JUDGMENT OF THE COURT (Fifth Chamber)

6 December 2001 *

In Case C-373/99,

Hellenic Republic, represented by V. Kontolaimos and I.-K. 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,

APPLICATION for partial annulment of Commission Decision 1999/596/EC of 28 July 1999 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 226, p. 26),

* Language of the case: Greek.

THE COURT (Fifth Chamber),

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

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 17 May 2001,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 7 October 1999, the Hellenic Republic brought an action under Article 230 EC for the partial annulment of Commission Decision 1999/596/EC of 28 July 1999 amending Decision 1999/187/EC on the clearance of the accounts presented by the Member States

in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 226, p. 26).

2 The action by the Hellenic Republic seeks the annulment of Decision 1999/596 in so far as it declared that the following amounts were not chargeable to the EAGGF:

— in respect of arable crops: GRD 2 281 284 896 (for deficiencies in the integrated management and monitoring system) and GRD 2 233 442 867 (for retention of administrative fees from the amount of the aid);

— in respect of fruit and vegetables: GRD 6 276 374 640 (for problems relating to producers' organisations and financial compensation for products withdrawn from the market) and GRD 816 097 399 (for problems relating to the free distribution of products withdrawn from the market);

— in respect of olive oil: GRD 6 039 930 084 (for problems relating to production aid) and GRD 4 140 575 078 (for problems relating to aid for consumption);

— in respect of cotton: GRD 983 748 583 (for problems relating to production aid); and

— in respect of beef and veal: GRD 230 000 000 (for retention of administrative fees from the amount of the premiums).

3 The reasons for the financial corrections thus imposed are summarised in Summary Report No VI/6462/98 of 12 January 1999 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1995 ('the 1995 summary report') and in the supplement to that report of 7 June 1999 ('the supplement to the 1995 summary report').

4 By order of 8 March 2001 (not published in ECR), the action was dismissed as manifestly inadmissible in so far as it sought the annulment of Decision 1999/596 in that it imposes financial corrections on the Hellenic Republic in respect of olive oil, for problems relating to aid for consumption and production, in respect of cotton, for problems relating to production aid, and in respect of beef and veal, for retention of administrative costs from the amount of the premiums.

The guidelines laid down in the Belle Report and the respective duties of the Commission and the Member States in the clearance of EAGGF accounts

5 The Belle Report of the Commission (Document No VI/216/93 of 1 June 1993) lays down the guidelines to be followed when financial corrections must be applied against a Member State.

6 In addition to three main calculation techniques, the Belle Report lays down three categories of flat-rate correction for difficult cases:

'A. 2% of expenditure — where the deficiency is limited to parts of the control system of lesser importance, or to the operation of controls which are not

essential to the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was minor.

B. 5% of expenditure — where the deficiency relates to important elements of the control system or to the operation of controls which play an important part in the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was significant.

C. 10% of expenditure — where the deficiency relates to the whole of or fundamental elements of the control system or to the operation of controls essential to assuring the regularity of the expenditure, such that it can reasonably be concluded that there was a high risk of widespread loss to the EAGGF.'

7 The report also states that it is possible to refuse the whole of the expenditure and that, therefore, a higher rate of correction may be held appropriate in exceptional circumstances.

8 As the Court has held, only intervention undertaken in accordance with the Community rules within the framework of the common organisation of agricultural markets is to be financed by the EAGGF (see Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6).

9 Article 8(1) of Regulation (EEC) No 729/70 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), which defines the principles according to which the Community and the Member States are to ensure the implementation of Community decisions on agricultural intervention

financed by the EAGGF and combat fraud and irregularities in relation to those operations, 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 (see Joined Cases 146/81, 192/81 and 193/81 *BayWa* [1982] ECR 1503, paragraph 13, Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraphs 16 and 17, and Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 45).

10 It is for the Commission to prove an infringement of the rules on the common organisation of the agricultural markets. Accordingly, the Commission is obliged to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question (see, in particular, Case C-247/98 *Greece* v *Commission* [2001] ECR I-1, paragraph 7, and the case-law cited there).

11 However, the Commission is not required to demonstrate exhaustively that the inspections carried out by the national authorities are insufficient, or that the data submitted by them are irregular, but to adduce evidence justifying serious and reasonable doubt on its part regarding those inspections or data (see Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 35, Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 40, and *Greece* v *Commission*, cited above, paragraph 8).

