission's findings of infringements in the checks on minimum yield and eligible grape varieties, the Greek Government submits that producers were not able to provide the crop estimates required by Article 3(2)(e) of Regulation No 2911/90 on the date laid down by paragraph 1 of that article, namely 30 April, since such estimates were premature at that date. Consequently, cross-checks were carried out during the period concerned in order to verify compliance with the minimum yield. Those checks were carried out in three stages: first, on-the-spot checks, then cross-checks of the sales data and finally random checks in winemaking or bottling regions. The Commission therefore erred in its assessment of the facts and consequently gave an inadequate statement of reasons for the contested decision in infringement of Article 253 EC.

87 The Commission contends that no evidence has been adduced that that three-stage check was carried out. On the contrary, following the inspections, it was apparent that there was no effective on-the-spot check to ensure that the aid paid solely concerned the eligible varieties of grape which had attained the minimum yield laid down and that the reduction of that yield was in fact due to unfavourable weather conditions. Moreover, the Greek authorities have adduced no evidence that the grapes were dried and that they were not used for purposes other than the production of dried grapes.

Findings of the Court

88 First, the Greek Government does not dispute the fact that the beneficiaries of the aid in question did not produce the crop estimates required by Article 3(2)(e) of Regulation No 2911/90.

89 Second, that government has not shown that effective controls have been implemented so as to ensure compliance with the minimum yield prescribed for each variety of grape eligible for the grant of production aid for dried grapes.

90 It follows that the Greek Government has failed to adduce evidence to rebut the Commission's assessment and, therefore, the second plea concerning production aid for dried grapes must be rejected as unfounded.

Third plea: error of fact in the Commission's assessment

Arguments of the parties

91 The Greek Government challenges the Commission's correction in respect of the adoption and application of the system of checks in so far as the shortcomings found and the correction which they entailed concern in general terms the entire internal system of control of the paying agency and not merely the system of production aid for dried grapes. In its view, the Commission could have carried out an inspection of the paying body and not inferred from an inspection of that system that the annex to Regulation No 1663/95 had not been applied in full.

92 Moreover, the control system has been reinforced and the register of wine production is in the process of being established in two stages, the second of which is already well advanced.

93 It follows that the Commission erred in its assessment of the data on which that correction is based, which ought therefore to be annulled.

94 According to the Commission, the improvements alleged by the Greek Government were implemented only after the adoption of a ministerial circular dated 23 February 1999 and they show that the earlier regime constituted a risk to the Community budget. It adds that the shortcomings found by the Court of Auditors of the European Communities in the internal system of control concerned all prefectures, which justifies the correction of 2%. The fact that those shortcomings also concern other agricultural schemes cannot justify the lack of any correction in the dried grape sector.

Findings of the Court

95 It is clear from the Summary Report that the Commission found certain shortcomings in the control system for production aid for dried grapes during the checks it carried out in the prefecture of Heraklion. The Commission considered that those shortcomings could be extrapolated to all the prefectures of Greece since the same system was used throughout the country.

96 According to that report, the Commission's findings in the prefecture of Heraklion were therefore extrapolated to the other prefectures of Greece, but they were not extended to sectors of expenditure other than those relating to production aid for dried grapes. It follows that in so far as the Greek Government alleges by the present plea that those findings were applied to sectors other than that of dried grapes, that plea is unfounded.

97 As regards the Commission's assertion that the infringements found in Heraklion are repeated throughout the country, the Greek Government has adduced no evidence to rebut that assertion. First, that government does not challenge the Commission's findings in Heraklion. Second, by basing its arguments on the improvements made to the national system, that government tacitly accepts that the earlier system was defective. Lastly, since they were introduced after the marketing years in question, those improvements cannot be used to surmount the findings of shortcomings during those years.

98 It follows that the third plea concerning the production aid for dried grapes must be rejected as unfounded.

The correction in respect of production aid for sheepmeat and goatmeat

99 The Greek Government puts forward seven pleas to challenge the corrections made to the premium paid to producers of sheepmeat and goatmeat. The first relates to the correction of 25% made to the expenditure declared for the prefecture of Rethymnon. The second to seventh pleas concern the correction of 10% made to the expenditure declared for certain other prefectures.

