OPINION OF ADVOCATE GENERAL ALBER

delivered on 6 July 2000 [1]

I — Introduction

1. With the present action, the Hellenic Republic is seeking the annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund ('EAGGF'), [2] in so far as that decision excluded from Community funding, in respect of the applicant, an amount of GRD 8 093 595 532 for expenditure relating to the arable crops, beef and veal, fruit and vegetable, and wine sectors. The Commission claims that there have been serious deficiencies in the management and control system in Greece which were discovered during investigations in 1994 and 1995.

2. The Hellenic Republic considers that the contested Commission decision must be annulled or, in the alternative, modified, since it is based on a misapprehension of the facts and on an incorrect, or otherwise insufficient, statement of reasons. In adopting that decision, the Commission exceeded the limits of its discretion, while, particularly in relation to the compulsory distillation of wine, relying on an insufficient legal basis for imposing the correction.

II — Forms of order sought

3. The Hellenic Republic has therefore brought an action against the Commission, claiming that the Court should:

(1) hold the action admissible;

(2) annul, or otherwise modify, Commission Decision C(98) 1124 final of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

4. The Commission contends that the Court should:

1 — Original language: German.
2 — OJ 1998 L 163, p. 28.

(1) dismiss the action brought by the Hellenic Republic;

(2) order the Hellenic Republic to pay the costs.

III — General observations on the EAGGF rules and applicable legislation

A — General rules

5. The fundamental provisions on the financing of the common agricultural policy are laid down in Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy,[3] last amended by Regulation (EC) No 1287/95.[4]

6. Financing is effected through the 'European Agricultural Guidance and Guarantee Fund', which (under Article 1(1)) comprises two sections, the Guarantee Section and the Guidance Section. The Guarantee Section finances (under Article 1(2)) refunds on exports to third countries and — as in the present case — intervention intended to stabilise the agricultural markets. The Guidance Section finances (under Article 1(3)) common measures adopted in order to achieve the objectives of the agricultural policy — as set out in Article 39(1)(a) of the Treaty (now, after amendment, Article 33(1)(a) EC) — including measures to effect structural adjustments.

7. As far as payment of aid is concerned, Article 4(2) provides:

'The Commission shall make available to Member States the necessary credits so that the designated authorities and bodies may, in accordance with Community rules and national legislation, make the payments...

...'

8. Under Article 5(1)(a) and (b), those authorities must transmit to the Commission estimates and annual accounts, accompanied by the necessary documents.

9. Under Article 5(2)(b), after consulting the European Agricultural Guidance and

3 — OJ 1970 L 94, p. 13.
4 — OJ 1995 L 125, p. 1.

Guarantee Fund Committee, the Commission must, '... before the end of the following year, on the basis of the documents referred to in paragraph 1(b), make up the accounts of the authorities and bodies'.

10. In order to ensure that payments are made correctly, the Member States are required to take further measures. To that end, Article 8 provides as follows:

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

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

— prevent and deal with irregularities;

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

...'

11. Furthermore, the Member States are required under Article 9 to cooperate in inspections and to provide information.

12. If a Member State infringes the Community rules or fails to comply with its obligations, the Commission is required to refuse to bear the expenditure, since, under Article 8(2), the financial consequences of 'irregularities or negligence attributable to administrative authorities or other bodies of the Member States' are not to be borne by the Community.

13. Similarly, under Article 1(4), 'expenditure relating to administrative costs and personnel borne by Member States and by recipients of aid from the Fund' is not to be paid.

14. The necessary reductions can be calculated on the basis of the actual loss incurred or as flat-rate percentages. In this connection, the Commission adopted the relevant guidelines in the Belle Group Report (Document VI/216/93 of 1 June 1993), which were approved by the Member

States. Specifically, the Belle Group Report proposes the following three categories of flat-rate corrections:

'(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.'

15. The guidelines further provide that, where there is doubt as to the rate of correction to be applied, the following considerations may be taken into account (as mitigating factors):

'— whether the national authorities took effective steps to remedy the deficiencies as soon as they were brought to light;

— whether the deficiencies arose from difficulties in the interpretation of Community texts'.

16. Therefore, under the guidelines set out in that report, in assessing the rate at which flat-rate corrections are to be applied, where it is not possible to determine specific amounts which have been paid out at the expense of the EAGGF, the risk of loss to the EAGGF is firstly to be calculated on the basis of the deficiencies found. In that regard, the effectiveness of the control system as a whole, individual elements of that system or the implementation of those controls must be taken into consideration. Account must also be taken of the seriousness of the deficiencies and the measures to combat fraud.

17. With regard to the decision on the clearance of the accounts, Article 8(a) of Regulation (EEC) No 1723/72 [5] provides as follows:

'The decision to make up the accounts mentioned in Article 5(2)(b) of Regulation (EEC) No 729/70 shall cover:

(a) the determination of the amount of expenditure incurred in each Member State during the year in question, recognised as chargeable to the EAGGF, Guarantee Section;

...'

B — Particular provisions

18. In order ensure greater clarity and easier comprehension, the particular provisions will not be set out in succession at this point, but will be included with each of the individual sectors in question. Reference is therefore made to points 25 to 28 (arable crops and beef and veal sectors), 57 to 59 (fruit and vegetable sector) and 85 to 95 (wine sector) below.

C — Case-law principles on the clearance of accounts procedure

19. It should firstly be stated that the clearance of accounts procedure is intended to ensure that the funds made available to the Member States have been used in accordance with the Community rules applicable within the framework of the common organisation of the market.

20. The Court has held that Article 8(1) of Regulation No 729/70 — see point 11 above — which expressly lays down in that specific area the obligations imposed on the Member States by Article 5 of the EC Treaty, 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. It 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, even if the specific Community

5 — Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ 1972 L 186, p. 1), as amended by Commission Regulation (EEC) No 295/88 of 1 February 1998 (OJ 1988 L 30, p. 7).

act does not expressly provide for the adoption of particular supervisory measures. [6]

21. It is settled case-law that where the Commission refuses to charge expenditure to the EAGGF on the ground that it was incurred as a result of breaches of Community rules for which a Member State can be held responsible, it is not required to demonstrate exhaustively that the information transmitted by the Member States is inaccurate, but merely to adduce evidence of serious and reasonable doubt regarding the figures notified by the national authorities. [7] Where, in refusing to bear certain expenditure, the Commission claims that there has been a breach of the rules on the common organisation of the agricultural markets, it is obliged to give reasons for its decision and indicate how the absence of, or defects in, inspection procedures operated by the Member State in question were found. [8]

22. Consequently, it is for the State to show that the Commission's calculations and findings are incorrect and to adduce the most detailed and comprehensive evidence that its own information and figures are accurate. [9] As can be seen from the above-mentioned judgment, the Member State in question cannot rebut the Commission's findings by mere assertions, but must indicate specific circumstances by reference to which, for example, the existence of a reliable and operational supervisory system can be proven.