12 The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of EAGGF accounts and, consequently, it is for that State to adduce the most detailed and comprehensive evidence that its inspections or figures are accurate and, if appropriate, that the Commission's statements are incorrect (*Germany* v *Commission*, cited above, paragraph 35, *Netherlands* v *Commission*, cited above, paragraph 41, and *Greece* v *Commission*, cited above, paragraph 9).

13 It should be borne in mind that, according to the case-law of the Court, a Member State whose controls carried out in the context of the application of the rules for the functioning of the 'guarantee' section of the EAGGF have been considered by the Commission to be non-existent or insufficient cannot rebut the Commission's findings without supporting its own allegations by evidence of a reliable and operational supervisory system (*Italy* v *Commission*, cited above, paragraph 7).

The corrections in the arable crops sector

The deficiencies in the integrated management and monitoring system

Summary report

14 It is apparent from the 1995 summary report that, as a result of the findings of the inspections in 1993 and 1994, the Commission asked the Hellenic Republic to increase the minimum rate of on-the-spot checks from 5% to 10% with effect from 1994 and that, although increased, that rate only reached 9.3%.

15 It is also apparent that the Commission's officers were aware, first, of the special difficulties encountered by the Hellenic Republic, where the land registry system was not in general use, and, second, of the fact that the definitive implementation of the integrated administration and control system ('the integrated system') introduced by 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) was not achieved until 1 January

1997. However, the Commission's officers considered that some of the errors found were in any event unacceptable. That was the case, first, of the practices relating to the risk analysis to be carried out for the purpose of selecting the holdings to be checked on-the-spot, which were not compatible with Article 6(4) of 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). Next, problems arose in providing evidence as to the number of checks carried out, since no trend chart was kept. Furthermore, as the regional directorates did not have access to the databases kept by the Associations of Regional Cooperatives ('the ACAs'), they were unable to supervise the work of those associations, which played a key role in the management of direct aid for arable crops. Last, administrative controls were inadequate, since, first, the cross-checks were only carried out after the Community aid had been paid and, second, the regional directorates did not have access to the integrated system databases.

16 Those deficiencies concerned directly applicable aspects of the integrated system necessary for the effective management of Community measures. They thus represented a risk to Community finance.

17 The financial correction of 2% of the total amount of the expenditure declared by the Hellenic Republic for arable crops in 1995 takes account of the fact that, despite the major failures found in the integrated system, the on-the-spot checks carried out by the Commission during inspections in Greece had resulted in no major problems and that the rate of on-the-spot checks carried out by the competent national authorities had increased from 5% to 9.3%.

18 According to the supplement to the 1995 summary report, the Conciliation Body established by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section

(OJ 1994 L 182, p. 45) found that there was insufficient evidence to bring into question the proposal for a flat-rate financial correction, which is normally set at a minimum of 2%.

Arguments of the parties

19 The Greek Government maintains that the correction of 2% in respect of arable crops is unjustified and based on an error in assessing the facts, since no major problem was revealed and the Greek authorities have done and continue to do all they can to improve the system and to make good the deficiencies.

20 In that regard, it claims that the Commission should have taken into account the fact that the 1994/95 year was a period of transition for the implementation of the integrated system, which was not to be fully applicable until 1 January 1997. The Government maintains that the Commission should also have taken account of the special difficulties that arose in connection with the application of that system in Greece, relating to particular features such as the absence of a land registry in the greater part of the country, the large number of producers (approximately 300 000) and the even greater number of plots declared.

21 As regards the on-the-spot checks, the Greek Government maintains that since 1995 the holdings to be checked have been selected by the central department of the Ministry of Agriculture with the assistance of computer technology. A special program takes account of a mass of data in order to determine the risk attaching to each holding and the sample holdings to be checked are selected on the basis of the resulting tables. As regards the rate of those checks, the Greek Government maintains that it must be considered satisfactory, since it has increased from 5% to 9.3%.

22 As regards the execution of the administrative cross-checks, the Greek Government claims that a programme of administrative checks has been implemented. That programme involves, *inter alia*, monitoring the data referred to in applications, displaying them in public, receiving and examining complaints and also, in so far as possible, cross-checking data on land areas and crops with any other relevant information.

23 As regards the supervision of the ACAs, the Greek Government maintains that the ACAs collaborate with the Ministry of Agriculture in the procedure for receiving, recording and dealing with applications and paying aid to producers. All those procedures are supervised by that Ministry.