First plea: breach of the principle of proportionality, exceeding the limits of the Commission's discretion and failure to state reasons

Arguments of the parties

100 As regards the correction of 25% applied to the expenditure declared for the prefecture of Rethymnon, the Greek Government alleges breach of the principle of proportionality, overstepping the limits of the Commission's discretion and that the reasons stated for the contested decision were inadequate. It claims that after the 1997 audit had revealed that in the prefecture of Rethymnon, between 1995 and 1997, there had been few, if any, on-the-spot checks, the Greek authorities immediately suspended all payments of the premium to producers of sheepmeat and goatmeat in that prefecture so that a thorough audit could be carried out. Thus, in 1998, 99.6% of producers in Rethymnon were inspected and the percentage of applications for premiums which were refused increased. For that reason, the Commission's conclusion that there was serious negligence in the grant of premiums until 1997 is not borne out and cannot provide the basis for a financial correction of 25%.

101 According to the Commission there were almost no controls in the prefecture of Rethymnon for three consecutive years, namely 1995, 1996 and 1997. Thus, it was not merely the increase in the number of refusals in 1998 which justified the correction of 25%, but the findings made during the on-the-spot controls. The increase in the number of refusals merely confirmed the Commission's suspicions.

Findings of the Court

102 The guidelines adopted by the Commission in its Document No VI/5330/97 provide for the application of a rate of correction of 25% where the 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.

103 It is clear from the file that the correction in question was based on the fact that from 1995 to 1997 there had been very few, indeed no, on-the-spot checks in the prefecture of Rethymnon. That is a seriously inadequate implementation of the checking system and indicates negligence in combating irregular or fraudulent practices, which justifies the application of a rate of correction of 25%, in accordance with the Commission's guidelines on the matter.

104 The increase in inspections and in applications for aid refused in 1998 relied upon by the Greek Government occurred after the period covered by the correction in question and, consequently, does not show that the correction is unfounded. On the contrary, whilst the rate of refusal of applications increased sharply in 1998 after the Greek authorities had checked almost all producers in the prefecture of Rethymnon that tends to confirm that the implementation of the checking system had been seriously inadequate in the preceding years.

105 Consequently, the first plea in relation to the premium payable to producers of sheepmeat and goatmeat must be rejected as unfounded.

Second plea: erroneous interpretation and application of Article 6(3) of Regulation No 3887/92

Arguments of the parties

106 The Greek Government claims that the Commission did not take into account the fact that, for certain prefectures, the Greek authorities provided the Commission with revised statistics for 1995 and 1996 replacing the incorrect data originally submitted. Consequently, the financial correction of 10% in respect of those prefectures is unjustified. Moreover, that government submits that Article 6(3) of Regulation No 3887/92 requires a check of 10% not in each prefecture but nationally. The fact that in the prefectures of Rethymnon and Chania, on-the-spot checks during the marketing year in question failed to achieve the 10% minimum was not unlawful since those carried out at national level did achieve that figure.

107 The Commission contends that Regulation No 3887/92 requires that representative checks be carried out. In order to ensure that such checks are effective, it is necessary for the sample to correspond to 10% of the aid applications for each prefecture.

Findings of the Court

108 As regards the statistics for 1995 and 1996, the information submitted to the Court does not show that the revised data referred to by the Greek Government were accurate or that they were submitted in accordance with the Community rules. In this context, the Hellenic Republic has not established the existence of a reliable and operational supervisory system, as it is required to do (see Case C-157/00 *Commission* v *Greece*, paragraph 18).

109 As regards the geographic basis of the sample, it is true that Article 6(3) of Regulation No 3887/92 provides that '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 ...'. It must be conceded that that provision does not state whether the minimum percentage is to be calculated in respect of each prefecture or of the country as a whole.

110 However, Article 6(1) of the same regulation provides that the 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'. Similarly, Article 6(4) of the same regulation provides that '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'. It follows that Article 6 of Regulation No 3887/92 seeks to bring about an effective verification of the terms under which aids are granted in particular by means of the representativeness of the samples checked.

111 It is clear that the representativeness of the samples is best ensured if these are determined at prefecture level rather than nationally. It would be contrary to the objective of effective checks if certain prefectures producing a significant quantity of

the products in question could escape in whole or in part from the checks provided that the national average of the sample exceeded 10%. In accordance with the broad logic and purpose of Regulation No 3887/92, the first indent of Article 6(3) of that regulation should be interpreted as meaning that the sample it refers to must cover at least 10% of the aid applications in each prefecture concerned.

112 Furthermore, the Commission submits, without being contradicted on the point, that the Greek authorities themselves stipulate a sample of 10% for each prefecture for on-the-spot checking.

113 In those circumstances, the second plea concerning the premium for producers of sheepmeat and goatmeat must be rejected as unfounded.