23. If the Member State is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts, which give sufficient grounds for a payment reduction, as to the existence of an adequate and effective series of supervisory measures and inspection procedures. [10]

24. In refusing to bear expenditure within the framework of the grant of funds through the EAGGF, the Commission is not required in principle to prove that actual loss has occurred. If such specific cases cannot be proven, proof of a (theoretical) risk of loss to the EAGGF is sufficient.

6 — See Case C-2/93 *Exportslachterijen van Oordegem* [1994] ECR I-2283, paragraphs 17 and 18, and Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 45.

7 — Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 40, with further references.

8 — Case C-242/96 *Italy* v *Commission* [1998] ECR I-5863, paragraph 58, and Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 23.

9 — Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 35.

10 — Case C-242/96 *Italy* v *Commission*, cited in footnote 8, and Case C-8/88 *Germany* v *Commission*, cited in footnote 8.

IV — Opinion

A — Corrections in the arable crops and beef and veal sectors

25. In these sectors the Commission has not recognised expenditure amounting to GRD 1 877 531 872 (which corresponds to 2% of the declared expenditure). [11] The Commission essentially justified its corrections on the ground that the producers' organisations in the Hellenic Republic had made an average deduction of 2% from the compensatory payments and premiums to be paid to the producers (members of the organisations and non-members) in order to cover their own costs.

1. Particular provisions

26. Under Article 2(1) of Regulation (EEC) No 1765/92, [12] Community producers of arable crops may apply for a compensatory payment under the conditions set out in Title I of that regulation.

27. With regard to the amount of the compensatory payments, Article 15(3) states:

'The payments referred to in this Regulation are to be paid over to the beneficiaries *in their entirety*'. [13]

28. Under Regulation (EEC) No 2066/92 [14] the conditions for the grant of premiums for beef producers were redefined and Article 30a was inserted into Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal. [15] That article is worded as follows:

'The amounts to be paid pursuant to this Regulation shall be paid *in full* to the beneficiaries'. [16]

11 — Specifically, expenditure amounting to GRD 1 732 138 831 was declared in the arable crops sector and GRD 145 393 041 in the beef and veal sector.

12 — 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).

13 — Emphasis added.

14 — Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49).

15 — OJ 1968 L 148, p. 24.

16 — Emphasis added.

2. Summary Report

29. In its Summary Report concerning the corrections in the arable crops and beef and veal sectors, the Commission stated the following:

(a) Arable crops sector

30. According to the findings of the Commission, the Associations of Agricultural Cooperatives (hereinafter: the Associations) deal with the computerised processing of applications for aid and the payment of the relevant amounts for all beneficiaries, i.e. members and non-members of the Associations. On the basis of an agreement at national level, the Associations retained approximately 2% of the aid in each case to cover their costs. However, that action is contrary to Article 15 of Regulation No 1765/92, under which the amounts to be paid must be paid over to the beneficiaries in their entirety.

31. It is apparent from the decision of the Greek Minister for the Economy and Agriculture of 10 November 1993 that, firstly, the Associations pay the relevant aid to the beneficiaries and, secondly, that the agricultural directorates are responsible for verifying the payments made by the Associations. The actual situation in the Hellenic Republic appeared to be that, after receiving the applications for aid, the regional directorates passed them on to the Associations which were then responsible for processing the data, examining the applications for aid, compiling a computerised list and, lastly, paying the aid to the beneficiaries. The regional directorate is to be regarded as a supervisory authority, but appears to have failed to perform that function and to have approved payment lists without having conducted any real verification. No effective control was exercised for the 1993 and 1994 financial years, since the regional directorates did not have the necessary technical equipment and thus did not have access to the Associations' databases.

32. The Associations are responsible for performing public functions, the costs of which should not be imposed on the Greek farmers. It is thus apparent that there is an infringement of Article 15 of Regulation No 1765/92. Such action also infringes Article 1(4) of Regulation No 729/70 in so far as administrative costs or execution costs in connection with the grant of Community aid were passed on.

33. The Commission then informed the Hellenic Republic that an action for failure to fulfil obligations would be brought against it if the current practice was not brought to an end. The Hellenic Republic

was also notified that the Commission would propose a correction of 2%.

34. As part of the conciliation procedure requested by the Hellenic Republic, it argued that the existing statutory basis be changed and that a judgment by the Court of Justice in *Jensen*,[17] which was of importance to the present case, should be awaited. In the light of the first argument, the Commission then refrained from bringing an action for failure to fulfil obligations. The Commission could not concur with the second argument, since it took the view that the judgment in *Jensen* could not be applied to the present case. The *Jensen* case concerns the lawfulness of a set-off in connection with the grant of aid, whereas the present case relates to the indirect financing of administrative expenditure at national level, where important functions in connection with the grant of aid have been transferred to the Associations.

35. In the conciliation procedure the Hellenic Republic submitted new arguments. According to those arguments, the contested retention had been arranged not on the basis of Greek Law No 1409/83, but on the basis of a voluntary agreement. Even after examining that submission, which had, in the view of the Commission, been lodged out of time, the assessment remained that the Associations were responsible for managing the aid and therefore performed public functions. The costs connected with that service should not be passed on to the Greek producers. Rather it was for the Member State to pay a consideration for the service provided.

36. The competent Greek authorities had claimed that the retention in each case could vary between the individual cooperatives. However, no evidence was produced in support of that claim.

(b) Corrections in the beef and veal sector

37. As in the arable crops sector, the Commission found that in the beef and veal sector each of the producers' organisations had retained at least 2% of the aid in order to reimburse the administrative costs incurred. However, that is contrary to Article 30(a) of Regulation No 805/68[18] under which the amounts to be paid must be paid in full to the beneficiaries. The Commission therefore applied a correction

17 — Case C-132/95 *Jensen and Korn- og Foderstofkompagniet* v *Landbrugsministeriet* [1998] ECR I-2975.