24 The Commission contends that the correction in question is based not on the non-application of the integrated system but on deficiencies directly affecting the control system and inefficiency in the administration of Community aid by the Greek authorities.

25 Explaining the findings set out in the 1995 summary report, the Commission claims that during the visits to Greece it was found, first, that the selection of cases for the purpose of the on-the-spot checks did not correspond to any method and lacked transparency. Furthermore, it was observed that throughout Greece there was an absence of a method of risk analysis, contrary to Article 6(4) of Regulation No 3887/92. Second, as regards the administrative checks, the cross-checks of information with the help of a database could not be carried out before the Community aid was paid and, although under Greek law the regional directorates of the Ministry of Agriculture are required to carry out certain supervisory tasks, they did not actually do so. Third, the ACAs carry out tasks in the general interest but in reality their activities are not supervised by the regional directorates of the Ministry of Agriculture.

26 Although they considered that the deficiencies in the system could give rise to legitimate doubt as to the lawfulness of the payments and justify a correction of at least 5%, the Commission's officers decided, for the reasons stated in the 1995 summary report, to apply a flat-rate correction of only 2%.

Findings of the Court

27 As regards the Greek Government's argument based on the period of transition for the implementation of the integrated system, it is sufficient to observe that, as the Commission has explained and as is also apparent from the 1995 summary report, the correction imposed by Decision 1999/596 is based not on the non-application of the integrated system but on deficiencies directly affecting the control system and on inefficiency in the administration of the Community aid by the Greek authorities.

28 As the Advocate General observes in point 84 of his Opinion, it follows, in particular, from Article 17(1) of Regulation No 3887/92, which, according to Article 19 of that regulation, is applicable from 1 February 1993, that, pending the full implementation of the integrated system, each Member State is to take 'whatever administrative and control measures are necessary to ensure compliance with the terms on which the aids concerned are granted'.

29 As regards the Greek Government's claim that, in respect of the on-the-spot checks, the administrative cross-checks and the supervision of the ACAs, the control system was reliable, it should be observed that, contrary to what is required by the case-law cited in paragraphs 12 and 13 of this judgment, the Government has adduced no evidence capable of calling in question the veracity of the Commission's findings.

30 As regards the argument that the Commission failed to take account of various mitigating circumstances, such as the fact that no major problem had been detected, the efforts made by the Greek authorities to improve the system and the special difficulties encountered in applying the integrated system in Greece, it is sufficient to observe, first, that those circumstances are expressly mentioned in the 1995 summary report and, second, that it is clear from that report that the Commission took them into account when fixing the flat-rate correction at 2%.

31 It follows from those considerations that the arguments put forward by the Greek Government to challenge the financial correction imposed for deficiencies relating to the integrated system cannot be upheld.

The retention of the administration costs from the amount of the aid

Summary report

32 It is apparent from the 1995 summary report that, in Greece, the ACAs are required to be involved in the management and payment of compensatory aid in relation to arable crops since they are responsible for the computerised processing of applications and the making of payments to all beneficiaries, whether or not they are members of the ACAs. Pursuant to a national agreement, the ACAs retain by way of fees about 2% of the amount of the aid, which infringes Article 15(3) of 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 Article 1(4) of Council Regulation (EEC) No 729/70, which provides that the aid is to be paid in full to the recipients.

33 According to the supplement to the 1995 summary report, the Conciliation Body noted that it had already examined the issues concerned in connection with earlier conciliation procedures, that the present case featured nothing new and that in its opinion the position of the Commission's officers was justified.

Arguments of the parties

34 The Greek Government maintains that the retention of administration costs constitutes voluntary withholdings which are not applied to all producers. Since 1993, moreover, the retentions referred to have no longer been based on Article 2 of Greek Law No 1409/83, which provides that 2% may be retained from the aid. That law was repealed in 1992 following the reform of the common agricultural policy, owing to the primacy of Community legislation. The retentions in fact arise from the agreements concluded between the ACAs and their members. They are not intended to cover operating costs or other costs incurred in paying the premiums, but they cover more general services provided by the ACAs; and, since the ACAs have a legal personality that is separate from the State, the Hellenic Republic could not interfere with the agreements concluded between them and their members. The financial correction is therefore based on an erroneous assessment of the nature of the retentions.