Third plea: erroneous interpretation of Article 12 of Regulation No 3887/92

Arguments of the parties

114 In relation to the unreliability of the statistics for inspections in 1995, 1996 and 1997, the Greek Government submits that the Commission based its findings on an isolated case in which the date of the inspection reports made it appear that 30 inspections were carried out on a single day without those reports' being signed by the farmer inspected. However, that case is explained by the workload which forced the head of the teams of inspectors to sign and date the reports after several days of inspections. As regards the signatures, Article 12 of Regulation No 3887/92 allows but does not require the farmer to sign the inspection report.

115 According to the Commission, it was not an isolated case since similar instances were found in 1998 and in sectors other than that of sheepmeat and goatmeat. Moreover, the fact that the reports in question were not signed by the farmers shows that they were not drawn up at the time of the inspection, which may raise doubts as to the quality of the checks carried out.

Findings of the Court

116 It is true that Article 12 of Regulation No 3887/92 provides that it is open to the farmer to sign the inspection report, but it does not require him to do so. The absence of a signature does not therefore constitute an irregularity in itself.

117 Nevertheless, the lack of signatures found during the inspections in question is one factor to be added to the other anomalies found in order to justify a serious and reasonable doubt in relation to the checks carried out by the Greek authorities.

118 In those circumstances, according to the case-law, it is for the Greek Government to adduce the most detailed and comprehensive evidence that it has made checks (see Case C-157/00 *Commission* v *Greece*, paragraphs 16 and 17).

119 Since the Greek Government has adduced no such evidence in the present case, the third plea concerning the premium for producers of sheepmeat and goatmeat must be rejected as unfounded.

Fourth plea: erroneous assessment of the facts

Arguments of the parties

120 According to the Greek Government, the difficulty involved in establishing a permanent register of livestock movements varies from Member State to Member State according to its topography. Greece poses particular difficulties in this regard since the flocks and herds are in mountainous or upland areas or on islands where access is difficult.

121 The Commission contends that under the rules in force such a registration system ought to have existed from 1995, whereas it had not been implemented in 2001.

122 The Greek Government claims that the Commission erred in its assessment of the failure to carry out a risk analysis in accordance with Article 6(4) of Regulation No 3887/92 in that, although such analysis has not been computerised, it is nevertheless carried out in writing in all prefectures.

123 The Commission submits that it has not been demonstrated that any risk analysis was carried out, even manually, in any of the prefectures inspected.

124 Finally, in relation to the acceptance of oral notification of losses, which is not provided for in the Community rules, the Greek Government claims that these are no more than isolated cases in the past.

125 The Commission replies that the Greek Government has adduced no evidence that the requisite information was provided.

Findings of the Court

126 Article 4(1) of Regulation No 2700/93, read in conjunction with Article 4 of Directive 92/102, requires the Member States to implement a system for the permanent recording of livestock movements from the 1994 marketing year, subject to a transitional measure allowing a less onerous system to be used for that marketing year. It follows that that recording system ought to have been operational in the 1995 marketing year at the latest.

127 The Greek Government does not deny that it did not implement such a recording system, as the Commission has stated.

128 As regards the risk analysis provided for by Article 6(4) of Regulation No 3887/92, it should be noted that a Member State cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system (see Case C-157/00 *Greece* v *Commission*, paragraph 18).

129 In the present case, the Greek Government has not adduced such evidence and, therefore, the Commission's findings relating to the failure to carry out risk analysis have not been rebutted.

130 Moreover, Article 10(5) of Regulation No 3887/92 provides that where the farmer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period, he is to be entitled to the premium 'provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals'.

131 In the present case, the Greek Government does not deny that it accepted oral notifications of loss, contrary to that provision.

132 It follows that the fourth plea in respect of a premium for sheepmeat and goatmeat producers must be rejected as unfounded.

Fifth plea: erroneous interpretation of Article 5(1) of Regulation No 3887/92

Arguments of the parties

133 As regards the Commission's finding that the place of retention of the animals was not stated precisely in the premium applications, the Greek Government submits that that reference consisted of a toponym, since there is no land register in Greece. Such a reference complies with the fourth indent of Article 5(1) of Regulation No 3887/92, which merely requires 'information on the location or locations where the animals will be held' and not a detailed description thereof.

134 The Commission claims that its inspectors did not require a detailed description of the place where the animals were kept, but merely a clear statement of it. However, no such statement was provided. Merely indicating the municipality where the farm is located is not the same as a check on the place where the animals are kept since this may not be the same as the location of the farm.