18 — See point 28 above.

of 2% for the 1993 and 1994 financial years as part of the clearance of accounts for 1994.

38. In the conciliation procedure, the Greek authorities argued that the retention by the producers' organisations was based on a voluntary agreement between the producers' organisations and the beneficiaries and that the level of retention varied between 0.5% and 2%. The conciliation body reached the conclusion, however, that the Greek authorities could not produce any evidence in support of that claim. The conciliation body therefore accepted that a correction of 2% was justified.

3. Submissions of the applicant

39. The Greek Government argues, first of all, that the contested retention took place on a voluntary basis and was not applied to all producers. Since 1993 it had no longer been founded on Law No 1409/83, but stemmed from an agreement concluded between producers' organisations and their members. The retention was not therefore effected on a statutory basis and was not connected to the covering of costs linked to the operation of aid management, but was the consideration for general services provided by the producers' organisations, which did not perform any public functions. The corrections applied by the Commission were therefore based on a misassessment of the deductions made.

40. Secondly, the Greek Government takes the view that the Commission may not impose any financial correction as part of the clearance of accounts. The clearance of accounts has a preventive character and does not permit penalties to be imposed on Member States. For that purpose the Commission would have had to pursue the route of proceedings for failure to fulfil obligations; however, in the context of clearance of accounts it cannot establish any treaty infringement or impose financial penalties on the Member States.

41. Thirdly, the argument is submitted, in the alternative, that the applicable provisions of Community law do not preclude the Greek action. In accordance with the case-law of the Court of Justice,[19] a deduction from the aid payable is permitted where that is consistent with the costs actually incurred and the normal costs which might be passed on in other cases in national law and where the amount of that deduction is not such as to deter the

19 — The Greek Government relies in this respect on the judgments in Case 31/78 *Bussone* [1978] ECR 2429 and in Case 233/81 *Denkavit Futtermittel* v *Germany* [1982] ECR 2933.

beneficiaries from participation in the support programme or to impair the functioning of the common organisation of the market.

42. Neither Regulation No 805/68 nor Regulation No 1765/92 contain express provisions which prohibit deductions from the aid payable. The rules of Article 15 of Regulation 1765/92 and Article 30a of Regulation No 805/68 cited by the Commission were adopted after the judgment had been delivered in *Denkavit*[20] without the Community legislature expressly prohibiting the imposition of administrative costs. The differing wordings of the abovementioned articles also suggest that there is no generally applicable rule which prohibits deductions from the aid payable. The Community legislature merely wished to prevent the beneficiaries having to bear costs which were not connected to the grant of aid. It is thus apparent from the two abovementioned articles only that the aid is to be paid to the beneficiaries, and not a third party, that no parafiscal levies or other charges which are not connected the grant of aid may be imposed on the beneficiaries and that the functioning of the common organisation of the market may not be impaired.

43. Fourthly, and likewise in the alternative, the Greek Government argues that the deductions made by the Associations vary between 0.5% and 2% of the aid to be paid. The Commission should therefore only have applied a correction rate of 1.25%.

44. Fifthly, it is claimed that under Greek Law No 2538/97, which entered into force on 1 December 1997, the contested deductions from aid at the expense of the EAGGF were prohibited.

4. Submissions of the defendant

45. The Commission rejects the accusation that it has incorrectly assessed the deduction made by the Associations and argues that the Hellenic Republic has inflicted a loss on the EAGGF by permitting the Associations to retain 2% of the aid to be paid as reimbursement for administrative costs incurred and thereby also failed, *inter alia*, to fulfil its obligations under Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68. Greek Law No 1409/83 was applicable for the 1994 accounting year and had afforded the Associations the opportunity to make a deduction of 2% from the aid to be paid. The abovementioned agreement between the producers' organisations and the producers merely constitutes the acceptance of the conditions laid down by statute. The costs connected with the payment of aid should not be chargeable to the EAGGF. Even if a statutory provision such as Article 2 of Law No 1409/83 was

20 — Cited in footnote 19.

not applicable, the Hellenic Republic, which conferred a public function on the Associations, should have prevented them from retaining a certain percentage of the aid. Lastly, the argument that the deduction was voluntary was not put forward until two years after the objections had been made by the Commission and thus after the expiry of the period within which that submission would have had to be considered.

46. As regards the argument that Regulation No 729/70 is not an appropriate legal basis for a financial correction, the Commission takes the view that it is not required under Article 169 of the EC Treaty (now Article 226 EC) to bring proceedings for failure to fulfil obligations whenever Community law is infringed. It may also assess such infringements as part of the clearance of accounts. Since the Commission must ensure that only proper expenditure is charged to the EAGGF, it is required, in so far as it establishes infringements of Community law with regard to the recognition of expenditure, to correct the expenditure declared by the Member State.

47. The third argument put forward by the Greek Government, that Community law does not preclude a deduction from aid, is rejected by the Commission on the ground that the case-law cited by the Hellenic Republic is not relevant to the present case. The provisions of Community law which were applicable at that time contained no rules corresponding to Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68. However, it is apparent from those two provisions that the Member States are prohibited from deducting administrative costs from the Community aid to be paid.

48. Lastly, as regards the level of the correction, the Commission argues that it is clear from its investigations that, in the cases inspected by it, there was a deduction of at least 2% from the amount of aid in each case. The Greek authorities had not been able to produce evidence in this case that a lower percentage had been applied.

5. Assessment

49. In accordance with the wording of Article 15(3) of Regulation No 1765/92 and of Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, the relevant payments are to be paid over to the beneficiaries 'in full' or 'in their entirety'.

50. The second recital of Regulation No 1765/92 expressly states that the compensatory payments are intended to com-

pensate for the loss of income caused by the reduction of the institutional prices within the framework of the new support system for producers of certain arable crops introduced as a result of the reform of the common agricultural policy. Under the third recital of Regulation No 2066/92 the purpose of the premiums in question is to grant substantial compensation for the consequences for producers of the reduction of the intervention price in the beef and veal sector.

51. The objective of compensation for the loss of income caused by the reduction of the institutional prices can thus be achieved only if the compensatory payments are paid over to the farmers affected by the reform of the common agricultural policy in full or in their entirety.