35 In the alternative, the Hellenic Government submits that, since the retentions vary between 0.5% and 2%, the correction should be fixed at 1.25%, the average of those two rates.

Findings of the Court

36 As regards the Greek Government's argument that the retentions are voluntary and that they are not applied to all producers, it should be noted, first, that the national legislation in force in the 1995 financial year authorised the making of the retentions referred to. As the Court found in paragraph 18 of its judgment in *Greece* v *Commission*, cited above, Article 2 of Law No 1409/83 was not repealed until 1 December 1997 by Law No 2538/97.

37 It should also be noted, second, that, as the Greek Government acknowledged at the hearing, the retentions referred to were also made on payment of aid to producers who were not members of the ACAs. Since those producers were not parties to the agreements made between the ACAs and their members, the retentions made in respect of them cannot have arisen from those agreements.

38 Consequently, that argument of the Greek Government cannot be accepted.

39 As regards the level of the financial correction, it is apparent from the minutes of the general meetings of the ACAs, annexed to the application, that the rate of retention used by those ACAs was never lower than 2%. In those circumstances, the Greek Government having failed to show that the rate of the retentions could be lower than the rate of the correction in issue, the second argument must also be rejected.

40 As the Court has not been able to accept any of the arguments raised by the Greek Government against the corrections made by the Commission in the arable crops sector, those corrections cannot be called into question.

The corrections in the fruit and vegetable sector

The problems relating to producers' organisations and financial compensation for products withdrawn from the market

Summary report

41 It is apparent from the 1995 summary report that the Commission's officers considered that a flat-rate correction analogous to that applied for the 1994 financial year should be applied for the 1995 financial year, namely a correction of 10% on all amounts declared for peaches, nectarines and citrus fruit and a correction of 20% of the amounts declared for peaches and nectarines in the nomos (district) of Pella. The Commission's officers considered that the reasons for the correction set out in Summary Report No VI/7421/97 of 8 June 1998 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1994 ('the 1994 summary report') remained valid for the 1995 financial year.

42 In that regard, it is apparent from the 1994 summary report that in the course of a number of inspections carried out by the EAGGF in Greece deficiencies were found in the system for controlling and administering financial compensation granted to organisations of fruit and vegetable producers.

43 Thus, as regards peaches and nectarines, inspections carried out in Macedonia in August 1994 and August 1995 revealed that recognition had been granted to organisations which did not have the necessary technical facilities to market the production of their members, that none of the organisations inspected had intervention funds and that the coefficient used in determining the withdrawal price for those fruits was incorrect.

44 A further inspection was carried out the following year in the nomoi (districts) of Pella and Imathia at the premises of a number of producers' organisations to which recognition had initially been refused. That inspection revealed that the re-examination procedure by the Greek authorities could generally be considered acceptable as far as Imathia was concerned but that, in Pella, a considerable number of organisations should not have been recognised owing to inadequacies in their technical facilities.

45 As regards citrus fruit, the 1994 summary report concludes that the Greek system of administering and controlling the procedures for recognition of the producers' organisations displayed several shortcomings. An inspection of a large organisation in the nomos of Arta, of which the Court of Auditors of the European Communities had been critical, had also revealed a number of irregularities.

46 According to the supplement to the 1995 summary report, the Commission's officers concluded that the correction proposed for 1995, in respect of products withdrawn from the market during the 1994/95 and earlier marketing years, was justified given the serious nature of the shortcomings detected during a number of inspections.

47 The Conciliation Body considered that it could not be disputed that certain improvements in the control procedures had had a significant impact during the 1995 marketing year and that it could do no more than record the fact that the

Commission's officers had refused to take those improvements into account. According to the supplement to the 1995 summary report, the Commission's officers accepted that there had been significant improvements in the system after May 1995, but that they could have affected only the withdrawal of produce during the subsequent marketing year, namely the 1995/96 marketing year. The correction for the 1995 financial year in respect of the 1994/95 marketing year reflects that fact, while the limited correction for the 1996 financial year takes account, in particular, of the improvements.