Findings of the Court

135 The fourth indent of Article 5(1) of Regulation No 3887/92 requires, where the farmer undertakes to keep the animals on his holding during the retention period, 'information on the location or locations where the animals will be held'. Given the broad logic and purpose of that provision, the information required must be sufficiently clear to enable the inspecting authorities to check the precise place where the animals are held.

136 On the basis of the evidence submitted to the Court, it must be found that the Greek Government has not demonstrated that sufficiently clear information was given to the inspecting authorities.

137 Consequently, the fifth plea concerning the premium for producers of sheepmeat and goatmeat must be rejected as unfounded.

Sixth plea: erroneous interpretation of Article 1(3) of Regulation No 2700/93

Arguments of the parties

138 As regards the marking of animals, the Greek Government alleges that this is compulsory only where the animals are placed in agistment in accordance with the second subparagraph of Article 1(3) of Regulation No 2700/93. In the cases subject to inspection the animals were not placed in agistment but rather flocks and herds belonging to different owners were kept together.

139 According to the Commission, marking was introduced in order to make it possible to identify animals when they are kept with animals from other flocks and herds. The farming in common of flocks and herds belonging to different owners is a very widespread practice in Greece and gives rise to the same problems in identifying animals as when they are placed in agistment.

Findings of the Court

140 The second subparagraph of Article 1(3) of Regulation No 2700/93 provides that 'before all or some of that number of ewes and/or she-goats in respect of which the premium is requested are placed in agistment during the retention period, the animals concerned must be identified'.

141 According to the first recital in the preamble to Regulation No 279/94, which introduced that provision into Regulation No 2700/93, 'in the case of animals placed in agistment, it is necessary to ensure that animals moved are identified'.

142 It follows that the purpose of that provision is to ensure that the animals moved have been identified before they are kept together with other animals. The essential characteristic of placing in agistment is that animals of different origins are kept together and that it becomes impossible in practice to distinguish between them if they have not been marked beforehand. That characteristic is shared by the farming in common of animals belonging to different owners. In order to ensure the effectiveness of the second subparagraph of Article 1(3) of Regulation No 2700/93, farming in common must be subject to the same guarantees. Consequently, the concept of 'placing in agistment' for the purposes of that provision must be interpreted as applying to cases in which animals are kept together with others on the basis of the farming in common of flocks and herds belonging to different owners.

143 Consequently, the sixth plea in respect of the premium for producers of sheepmeat and goatmeat must be rejected as unfounded.

Seventh plea: erroneous interpretation of the fifth subparagraph of Article 5(2)(c) of Regulation No 729/70

Arguments of the parties

144 According to the Greek Government, the Commission's refusal to finance certain expenditure in the sheepmeat and goatmeat sector concerns expenditure prior to the 24-month period preceding the Commission's communication in writing of the results of its checks to the Member State concerned and is thus contrary to the fifth subparagraph of Article 5(2)(c) of Regulation No 729/70. Since the Commission's checks took place in 1997 and 1998 and the written communication of the results of those checks in 1998, that 24-month period ended in 1996. The correction was therefore wrong also to cover expenditure effected in 1995.

145 The Commission submits that under Article 5 of Regulation No 729/70, the communication of the results of the checks sets in train the 24-month period. The relevant findings relate to 1995, 1996 and 1997, a period which does not exceed the 24-month period preceding the communication of the results of the inspections. In the present case, the written notification was made by letter dated 22 July 1997 and not in 1998.

Findings of the Court

146 Under the fifth subparagraph of Article 5(2)(c) of Regulation No 729/70, 'a refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned. ...'

147 The Commission submitted to the Court a letter, the Greek version of which is dated 22 July 1997, in which it informed the Greek authorities of the problems discovered during its on-the-spot checks in the sheepmeat and goatmeat sector. That letter refers to problems arising not only in 1996 and 1997 but also in 1995. It is clear from that letter that the Commission intends to exclude from Community financing certain expenditure on the basis of the findings set out therein. Moreover, it is expressly stated that that letter sets in train the 24-month period referred to in the fifth subparagraph of Article 5(2)(c) of Regulation No 729/70. The Greek Government does not deny that it received that letter.

148 It follows that the communication of the results of those checks within the meaning of that provision was made by the letter of 22 July 1997. Therefore the financial corrections made in relation to the premium for producers of sheepmeat and goatmeat could legitimately apply to expenditure made in 1995.

149 Consequently, the seventh plea in relation to that premium must be rejected as unfounded.

150 In the light of the totality of the foregoing considerations, the action of the Hellenic Republic must be dismissed in its entirety.

Costs

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

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action;

2. Orders the Hellenic Republic to pay the costs.

Signatures.