52. In the joined cases of *Kellinghusen* and *Ketelsen*,[21] the Court of Justice stated with regard to this issue, that 'Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, prohibit the authorities in the Member States from making a deduction from the payments made or from demanding the payment of administrative fees charged for processing applications and having the effect of reducing the amount of the aid'.

53. The case-law of the Court of Justice cited by the Greek Government[22] is not relevant to the present case. Regulation (EEC) No 1725/79,[23] which had to be interpreted in those cases, does not contain any rules on the costs of the checks to be conducted by the Member States. The wording of that regulation did not prohibit the Member States from conducting checks without remuneration or from requiring the undertakings concerned to reimburse the costs of those checks.

54. The Member States cannot therefore be granted the power under Regulation No 1765/92 and Regulation No 805/68 to reduce the compensatory payments by deducting administrative fees, since that would result in varying compensation of the income losses suffered by the farmers. It is immaterial whether the deductions were made on the basis of a national statutory provision or an agreement between the producers and the producers' organisations. The Member States are in any case required to ensure that the beneficiaries receive the compensatory payments to which they are entitled in full or in their entirety.

55. The submissions of the Greek Government are therefore unfounded and consequently must be rejected.

21 — Joined Cases C-36/97 and C-37/97 *Kellinghusen* v *Amt für Land- und Wasserwirtschaft Kiel* and *Ketelsen* v *Amt für Land- und Wasserwirtschaft Husum* [1998] ECR I-6337, paragraph 21).

22 — Cited in footnote 19.

23 — Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (OJ 1979 L 199, p. 1).

B — Fruit and vegetable sectors

56. The Commission applied a correction amounting to GRD 5 138 253 067[24] in this sector, justifying that correction on the ground that there were deficiencies in the Greek management and control system and in the operation of the producers' organisations.

1. Particular provisions

57. The fundamental provisions governing the common organisation of the market in fruit and vegetables are contained in Regulation (EEC) No 1035/72 of the Council of 18 May 1972.[25]

58. As regards the producers' organisations, Article 13, as amended by Regulation (EEC) No 3284/83,[26] provides as follows:

'1. For the purposes of this Regulation, "producers' organisation" means any organisation of fruit and vegetable producers:

(a) which is formed on the producers' own initiative for the purposes, in particular:

— of promoting the concentration of supply and the stabilisation of prices at the producer stage in respect of one or more of the products referred to in Article 1, and

— of making suitable technical facilities available to producer members for presenting and marketing the relevant products;

(b) which requires the producer members:

— to sell through the producers' organisation their total output of the product or products by reason of which they have become members; the organisation may, however, waive this requirement in respect of certain quantities,

24 — Specifically, a correction of 10% (or GRD 448 497 124) was applied in respect of citrus fruits and a correction of 10% in total (or GRD 4 689 755 943) in respect of peaches and nectarines, where expenditure amounting to 20% was not recognised for the nomos (district) of Pella.

25 — OJ 1972 L 118, p. 1.

26 — Council Regulation (EEC) No 3284/83 of 14 November 1983 amending Regulation (EEC) No 1035/72 on the common organisation of the market in fruit and vegetables as regards producers' organisations (OJ 1983 L 325, p. 1).

— to apply, with regard to production and marketing, rules which have been adopted by the producers' organisation with a view to improving product quality and adapting the volume of supply to market requirements, and

— to provide the information requested by the organisation on harvests and supplies;

(c) which has been recognised by the Member State concerned pursuant to paragraph 2.

2. Member States shall at the request of the organisations concerned grant them the recognition referred to in paragraph 1(c) if:

— there is sufficient evidence as regards the duration and effectiveness of their activities, in particular the tasks referred to in paragraph 1,

— from the date of recognition they keep specific accounts in respect of the activities for which recognition is sought.

Member States:

— shall take a decision on the granting of recognition within three months from the filing of the request,

— shall notify the Commission, within a time-limit of two months, of any decision to grant, refuse or withdraw recognition,

— shall draw up each year a report on the application of this Article ...'

59. With regard to the withdrawal of products listed in Annex II of that regulation,[27] Article 15(1), as amended by Regulation (EEC) No 1154/78,[28] provides that producers' organisations or associations of

27 — These are products covered by the price and intervention system.

28 — Council Regulation (EEC) No 1154/78 of 30 May 1978 amending Regulation (EEC) No 1035/72 on the common organisation of the market in fruit and vegetables and Regulation (EEC) No 2601/69 laying down special measures to encourage the processing of certain varieties of oranges (OJ 1978 L 144, p. 5).

such organisations may fix a withdrawal price for certain products below which the producers' organisations will not offer for sale products supplied by their members. If a withdrawal price is so fixed, in respect of products which conform to the quality standards, producers' organisations or associations of such organisations must grant an indemnity to the producers for the quantities that remain unsold. If marketing rules aimed at limiting the volume of the supply of products are applied, the producers' organisations may decide not to put on sale products which, while conforming to the quality standards, do not comply with the marketing rules referred to above. In that case the producers are to be granted compensation, calculated on the basis of the withdrawal price, for the quantities that remain unsold. To finance those measures, associated producers must establish an intervention fund, maintained by contributions assessed on quantities offered for sale.

2. Summary Report

60. In its Summary Report, the Commission states that in the course of several inspections it found significant deficiencies in the management and control system in the Hellenic Republic in the fruit and vegetable sectors.

61. The inspections carried out for peaches and nectarines in Macedonia in August 1994 and August 1995 revealed that producers' organisations had been recognised which had neither the technical equipment necessary for marketing the products in question nor an intervention fund, and that the coefficient used to fix the withdrawal price was incorrect. A further inspection was carried out in the following year in the nomoi (districts) of Pella and Imathia. In that inspection, the Community inspectors had concentrated on producers' organisations which the Greek authorities had initially refused to recognise.

62. For Imathia, the findings were by and large satisfactory. In Pella, however, a large number of producers' organisations should not have been recognised on account of inadequate technical equipment.

63. The Commission also discovered a number of deficiencies in the area of citrus fruits. Alarming weaknesses were evident in the management and control system concerning the recognition and control procedures of the producers' organisations. In addition, the inspection of a large producers' organisation in Arta uncovered a number of deficiencies. The Commission asked the Greek authorities to conduct an investigation of the withdrawal of oranges

in the nomos of Arta; however, no such investigation was satisfactorily conducted. The Commission therefore proposed a correction of 10% both for citrus fruits and for peaches and nectarines, whilst notification was given of a correction of 20% for the nomos of Pella.