Arguments of the parties

48 The Greek Government submits, first, that the Commission's corrections are based on an erroneous assessment of the facts. It states that, in reply to a letter from the Commission of 12 October 1994, informing it of its intention to make a correction of 50% on the expenditure connected with withdrawals of peaches and nectarines for the 1994 financial year and to extend that correction to the 1992 and 1993 financial years if strict measures were not taken during the first half of 1995, it had communicated to the Commission on 1 November 1994 a series of measures taken in 1994 in order to improve the system of withdrawals and of producers' organisations. It was in reaction to those measures that, by letter of 13 December 1995, the Commission lifted its reservations concerning the 1992 and 1993 financial years and reduced the financial correction to 10% of expenditure. However, although those measures were all adopted and implemented during the 1994 marketing year and produced tangible results during that period, the Commission not only maintained the financial correction for the 1994 financial year, but imposed the same correction for the 1995 financial year, even though during that year the system worked perfectly and guaranteed the lawfulness of payments to genuine beneficiaries.

49 The Greek Government submits, second, that the Commission exceeded the limits of its discretion under the fourth sub-subparagraph of Article 5(2)(c) of Regulation No 729/70, as amended by Council Regulation (EC) No 1287/95 of

22 May 1995 (OJ 1995 L 125, p. 1) ('Regulation No 729/70, as amended'). In that regard, it claims, first, that, where the Commission applies flat-rate corrections on the basis of the Belle Report, it must do so with moderation, a correction of 10% being justified only where there is a high risk of extensive loss for the EAGGF. Second, it argues that the Commission is required, when making the correction of the declared expenditure, to take account of the nature and seriousness of the infringement and of the financial loss caused to the Community. Last, it submits that the Commission's inquiry in the oranges sector concerned only one nomos, whereas Greek territory has 52 nomoi in total, and that in the peaches and nectarines sector the inquiry concerned only two nomoi. Furthermore, in those two nomoi the Commission examined only a small number of producers' organisations, in respect of which an inspection carried out previously by the Greek authorities had already revealed certain deficiencies in applying the regulation. That control is therefore not representative.

50 Third, as regards the functioning of the producers' organisations, the Greek Government further states that directions indispensable for correct and effective implementation of the controls concerning the administration of the fruit and vegetable market have been given to all senior officials responsible for carrying out those controls. Those directions concerned quality control, the correct functioning of the producers' organisations and the proper procedure for withdrawal and free distribution. The Ministry of Agriculture has also given instructions concerning the recognition, structure and functioning of certain producers' organisations. In addition, a computerised file of the members of the producers' organisations had been created in order to facilitate the monitoring of their productive and commercial activity.

51 Fourth, as regards the alleged absence of technical facilities and intervention funds, the Greek Government maintains that Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organisation of the market in fruit and vegetables (OJ, English Special Edition 1972 (II), p. 437), as amended by Council Regulation (EEC) No 985/84 of 31 March 1984 (OJ 1984 L 103, p. 1), ('Regulation No 1035/72') does not require producers' organisations to have their own technical facilities, so that recognition cannot be refused to producers'

organisations which rent them. Nor does that regulation specify a precise ceiling for the receipts of the intervention fund, and the mere fact that certain funds do not have the necessary capital to cover the withdrawals made is thus not capable of affecting the lawfulness of the recognition of the organisations concerned.

Findings of the Court

52 It should be pointed out, first, that Regulation No 1035/72 provides in Article 13 for the creation, on the initiative of fruit and vegetable producers, of producers' organisations for the purpose of promoting the concentration of supply and the regularisation of prices at the producer stage in respect of one or more of the products referred to by the regulation and of making suitable technical means available to producer members for presenting and marketing the relevant products.

53 Under Article 13(2) of Regulation No 1035/72, Member States may grant recognition to the organisations concerned only on condition that there is sufficient evidence as regards the duration and effectiveness of their activities, in particular the tasks for the purpose of which they were constituted, and that, from the date of recognition, they keep specific accounts in respect of the activities for which recognition was sought. It follows that a Member State must refuse recognition to, or withdraw recognition from, any organisation of producers which, for example, does not have adequate technical facilities for presenting and marketing the products concerned (*Greece* v *Commission*, cited above, paragraph 44).

54 Second, it should be noted that, for the reasons stated in paragraph 12 of this judgment, it is for the Member State to prove the inaccuracy of the Commission's statements. In this case, the Greek Government limits itself to claiming in a very

general manner that the Commission committed an error in imposing for the 1995 financial year the same financial correction as that applied for the 1994 financial year, but does not adduce any concrete evidence capable of calling into question the veracity of the Commission's findings on the subject of the irregularities affecting the recognition of the producers' organisations.

55 As regards the precise financial year as from which it was necessary to take into account the measures adopted by the Greek Government in that respect, it must be observed that the Greek Government does not adduce the slightest evidence capable of invalidating the finding of the Commission's officers that it was only from May 1995 that certain improvements were made to the system. Nor does the Greek Government dispute the Commission's assertion that peaches and nectarines are harvested between June and September and payments for products withdrawn during that period are made only from November. Therefore, as the Commission has stated, since a particular financial year includes the payments made from 16 October of the preceding year until 15 October of the year in question, the improvements in point could not have any impact on the clearance procedure for the 1995 financial year. As regards the 1996 financial year, on the other hand, it is evident from the supplement to the 1995 summary report that the correction takes those improvements into account.

56 As regards the alleged difference in assessment by comparison with the financial corrections applied for the 1992 and 1993 financial years, it is clear from the case-law of the Court that where the Commission did not carry out the correction called for in respect of a previous year, but tolerated the irregularities on grounds of fairness, the Member State does not acquire any right to demand that the same position be taken with regard to the irregularities with respect to the following financial year by virtue of the principle of legal certainty or the principle of protection of legitimate expectations (see Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 67). It was held in paragraph 46 of *Greece* v *Commission*, cited above, that the lifting by the Commission of its reservations concerning the expenditure by the Hellenic Republic during the 1992 and 1993 financial years does not in any way signify that the maintenance of the correction

for the 1994 financial year is unjustified. On the contrary, the results of the Commission's inquiries into the producers' organisations, which have not otherwise been challenged by the Hellenic Republic, constitute sufficient justification in that respect.

57 As regards the irregularities concerning the recognition of the producers' organisations found by the Commission, it should be noted that they were undeniably of a certain gravity. As the Commission has rightly observed, both in the peaches and nectarines sector and in the citrus fruits sector, a large number of the organisations inspected did not have either their own or rented facilities for presenting and marketing the production of their members and did not have intervention funds to finance the withdrawals of certain products. As already observed in paragraph 54 of this judgment, the Greek Government has not produced any evidence capable of calling into question the veracity of those findings.

58 As regards the question whether the inspections carried out by the Commission were sufficiently representative, it must be observed that, as the Commission has argued without being contradicted by the Greek Government, those inspections concerned, in relation to the peaches and nectarines sector in Greece, all the producers' organisations having their seat in the nomoi of Pella and Imathia, which account for 95% of production of peaches and nectarines on Greek territory and for 93.5% of the compensatory payments made in that respect. In the citrus fruits sector, the inspections concerned the nomoi of Argolida, Arta and Lefkada, the production of which gave rise to 74% of the compensatory payments. Having regard to those figures, the representative nature of the inspections made by the Commission and the extent of the irregularities cannot reasonably be cast in doubt (see *Greece* v *Commission*, cited above, paragraph 52).

59 Similarly, the mere fact that, on a second inspection in the nomos of Pella, the Commission inspected only organisations the recognition of which had already been challenged by the Greek authorities is in no way capable of invalidating the

Commission's finding at the conclusion of that inspection, namely that 48% of the producers' organisations established in that nomos did not have technical facilities for the marketing of fruits (see *Greece* v *Commission*, cited above, paragraph 53).

60 Moreover, the adoption of directions addressed to officials responsible for the controls prior to the recognition of the producers' organisations and the creation of computerised files on the members of the producers' organisations afford no guarantee that the organisations recognised will in fact fulfil, at the time when recognition is granted to them or subsequently, all the criteria required for that recognition. Those arguments cannot therefore be accepted (*Greece* v *Commission*, cited above, paragraph 54).

61 It should next be noted, first, that the Commission did not confine itself to finding that a certain number of organisations did not have their own technical facilities but stated that a large number of producers' organisations did not have 'either their own or rented facilities' and that, moreover, it did not observe that the compulsory intervention funds had insufficient revenue but pointed out that those funds were often non-existent (*Greece* v *Commission*, cited above, paragraph 55).

62 In the light of those considerations, it is apparent that the deficiencies found by the Commission concerned the execution of the essential controls designed to ensure the lawfulness of the expenditure in the area concerned, so that the Commission could reasonably conclude that in this case there was a risk of widespread losses for the EAGGF (*Greece* v *Commission*, cited above, paragraph 56).