64. During the bilateral negotiations, the Greek authorities reported that improvements to the system had been introduced as from the 1996 marketing year. The Commission pointed out, however, that the principal problem lay in the recognition procedure and in the checks carried out on the producers' organisations and that the abovementioned changes in 1994 had not yet had any effect. The conciliation body to which the Greek authorities referred the matter merely called into question the proposed 20% correction for the nomos of Pella. The Commission inspected the producers' organisations with which fault had already been found in national checks. However, the Commission did not consider that it was able to revise the proposed correction. It initially proceeded on the basis of a 50% reduction for the total declared expenditure and wished also to extend this to the 1992 to 1994 marketing years. However, in order to accommodate the Greek authorities and to honour their efforts, the Commission proposed only a 10% correction, with the exception of the nomos of Pella. There had been more serious deficiencies in that nomos than in the other districts.

3. Submissions of the applicant

65. In this connection the Hellenic Republic accuses the Commission of having adopted its decision on the basis of a misassessment of the facts and having exceeded the limits of its discretion under Article 5(2)(b) of Regulation No 729/70.

66. The Commission firstly announced that it was imposing a correction of 50% for the financial years 1992 to 1994. However, after the Commission had been notified by the Greek authorities of a series of measures taken in 1994, the Commission withdrew its reservations concerning the financing of expenditure for the 1992 and 1993 marketing years. Since the measures taken to improve the management and control system had been taken as early as 1994, the correction applied by the Commission as part of the clearance of accounts for 1994 was incorrect.

67. The Commission has exceeded the limits of its discretion since the deficiencies

found had not justified the correction made and that correction was arbitrary. A 10% reduction should be applied only where it can be concluded that there is an increased risk of loss to the EAGGF. In its corrections, the Commission must take into consideration the nature and severity of the infringements and the financial loss incurred by the Community. With regard to oranges, the Commission inspected only one nomos out of a total of 52 in Greece. As far as peaches and nectarines were concerned, the Commission inspected only 2 (of the 52) nomoi and restricted itself to those producers' organisations whose conduct had already been criticised by the Greek authorities. The 20% correction applied for the nomos of Pella should also be regarded as unjustified, since in that nomos the Commission inspected only eight producers' organisations to whose recognition the Greek authorities had already objected.

68. The Hellenic Republic further argues that the senior officials entrusted with carrying out the checks had been issued binding guidelines for the correct and proper implementation of the checks. Those instructions concerned quality control, the proper operation of the producers' organisations and the correct procedure for withdrawal. There is therefore no cause for objection to the operation of the producers' organisations, which is also shown by the fact that the Commission withdrew its reservations concerning the 1992 and 1993 financial years. For peaches and nectarines, similar instructions were issued relating to the recognition of certain producers' organisations and the checks to be conducted. Furthermore, a computerised form was devised for members of the producers' organisations in order to be able to verify their productivity and economic efficiency. As far as the supposed lack of technical equipment and intervention funds is concerned, the Hellenic Republic argues that Regulation No 1035/72 does not prescribe that the producers' organisations must have their own technical equipment, with the result that it is also possible to hire such equipment. That regulation does not lay down a ceiling for the intervention funds either, and the possibility that the financial means of the producers' organisations might be inadequate is not in itself a reason to refuse recognition.

69. As regards the producers' organisation in Arta, the Greek Government points out that a computerised membership list was created, accounting was reorganised and the regulations were adjusted. Through those changes there were repercussions on the operation of the producers' organisation, but it was not possible to establish any illegitimate payment of Community aid.

The deficiencies to which the Commission objects regarding registration on the membership list had no consequences.

70. With regard to the supposed deficiencies in the withdrawal of oranges in the nomos of Arta, further payments were suspended immediately, further information was requested from the competent local authorities and a special investigation group was appointed which nevertheless concluded that no irregularities had occurred in that case.

4. Submissions of the defendant

71. The Commission firstly points out that the clearance of accounts for 1994 covers the period from 16 October 1993 to 15 October 1994. Since the marketing year for peaches and nectarines extends from 1 May to 31 October and for oranges from 1 October to 15 July, compensatory payments for the withdrawal of peaches and nectarines applied for in August 1994 could not be taken into consideration until the clearance of accounts for 1995.

72. The correction proposals were made by the Commission on the basis of the investigations conducted by it. Those investigations had uncovered a series of irregularities. Thus, in the course of an investigation in August 1994 in the area of peaches and nectarines, Commission officials found that some producers' organisations had not provided their members with the necessary technical facilities for marketing the products, that others did not have an intervention fund, that the withdrawal coefficient had been incorrectly applied and that the obligation to define the size of fruit had not been complied with. On the basis of those findings, a correction of 50% was proposed for the 1992 to 1994 marketing years. While the Greek authorities had taken measures to improve the management and control system, new investigations had revealed that there were still significant deficiencies, in particular regarding packaging and mandatory definition of fruit size. In the area of citrus fruit, the same irregularities occurred as for peaches. Those irregularities concerned the recognition of producers' organisations, the controls on the operation of those organisations and the existence of intervention funds. Even though the Commission did not apply a correction for the 1992 and 1993 marketing years, the existence of the abovementioned deficiencies justified the proposed reduction of 10% for the 1994 marketing year.

73. As regards the accusation that it exceeded the limits of its discretion, the Commission argues that a 10% correction for

the declared expenditure relating to citrus fruit and peaches and nectarines was justified on account of the deficiencies found and the resulting risk of loss to the EAGGF. The losses to the EAGGF were in any case higher than the correction made by the Commission.

74. In reply to the accusation that the inspections were supposedly not representative, the Commission contends that the inspections conducted by it concerning peaches and nectarines in the nomoi of Pella and Imathia had covered 95% of Greek production of those products and 93.5% of the total amount of funding paid to the Hellenic Republic. The inspections for citrus fruit — where the nomoi of Agulide, Arta and Leucade were inspected — were also representative, since 74% of all funds for the 1994 financial year were paid over to that area. The inspections in the nomos of Pella had revealed that 48% of the producers' organisations did not have the necessary technical facilities for marketing fruit.

75. A 20% correction for the nomos of Pella was justified, since more serious deficiencies had been found there than in the other nomoi.

76. With regard to the argument put forward by the Greek authorities regarding the operation of the producers' organisations, the Commission claims that it has not been substantiated what instructions were drawn up for the producers' associations with a view to improving quality control. In addition, the measures taken did not relate to the deficiencies established during an inspection in April 1994, according to which producers' organisations did not have any membership lists and admission was possible even after the expiry of the admission obligation under Article 5 of Regulation (EEC) No 2602/90.[29] As a result of those deficiencies, the competent authorities should have withdrawn recognition from the producers' organisations. The improvements referred to by the Hellenic Republic were not decided until June 1995 and thus could not have had any effect during the 1994 marketing year. The investigations conducted in the nomos of Pella had revealed that 48% of the producers' associations had neither their own nor hired equipment for presenting and marketing their products.

77. The Greek authorities had disputed a withdrawal of oranges in the nomos of

29 — Commission Regulation (EEC) No 2602/90 of 7 September 1990 laying down detailed rules concerning citrus fruit producers' organisations (OJ 1990 L 245, p. 13).

Arta, but had been unable to prove that no such withdrawal had taken place.

5. Assessment

78. It should firstly be stated that under Article 13(2) of Regulation No 1035/72, as amended by Regulation No 3284/83 — see point 58 above — Member States must grant the producers' organisations recognition only if there is sufficient evidence as regards the duration and effectiveness of their activities. The duties of a producers' organisation under Article 13(1) of that regulation include making suitable technical facilities available to producer members for presenting and marketing the relevant products.

79. In the present case the Greek Government could not prove that the findings made by the Commission regarding the lack of technical equipment held by producers' organisations and producers were inadequate. However, since the Court of Justice has held [30] that it is for the Member State to show that the Commission's findings are incorrect and to adduce the most detailed and comprehensive evidence that its own figures and information are accurate, it is not sufficient to make mere assertions. Rather, the Member State must indicate specific circumstances with which, for example, the existence of a reliable and operational supervisory system can be proven.

80. Nor has the Greek Government proven that the recognised producers' organisations have the intervention funds necessary under Article 15(1) of Regulation No 1035/72, as amended by Regulation No 1154/78, [31] for financing the measures in connection with the withdrawal of certain products.

81. Even though the Commission did not make any financial corrections for the 1992 and 1993 marketing years, that does not mean that it would not have been entitled to make corrections for the 1994 financial year on the basis of the same deficiencies in the management and control system. The Court has already ruled in this regard. In *Italy* v *Commission* [32] it held as follows:

'... Where the Commission did not carry out the correction due in respect of a

30 — See point 22 above.

31 — See point 59 above.

32 — Case 55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 67.

previous year, but tolerated the irregularities on grounds of fairness, the Member State does not acquire any right to demand to the same position to 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.'

82. With regard to the representativeness of the inspections conducted by the Commission, those inspections for the nomoi of Pella and Imathia covered 95% of Greek production of peaches and nectarines and 93.5% of the total compensatory payments made. The inspections for citrus fruit covered a total of 74% of the compensatory payments made in that sector for the 1994 financial year. Finally, for the nomos of Pella, the Commission found that 48% of the producers' organisations inspected did not have the necessary technical equipment.

83. It must therefore be assumed, as does the Commission, that the deficiencies found affected all or, in any case, substantial parts of the control system or at least related to the implementation of controls which are of vital importance for ensuring the legitimacy of expenditure. It can thus be concluded that there is a high risk of widespread loss to the EAGGF. Consequently, the corrections made by the Commission in the present case are justified. The reliance by the Greek Government on improvements made to the system cannot affect this view in any way, since those improvements were not decided until June 1995 and thus could not have had any effect during the 1994 marketing year.

C — *Wine sector*

84. In this sector the Commission declined to recognise expenditure amounting to GRD 629 212 616.[33] That correction is based, firstly, on deficiencies in the management and control system in connection with the permanent abandonment of wine-growing areas and, secondly, on failure to achieve the quantities of wines fixed for compulsory distillation.

1. Particular provisions

(a) Permanent abandonment of wine-growing areas

85. Regulation (EEC) No 1442/88[34] contains the fundamental provisions on the

33 — Specifically, expenditure amounting to 8.64% (or GRD 456 768 848) for set-aside and GRD 172 443 768 for compulsory distillation was not recognised.

34 — Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas (OJ 1988 L 132, p. 3).

granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas. Under the third recital in the preamble to that regulation, an incentive is to be given for the abandonment of wine-growing areas through the grant of premiums in amounts to be varied on the basis of the productivity of the areas concerned, covering the cost of grubbing-up operations, the loss of replanting rights and the loss of future income.

86. Under Article 2(3) the yield per hectare of the grubbed-up areas is to be calculated on the basis of the average yield declared for the recipient's holding and the productive capacity of the wine-growing area to be grubbed up assessed by the competent authority.

87. Under Article 4(2) the grant of the premium is subject to a written declaration in which the applicant undertakes to grub up the vines on the areas in respect of which the premium has been applied for or to have them grubbed up before 15 May of the year following that in which the application is submitted.

88. Regulation (EEC) No 2729/88 [35] laid down detailed rules for the application of Regulation No 1442/88. With regard to the objectives of that regulation, the fourth and sixth recitals state:

'Whereas in the interests of ensuring that the system runs efficiently and can be supervised, the nature of the information to be entered on the application for a premium must be laid down, and provision must be made for the checking of that information.'

'Whereas before the premium is paid... the production capacity of the areas to be grubbed up should be assessed, and whereas it should be verified that grubbing up of the said areas has actually taken place; whereas these findings must be certified in order to enable the applicant to prove that grubbing up has been carried out...'.

89. Under Article 4(2), on receiving the application for the grant of the premium, the competent authority must verify the information contained in the application, determine in particular the production capacity of the wine-growing area to be grubbed up on the basis of its age, its state of upkeep and the proportion of missing vines, calculate the yield per hectare of the areas concerned, and notify the applicant of the level of premium granted, after allowing him to submit his own observations.

90. Under Article 6(1) the competent authority must, at the applicant's request

35 — Commission Regulation (EEC) No 2729/88 of 31 August 1988 laying down detailed rules for the application of Regulation (EEC) No 1442/88 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums of wine-growing areas (OJ 1998 L 241, p. 108).

and within two months of the complete grubbing up of the vines located on the plots, verify that the operation has taken place and certify when it took place.