63 Therefore, the correction of 10% made by the Commission of all expenditure declared for peaches and nectarines and for citrus fruit and the correction of 20% of the expenditure declared for peaches and nectarines in the nomos of Pella do not appear unjustified.

The problems relating to the free distribution of products withdrawn from the market

Summary report

64 According to the 1995 summary report, examination by the Commission's officers of the way in which products withdrawn from the market were distributed in Greece identified a number of weaknesses, such as the non-eligibility of certain beneficiaries, lack of controls in respect of those beneficiaries, the absence of reliable data at the paying agency and the acceptance of packaging and sorting costs which were higher than the real costs. As a result, the Commission decided to apply a financial correction of 10% of the expenditure declared by the Greek authorities.

65 It is apparent from the supplement to the 1995 summary report that the Commission's officers noted that the Conciliation Body did not contest that correction for the 1995 financial year and concluded that it should be maintained.

66 As regards the 1996 financial year, which was covered by the same conciliation procedure as 1995, the Conciliation Body drew a distinction between distribution to large families and distribution to schools. In the former case, it considered that, on the basis of the information received from the parties, the Commission's criticisms should be regarded as well founded. As regards distribution to schools, on the other hand, the Conciliation Body considered that observance of the principle laid down in the sixth indent of Article 21(1)(a) of Regulation No 1035/72, which provides that the quantities thus distributed are to be supplementary to the quantities normally bought by school canteens, was less important, given the absence of canteens at most Greek schools. It further noted that such a principle was not to be found in the new basic regulation concerning the sector, namely Council Regulation (EC) No 2200/96 of 28 October 1996 on

the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1). The Commission maintained the financial correction proposed in respect of distribution to large families but not that relating to distribution to schools.

Arguments of the parties

67 The Greek Government claims that the quantities distributed free to large families were reduced to a minimum by two circulars from the Minister for Agriculture, one dated 18 January 1996 and the other 11 December 1996, the first of which essentially codified what was applied in practice, and also by the amendment of the agreements between producers' organisations and institutions entitled to free distribution.

68 As regards the Commission's assertion that large families whose children were already grown up also received distributions, it refers to isolated cases of dependent children in higher education or at university or carrying out their compulsory military service.

69 As regards distributions to schools, the purpose of which was to avoid having to destroy citrus fruit, they were from the outset perfectly consistent with the spirit and objectives of that type of distribution, namely, in particular, to balance the market in citrus fruit, since, in the new organisation of the market introduced by Regulation No 2200/96, the Commission abandoned the principle that the quantities distributed must be supplementary to the quantities normally bought by school canteens. In any event, that principle is difficult to apply in Greece, given the absence of organised buffets or canteens in all schools.

70 The Commission contends, first, that under the Greek legislation distributions may be made to families satisfying the definition of 'large families', irrespective of their level of income. That is contrary to the objective pursued by the Community provision governing that type of distribution, namely the first indent of Article 21(1)(a) of Regulation No 1035/72, which is, *inter alia*, to contribute to the subsistence of persons who lack the necessary means. Furthermore, the inspection carried out at the premises of four associations of large families showed that, in certain cases, those associations also distributed the products concerned to members of families whose children were now grown up, were already working and, in some cases, had started their own families. That situation, which gave rise to an unwarranted increase in the quantities distributed, was further aggravated by the absence of a pre-established individual limit.

71 Second, as regards free distribution to schools, the Commission contends that the sixth indent of Article 21(1)(a) of Regulation No 1035/72, by requiring that the quantities distributed were to be supplementary to the quantities normally bought by school canteens, was intended to ensure a normal flow of the products on to the market.

Findings of the Court

72 It should first of all be pointed out that neither the 1995 summary report nor the supplement to the 1995 summary report, nor, moreover, the final report of the Conciliation Body, contains anything whatever that would allow the conclusion that, so far as the 1995 financial year is concerned, the correction in relation to the free distribution of products withdrawn from the market concerns distribution to large families and/or to schools. Those reports do not in any way specify the beneficiaries of the distribution in issue.

73 In any event, even if the correction proposed for the 1995 financial year does relate to free distribution to those two groups, it must be observed that, in the case of distribution to large families, first, the two circulars from the Minister for Agriculture to which the Greek Government refers were adopted in 1996 and therefore had no effect on expenditure during the 1995 financial year. Second, as regards the irregularities found by the Commission, the Greek Government merely claims that they concerned a number of isolated cases, without adducing the slightest evidence in support of its claims.