91. Regulation (EEC) No 2392/86 [36] contains the rules on the Community vineyard register. [37] The eleventh recital states that, by virtue of the information which it contains, the register constitutes a vital instrument for the management and monitoring of the market.

92. Under Article 4(1) of that regulation, the vineyard register was initially to be established by 27 July 1992 at the latest. That time-limit was subsequently extended to 31 December 1996 on account of technical difficulties encountered by some Member States. [38] Article 4(4) [39] provides that Member States which, on 1 July 1995, have not yet established a vineyard register or which have only established a partial register must, before 31 December 1998, establish reference charts covering the entire area under vines.

93. Council Regulation (EEC) No 2048/89 laying down general rules on controls in the wine sector [40] contains, in Title II, measures to improve controls to be carried out by Member States. The relevant principles are set out in Article 3:

'1. Member States shall take the necessary measures to improve control of compliance with the rules in the wine sector notably in the particular fields listed in the Annex.

2. The controls in the areas referred to in the Annex shall be carried out either systematically or by sampling. In the case of sampling, Member States shall ensure by their number, nature and frequency that controls are representative of the whole of their territory and correspond to the scale of the wine-sector products marketed or held with a view to their marketing.

Member States shall ensure that the competent authorities have a sufficient number of suitably qualified and experienced staff

36 — Council Regulation (EEC) No 2392/86 of 24 July 1986 establishing a Community vineyard register (OJ 1986 L 208, p. 1).

37 — With regard to the spirit and purpose of such a vineyard register, the second recital states that 'such a register is needed if vital information is to be obtained on production potential and trends, in order to ensure the proper functioning of the common organisation of the market in wine, and in particular of the Community arrangements on intervention and planting, and monitoring measures'.

38 — Council Regulation (EC) No 1549/95 of 29 June 1995 amending Regulation No 2392/86 establishing a Community vineyard register (OJ 1995 L 148, p. 37).

39 — Inserted by Regulation No 1549/95 and amended by Council Regulation (EC) No 1596/96 of 30 July 1996 amending Regulation No 2392/86 establishing a Community vineyard register (OJ 1995 L 206, p. 38).

40 — Council Regulation No 2048/89 of 19 June 1989 (OJ 1989 L 202, p. 32).

to carry out efficiently the wine controls referred to in the Annex in particular.'

(b) Compulsory distillation

94. Compulsory distillation was introduced because it was regarded as the most suitable way to absorb surpluses of table wine on the market. [41] Thus, Article 39(1) of Regulation No 822/87 provides that where, in respect of a given wine year, the market in table wine and wine suitable for yielding table wine is in a state of serious imbalance, compulsory distillation of table wine is to be decided on. The Commission is to fix the quantities that are to be delivered for compulsory distillation to eliminate production surpluses and thus restore a normal market situation, in particular as regards the levels of foreseeable availabilities at the end of a wine year and prices. The total quantity to be distilled is shared between the various wine-growing regions of the Community, grouped together by Member State. The quantity for distillation is then shared between table wine producers in each wine-growing region. Member States must notify the Commission of the quantities of table wine produced in each delimited wine-growing region. Those notifications then serve as a basis for setting the total quantity for distillation in the Community.

41 — See forty-fourth recital in the preamble to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1).

2. Summary Report

(a) Permanent abandonment of wine-growing areas

95. In the Summary Report, the Commission states that, in the course of inspections conducted in September 1995, it found a number of deficiencies in the management and control system in connection with the permanent set-aside of wine-growing areas. Since there was neither a vineyard register nor a land register in Greece, the necessary measures had not been taken to ensure a proper control system for designating and surveying the plots. The inspection measurements of several plots had revealed that the estimates of the Greek inspectors had exceeded the actual area by 10% on average. It had not been possible to explain measurement methods for determining the surface areas. As had been confirmed by one local Greek inspector, measurements had not been performed after the set-aside. Furthermore, discrepancies had arisen between production declarations and recognised yields. The relevant provisions do not provide that the average for a region should be used to determine yield, but the plots set aside must be taken into consideration in each case. The on-the-spot inspections also revealed that the areas had not been set aside in accordance with the Community legislation. It is also clear that the post set-aside checks were con-

ducted only after the prescribed period had expired. The Commission therefore considers a correction of 8.64% of expenditure to be justified.

(b) Compulsory distillation

96. The reason for a correction in this sector can be seen from the clearance of accounts for 1991, in which it emerged that several Member States (including the Hellenic Republic) had failed to comply with their obligations regarding compulsory distillation and had systematically underestimated the stocks at the end of the marketing year. As a result, compulsory distillation had been carried out on too small a scale, the operation of the common organisation of the market in wine had been impaired and the costs of private storage had increased.

97. As regards compulsory distillation, the Commission initially assumed a shortfall of 153 000 hectolitres. In the conciliation procedure initiated by the Greek authorities, the Commission corrected that amount on the basis of documents produced by the Greek authorities and now assumes a deficit of 135 569 hectolitres.

3. Submissions of the applicant

(a) Permanent abandonment of wine-growing areas

98. In the view of the Hellenic Republic, the correction made amounting to 8.64% is not justified, since the control and inspection system is operational and reliable. The on-the-spot checks, which covered 100% of the submitted documents, were entrusted to specialised agricultural experts and were conducted both before and after set-aside.

99. The checks conducted before set-aside concerned the surface area, productivity and yields of the individual plots. The results of the checks and the data contained in the applications were published. The Greek system provides for verification of the data and the results of the checks by two different bodies. After the land is set aside, there is another on-the-spot check, including a new survey of the surface area, from which the data obtained are compared with the earlier data.

100. As far as the identification and surveying of surface areas is concerned, the

Greek Government argues that the existing system requires the applicant to indicate whether he manages a plot alone or together with another producer, or whether the plot is rented. As a result, the competent authorities are in a position to determine at any time the owner of each plot. The problems discovered by the Commission concerning the surveying of areas were attributable to the fact that there are no detailed certificates of ownership in Greece. No topographical schemata are attached to the existing certificates and the information regarding the area of the plots is estimated in the 'stremma' unit of measurement. The inaccuracies in the measurements which were criticised for the nomos of Achaios could be explained by the fact that large areas, the borders of which could not be precisely determined, were involved there, and measurements were made using a measuring tape and not using topographical instruments.

101. With regard to the alleged discrepancies between production declarations and yields, it is claimed that the average yield of a plot was calculated with great precision with due regard to the age of the vines, fructification, the strength of the vines and irrigation possibilities. Lastly, in order to assess the compensatory payments, the yield of a plot was compared with yields from the preceding years. In addition, the Greek Government refers to the fact that harvest declarations were not used to estimate the maximum yield of a plot in order to calculate the compensatory payments on that basis.

102. Furthermore, the Greek Government claims that the checks made were sufficient, particularly since they were strengthened on the recommendation of the EAGGF staff during the period from 1993 to 1994.

103. There was also cause for complaint at the correction applied by the Commission in the clearance of accounts for 1994, since it also took into consideration the 1992 to 1993 and 1994 to 1995 marketing years.

104. Lastly, it is submitted in the alternative that a correction of 8.64% is arbitrary and unjustified, since the figures concerning the areas for which compensatory payments were granted had been only 3.38% higher than the actual areas set aside.

(b) Compulsory distillation

105. In the view of the Greek Government, there is no legal basis for the application of

a financial correction in the area of compulsory distillation. The relevant legislation does not require the Member State to distill a certain quantity; rather the rules are addressed to the respective producer. A Member State cannot require the producers to subject a certain proportion of their production to compulsory distillation, since that would mean an infringement of the principle of economic freedom. Moreover, in the present case, the EAGGF has not suffered any loss, since no illegitimate aid was paid. In support of that claim, the Greek Government relies on the fact that none of the producers who participated in compulsory distillation received aid in connection with private storage.

4. Submissions of the defendant

(a) Permanent abandonment of wine-growing areas

106. Firstly, the Commission refers to the fact that the deficiencies in the control system concerning permanent set-aside have been known since the clearance of accounts for 1992 and 1993. The statements made by the Hellenic Republic are not such as to dispel the Commission's doubts regarding the existence of an operational system for recognition and determination of surface areas. It had been found during the inspections conducted by the Commission that the national inspectors were not in a position to determine surface areas on the basis of objective data and the ownership status of the plots.

107. Secondly, the Commission points out that financial corrections of 2% had been proposed in respect of the 1992 and 1993 accounting years. In the course of the inspections for the 1994 accounting year, it was found that, despite the deficiencies which had emerged, the national inspectors had not discovered any irregularities. The Commission had found in the nomoi of Achaios and Heraklion, however, that there had been difficulties in locating plots, surveying and determining yields. Moreover, there were no controls to verify the proper implementation of set-aside of areas. Large discrepancies could be observed between the surface areas for which aid had been recognised as due and the areas actually set aside. In addition, the documents on the set-aside of the areas were incomplete. No deduction had been made by the national authorities from the aid paid, even though the areas had not been set aside within the specified period.

108. The Commission therefore initially proceeded from the assumption of a cor-

rection of 17% for the 1993/94 financial year. As a result of the information subsequently communicated by the Greek authorities, the Commission eventually applied a correction of 8.64%.

5. Assessment

(a) Permanent abandonment of wine-growing areas

(b) Compulsory distillation

109. In the view of the Commission, it is apparent from the forty-seventh recital in the preamble to Regulation No 822/87 that it is incumbent upon each Member State to supervise and implement compulsory distillation. The Member States are required to take the necessary measures to ensure that the producers allocate the relevant quantities for distillation. To that end, the necessary controls have to be implemented by the Member State in order to achieve the general objective of the regulation in its territory. However, on-the-spot inspections revealed that the Greek authorities were not able to produce a list containing the inspected producers or those producers who had not delivered the full quantity for compulsory distillation.

110. As regards loss to the EAGGF, the Commission states that, since a certain quantity of table wine was not delivered for compulsory distillation, it must be assumed that that resulted in an increase in costs for private storage in the following marketing year.

111. Under Article 2(3) of Regulation No 1442/88 the competent national authority must calculate the productive capacity of the wine-growing area to be grubbed up. Thus, before payment of the premiums, the productive capacity of the wine-growing areas to be grubbed up must be calculated and it must be verified whether the areas have actually been grubbed up. Under Article 6(1) of Regulation No 2729/88 the competent authority must likewise, after the complete grubbing up of the vines located on the plots, verify that the operation has taken place and certify when it took place.

112. Under Article 3 of Regulation No 2048/89, Member States must take the necessary measures to improve the monitoring of compliance with the rules in the wine sector.

113. In the course of its inspections, the Commission found that there were difficulties in the identification, measurement and determination of the yields of the various plots. Moreover, discrepancies occurred

between the areas declared as set-aside land and the areas which were actually set aside. It was found in particular that, in this case also, the necessary technical equipment was not available.

114. The submissions of the Greek Government are not capable of proving that the Commission's findings are incorrect, since the Government has not adduced detailed or comprehensive evidence that its own information and figures are accurate. The Greek Government could not indicate any specific circumstances by reference to which the existence of a reliable and operational supervisory system could be proven. Similarly, with regard to the level of the correction applied by the Commission, the Greek Government could not prove that the calculation was incorrect.

115. The submissions of the Greek Government which are based on those arguments must therefore be rejected.

(b) Compulsory distillation

116. Under Regulation No 822/87, it is incumbent upon each Member State to supervise and implement compulsory distillation. The Court has held [42] that Member States are required to take the measures necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly, even if the specific Community act does not expressly provide for the adoption of particular supervisory measures.

117. However, since it is undisputed that the quantity for compulsory distillation laid down by the Commission under Article 39 of Regulation No 822/87 was not complied with, it must be assumed that the Hellenic Republic has infringed Article 8(1) of Regulation No 729/70 in conjunction with Article 5 of the EC Treaty (now Article 10 EC).

118. The Commission was able to calculate possible risks to the EAGGF only on the basis of the wine remaining in storage. Although there is no automatic correlation between the quantities of wine stored and the quantities not distilled, it would be difficult to make the calculation on any other basis. [43] Moreover, the Greek Government was unable to supply evidence of actual errors in the calculations.

119. The complaints made by the Greek Government in this regard must therefore be rejected.

42 — See point 20 above.

43 — See Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 96.

V — Costs

120. 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 an order that the Hellenic Republic pay the costs, and the latter has been unsuccessful in its submissions, the Hellenic Republic must be ordered to pay the costs.

VI — Conclusion

121. In the light of the foregoing, I propose that the Court should:

(1) dismiss the action;

(2) order the Hellenic Republic to pay the costs.