74 As regards the free distribution to schools, the wording of the sixth indent of Article 21(1)(a) of Regulation No 1035/72, which was applicable to the 1995 financial year, clearly provides that Member States are to ensure 'that the quantities... distributed [to children in schools] are supplementary to the quantities normally bought by school canteens'.

75 In those circumstances, the financial correction of 10% made by the Commission in respect of the problems relating to the free distribution of products withdrawn from the market in the fruit and vegetable sector cannot be called into question.

The Commission's lack of competence *ratione temporis*

Arguments of the parties

76 The Greek Government claims that, by Decision 1999/596, the Commission, contrary to the fifth indent of Article 5(2)(c) of Regulation No 729/70, as amended, and to Article 8 of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of 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), imposes certain corrections relating to expenditure prior to the 24 months preceding the written communication of its findings. Those corrections must therefore be considered void, in particular those relating to the fruit and vegetable sector.

77 The Commission replies that the written communication referred to in Article 8 of Regulation No 1663/95 was compulsory from the 1996 financial year. In any event, for the 1995 financial year, the Commission informed the Greek authorities, by letter of 8 July 1996, of the results of the on-the-spot checks carried out between 23 and 26 January 1996 and the inferences to be drawn from them. It also stated in that letter that any financial effects of those findings would be evaluated after it had received the reply to the letter. The expenditure in question was therefore effected during the 24-month period preceding the written communication of the results of the checks.

Findings of the Court

78 It should be pointed out that the fifth sub-subparagraph of Article 5(2)(c) of Regulation No 729/70, as amended, provides that '[a] refusal to finance may not involve expenditure effected prior to 24 months preceding the Commission's written communication of the results of those checks to the Member State concerned'.

79 Although Regulation No 1287/95, which inserted that provision in Regulation No 729/70, applies in principle, by virtue of the second subparagraph of Article 2(1), only to the financial year beginning on 16 October 1995, Article 2(2) thereof provides that refusal to grant financing as referred to in

Article 5(2)(c) of Regulation No 729/70, as amended, may not relate to expenditure claimed against a financial year prior to 16 October 1992, but without prejudice to clearance decisions in respect of the financial years preceding the entry into force of Regulation No 1287/95.

80 In its judgment in Case C-278/98 *Netherlands* v *Commission* [2001] ECR I-1501, paragraph 82, the Court held that, in order to give a useful sense to Article 2(2) of Regulation No 1287/95, the correction procedure must be taken to apply to financial years subsequent to 16 October 1992 which were not the subject of a clearance decision prior to the entry into force of that regulation.

81 It follows that, in this case, as far as the clearance of accounts for 1995 is concerned, the Commission was required to implement the procedure referred to in Article 5(2)(c) of Regulation No 729/70, as amended.

82 On the other hand, it follows from Article 10 of Regulation No 1663/95 that Article 8(1) of that regulation, which specifies, *inter alia*, the content of the written communication which the Commission is to send to the Member State concerned pursuant to the fifth sub-subparagraph of Article 5(2)(c) of Regulation No 729/70, as amended, is applicable only from the financial year beginning 16 October 1995, namely the 1996 financial year.

83 It is therefore necessary to consider whether the financial corrections imposed by Decision 1999/596 and forming the subject-matter of the present action involve expenditure effected during the 24 months preceding the Commission's written communication to the Hellenic Republic of the results of its checks.

84 In that regard, the documents before the Court contain various items of evidence, in particular the letter of 8 July 1996 on which the Commission relies and the letters referred to by the Advocate General in points 96 to 98 of his Opinion, which show that the Commission did in fact communicate in writing the results of its checks before expiry of the 24-month period. Since the Greek Government has not adduced the slightest evidence that such a conclusion is unfounded, the Commission must be held to have fulfilled its obligations under the fifth sub-subparagraph of Article 5(2)(c) of Regulation No 729/70, as amended.

85 It follows that the plea in law alleging that the Commission lacked competence *ratione temporis* cannot be upheld.

86 Since none of the pleas in law put forward by the Greek Government has been successful, the application must be dismissed in its entirety.

Costs

87 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.**

Jann von Bahr Edward

La Pergola Sevón

Delivered in open court in Luxembourg on 6 December 2001.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber