Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

22 January 2013 *

(EAGGF — Guarantee Section — Expenditure excluded from financing — Processing of citrus fruits, cotton, bovines, and olive oil — Financial audit — Key controls — Proportionality — Recurrence — Duty to state reasons)

In Case T-46/09,

Hellenic Republic, represented by V. Kontolaimos, I. Chalkias, S. Charitaki and S. Papaïoannou, acting as Agents,

applicant,

v

European Commission, represented by A. Markoulli and H. Tserepa-Lacombe, acting as Agents, assisted by N. Korogiannakis, lawyer,

defendant,

ACTION for annulment of Commission Decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) (OJ 2008 L 340, p. 99) inasmuch as it excludes from Community financing certain expenditure made by the Hellenic Republic,

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood, President, F. Dehousse (Rapporteur) and J. Schwarcz, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 5 June 2012,

gives the following

* Language of the case: Greek

Judgment

Legal framework

1. *General legislation relating to the financing of the common agricultural policy*

1 Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (CAP) (OJ English Special Edition 1970(I), p. 218), set out the rules applicable to the financing of the CAP. That regulation was repealed and replaced by Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the CAP (OJ 1999 L 160, p. 103), which governs the expenditure effected between 1 January 2000 and 16 October 2006 within the context of the financing of the CAP.

2 Article 7(2) of Regulation No 1258/1999 provides that the Commission of the European Communities shall decide on monthly advances on the provision for expenditure effected by the accredited paying agencies and Article 7(3) of the regulation relates to clearance of the accounts of the paying agencies.

3 Article 7(4) of Regulation No 1258/1999 states:

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

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

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

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

A refusal to finance may not involve:

(a) expenditure referred to in Article 2 effected prior to 24 months preceding the Commission’s written communication of the results of those checks to the Member State concerned;

…’

4 Article 8(1) of Regulation No 1258/1999 states:

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

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

(b) prevent and deal with irregularities;

(c) recover sums lost as a result of irregularities or negligence.

…’

5 Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the CAP (OJ 2005 L 209, p. 1) repeals Regulation No 1258/1999 and is applicable from 1 January 2007 (Article 49 of Regulation No 1290/2005). However, it provides that inter alia Article 31, relating to conformity clearance, is applicable from 16 October 2006 for expenditure effected from 16 October 2006.

6 Article 31 of Regulation No 1290/2005 contains, in essence, the same provisions as Article 7(4) of Regulation No 1258/1999.

7 Article 8 of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as amended inter alia by Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5), provides:

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

The communication shall refer to this Regulation. The Member State shall reply within two months and the Commission may modify its position in consequence. In justified cases, the Commission may extend the period allowed for reply.

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission, after consultation of the Member States, for the provision of further information or, where the Member State does not accept the invitation to a meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC. Without prejudice to the fourth subparagraph of this paragraph, that communication shall include an evaluation of any expenditure the Commission intends to exclude under Article 5(2)(c) of Regulation … No 729/70.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force. The Commission shall, as appropriate, adopt one or more Decisions under Article 5(2)(c) of Regulation … No 729/70 to exclude expenditure affected by non-compliance with Community rules up to the date of entry into force of the corrective measures.

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

8 Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of ... Regulation ... No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90) is applicable from 16 October 2006 and its Article 11(1) to (3), provides, in essence, for the same procedure as that provided for in Article 8 of Regulation No 1663/95.

2. *Commission guidelines*

9 The guidelines for the application of financial corrections were set out in Commission document No VI/5330/97 of 23 December 1997 entitled 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee' ('document No VI/5330/97').

10 It is apparent from Annex 2 of document No VI/5330/97, entitled 'Financial consequences of shortcomings in the checks carried out by the Member States for the clearance of the accounts of the EAGGF Guarantee Section', that the financial corrections are calculated having regard in particular to the degree of non-compliance found and that, for that purpose, the Commission is to take into account the nature and gravity of the infringement and the financial loss suffered by the Community (Annex 2 to document No VI/5330/97, second paragraph).

11 Annex 2 to document No VI/5330/97 provides, first, a method of evaluation of the financial correction on the basis of 'errors in individual files'. This method of evaluation captures individual irregularities — extrapolated if necessary — and results in a correction. That annex provides, secondly, a method of evaluation of the financial correction on the basis of the risks of financial loss. That method of evaluation captures systemic irregularities and results in the application of a flat-rate correction (Annex 2 to document No VI/5330/97, eighth to twenty-fifth paragraphs).

12 According to this latter method of evaluation, relevant in the context of a systems audit, the Commission applies flat-rate corrections of 2%, 5%, 10% or 25% of the expenditure declared, depending on the amplitude of the risk of loss for the Community resulting from deficiencies in the control systems (Annex 2 to document No VI/5330/97, eighth paragraph).

13 The Commission divides the controls which are carried out by Member States into two categories (Annex 2 to document No VI/5330/97, fourteenth paragraph).

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

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

16 For the purposes of calculating ineligible expenditure, document No VI/5330/97 sets out four categories of flat-rate corrections:

— 25% of expenditure where implementation of the checking system has been non-existent or seriously inadequate and there are indications of very frequent irregularities and negligence in combating irregular or fraudulent practices, and that, consequently, there is a risk of particularly high losses to the European Agricultural Guidance and Guarantee Fund (EAGGF);

— 10% of expenditure when one or more key controls are not applied or are applied so poorly or so infrequently that they are ineffective in determining whether claims are eligible or preventing irregularities, and that it can reasonably be concluded that there is a high risk of wide-spread loss to the EAGGF;

— 5% of expenditure when all key controls are applied, but not in the number, frequency or depth required by the legislation, and that it can reasonably be concluded both that they do not provide the expected degree of assurance that claims are regular and that the risk of loss to the EAGGF is significant;

— 2% of expenditure when a Member State has adequately performed the key controls but completely failed to carry out one or more ancillary controls, and, as a consequence, there is less risk of loss to the EAGGF and the infringement is less serious.

17 Finally, Annex 2 to document No VI/5330/97 provides that '[a] Member State's failure to perfect controls becomes more serious if the Commission has already notified it of the improvements it considers essential' (Annex 2, sixteenth paragraph, *in fine*).

18 Document AGRI/61495/2002 relates to how the Commission intends to handle recurrent shortcomings in control systems in the context of the EAGGF Guarantee clearance of accounts procedure and aims to specify the principle of recurrence set out in Document No VI/5330/97. It provides as follows:

'Where

— the absence or deficiency of a control system or an element of that system has been the subject of one or more financial correction decisions in the context of the EAGGF Guarantee clearance of accounts procedure, and

— it is noted that the same deficiencies have continued in a period subsequent to the period already corrected,

then the Commission considers, subject to an examination of any corrective or compensating measures taken by the Member State, that there is normally justification for applying an increase in the flat-rate correction applied at the time of the previous correction, in view of the increased risk of financial loss to the EAGGF

…

In order to ensure that flat-rate corrections are applied, as provided for in document C 3909 of 8 December 1997 (VI/5330/97), when the actual level of irregular payments and thus the amount of financial losses suffered by the Community cannot be determined, the following percentages are intended to provide guidance:

…

— in the event of a previous correction of 5%: a rate of 10% over the new period concerned;

— in the event of a previous correction of 10%: a rate of at least 15%, depending on the extent of the greater risk, over the new period concerned;

…'

Background to the dispute

19 By Decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under the EAGGF and under the European Agricultural Guarantee Fund (EAGF) (OJ 2008 L 340, p. 99) ('the contested decision'), the Commission excluded

the Hellenic Republic from Community financing in the fruit and vegetable, cotton, bovines, olive oil and financial audit sectors, in the total amount of EUR 179 140 594.66 for the 2002 to 2006 financial years.

20 The reasons for the financial corrections effected by the Commission were summarised in Summary Report AGRI-63130-00-2008 of 11 September 2008, on the results of the Commission's inspections in the context of the conformity clearance pursuant to Article 7(4) of Regulation (EC) No 1258/1999 and Article 31 of Regulation (EC) No 1290/2005 ('the summary report').

21 In the contested decision, the Commission applied the following corrections:

— in the 'fruit and vegetable — citrus processing' sector: two flat-rate corrections of 10% were imposed, as a result of cheque payments and deficiencies in accounting and administrative controls, in the amount of EUR 2 289 213 for the 2005 financial year and EUR 385 748 for the 2006 financial year;

— in the cotton sector: in addition to two uncontested individual corrections for exceeding the eligible level of production in the amount of EUR 4 870 264.97 for the financial year 2003 and in the amount of EUR 2 143 945.63 for the financial year 2004, the Commission imposed two flat-rate corrections of 5%, one in the amount of EUR 27 731 557.37 for the financial year 2002 and the other in the amount of EUR 32 655 464.17 for the financial year 2003;

— in the sector of meat premiums for bovines, the Commission applied flat-rate corrections as a result of weaknesses in the identification and registration database and the on-the-spot checks of 10% for the financial year 2003, 5% and 10% for the financial year 2004, 5% and 10% for the financial year 2005 and 5% and 10% for the financial year 2006, which amounts to a total correction of EUR 14 341 429.92;

— in the sector of olive oil production aid, the Commission applied flat-rate corrections of 10% and 15% for the financial years 2003 to 2006, as a result of recurrent deficiencies in controls of plantations, mills and yields, in a total amount of EUR 83 641 370.78, and

— in the financial audit sector, for the financial year 2005, the Commission imposed an individual correction in the amount of EUR 4 521 536.62 as a result of a failure to meet payment deadlines; it also imposed an individual correction for overshooting of financial ceilings in the amount of EUR 6 326 450.77 for the financial year 2004, and in the amount of EUR 233 613.43 for the financial year 2005.

Procedure and forms of order sought by the parties

22 By application lodged at the Registry of the General Court on 6 February 2009, the Hellenic Republic brought the present action.

23 The composition of the Chambers of the General Court having been modified, the case was assigned to the Fifth Chamber on 30 September 2010. A new judge-rapporteur was designated on 15 February 2011 and, the latter having been assigned to the Second Chamber, the case was assigned to that Chamber.

24 On hearing the report of the Judge-Rapporteur, the General Court (Second Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of the Rules of Procedure of the General Court, requested the parties to reply to certain written questions. The parties replied to those questions within the time allowed. At the hearing on 5 June 2012, the parties submitted oral argument and answered questions put by the Court.

25 The Hellenic Republic claims that the Court should:

— annul or alter the contested decision in accordance with the arguments set out in its pleadings;

— order the Commission to pay the costs.

26 The Commission contends that the Court should:

— dismiss the action;

— order the Hellenic Republic to pay the costs.

Law

1. *Scope of the application*

27 In the application, the Hellenic Republic raised twelve pleas for the purposes of the annulment of the contested decision. The first two pleas concern the citrus processing sector. The third plea concerns the cotton sector. The fourth, fifth and sixth pleas concern the bovine sector. The seventh, eighth and ninth pleas concern the olive oil sector and the tenth, eleventh and twelfth pleas concern the financial audit sector.

28 During the hearing, the Hellenic Republic withdrew the fourth and seventh pleas, which related to the Commission's lack of competence *ratione temporis* and infringement of the principle of legal certainty resulting from the excessive length of the procedure, concerning the bovine and olive oil sectors respectively.

29 It also withdrew the fifth and eighth pleas, which related to a failure to respect the 24-month period laid down in Article 7(4) of Regulation No 1258/1999, concerning the bovine and olive oil sectors respectively.

30 In relation to the financial audit sector, it withdrew its twelfth plea, concerning the enquiry under reference FA/2006/137/GR, alleging failure to state the grounds. In addition, as regards the tenth plea, concerning the enquiry under reference FA/2005/70/GR, regarding the corrections relating, firstly, to less-favoured areas, secondly, to the restructuring and reconversion of vineyards and, thirdly, to additional payments in the bovine sector, it stated that it maintained that plea only in relation to less-favoured areas.

31 Finally, it withdrew its head of claim seeking the amendment of the contested decision.

32 Formal note of the above was taken in the minutes of the hearing.

2. *The first and second pleas, concerning the corrections applied to the 'fruit and vegetables — citrus processing' sector*

Community legislation

33 Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits (OJ 1996 L 297, p. 49) introduced a financial support scheme which relies inter alia on the conclusion of contracts between producer organisations recognised or

provisionally authorised under 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) on the one hand, and processors or their legally constituted organisations or associations on the other.

34 Commission Regulation (EC) No 2111/2003 of 1 December 2003 laying down detailed rules for the application of Council Regulation (EC) No 2202/96 (OJ 2003 L 317, p. 5) provides at Article 7(1)(f) that contracts shall specify in particular the price to be paid to the producer organisation for the raw materials, which may vary by variety and/or quality and/or delivery period and shall be paid only by bank or post office transfer.

35 Article 24(1)(d) of Regulation No 2111/2003 states that the Member States shall take the necessary steps to verify the records of producer and processor organisations provided for in Articles 25 and 26, ensuring that they tally with the accounting required of producer organisations and processors under national law.

36 Article 27 of Regulation No 2111/2003, concerning controls, states:

'1. For each producer organisation delivering sweet oranges, mandarins, clementines, satsumas, lemons, grapefruit and pomelos for processing, the following checks shall be conducted for each product and marketing year:

…

(b) administrative and accounting checks on at least:

(i) 5% of producers covered by contracts, in order to check in particular that for each producer the areas, the total harvest, the quantity delivered to the producer organisation and the quantity delivered for processing all tally with the aid payments provided for in Article 23 and the payments received;

…

(c) administrative and accounting checks to verify that the total of the quantities of products delivered to the producer organisation by the producers referred to in Article 15(1) and (2), the total of the quantities delivered for processing, the total of the delivery certificates referred to in Article 17(2), and the total of the quantities stated in the applications for aid all tally with the aid paid under Article 23 and the payments received from the processor;

2. For processors of sweet oranges, mandarins, clementines, satsumas, lemons, grapefruit and pomelos, the following checks shall be conducted for each plant, product and marketing year:

(a) administrative and accounting checks on at least:

(i) 5% of the lots received under each type of contract (short-term or multiannual) to verify that the quantities concerned are covered by a contract and by delivery certificates referred to in Article 17(2), the precise identification of the means of transport used and compliance with the minimum requirements laid down in Annex I,

…

(c) administrative and accounting checks to verify, on the basis of the invoices issued and received and on the basis of the accounting data, that the quantity of finished product obtained from the raw materials received and the quantities of finished products purchased tally with the quantities of finished products sold;

…’

37 Annex 16 to document No 17933/2000 of the Commission defines key controls and ancillary controls for the citrus sector. In particular, that annex defines six key controls, which include inter alia controls on the proper keeping of registers and ensuring that they tally with the accounting required of producer organisations and processors under national law.

Summary report

38 In the context of the enquiry under reference FV/2006/315/GR, the Commission’s services carried out checks in Greece between 3 and 7 April 2006. Following an exchange of correspondence, a bilateral meeting took place between the Commission and the Greek authorities on 27 February 2007. By letter of 10 January 2008, the Commission notified the Greek authorities of its findings. Following the opinion of the Conciliation Body of 19 June 2008, the Commission notified its final position by letter of 21 August 2008.

39 In the summary report, certain weaknesses were detected in the accounting and administrative controls set out in Article 27(1)(b)(i) and (1)(c) of Regulation No 2111/2003 and Article 27(2)(a)(i) and (2)(c) of Regulation No 2111/2003. In addition, the summary report states that the checks provided for under Article 24(1)(d) of that regulation were not carried out in accordance with the requirements of the Community legislation in at least one case. Moreover, it was found that the supporting documentation underpinning these checks was often missing. Those deficiencies were mainly due to a lack of clear guidance and the limited accounting skills of the inspectors concerned. The Commission’s services were of the opinion that those weaknesses concerned substantial aspects of the control system and that not carrying out controls or carrying them out inadequately led to a high risk for the EAGGF. The Commission noted that identical weaknesses had been detected inter alia in an enquiry into citrus processing in 2003.

40 Moreover, it is apparent from the findings of the Commission’s services that one of the payments from a processor to a producer organisation was made by cheque, even though that type of payment must be made by bank or post office transfer and that had already been the subject of observations by the Commission in the past. It is also clear from the summary report that the inspectors who carried out the checks were unaware of the relevant Community and national requirements.

41 The Commission considered that, in accordance with the guidelines set out in document No VI/5330/97, key controls had not been carried out with the frequency and depth laid down by the applicable regulations and that, furthermore, that deficiency was recurrent. It noted that the previous correction was 5% and, in the present case, applied a rate of correction of 10% for the financial years 2005 and 2006, since the period concerned ran from 30 August 2004 up to and including the 2004/2005 marketing year.

Findings of the Court

42 The Hellenic Republic raises a first plea, alleging misinterpretation and misapplication of the Commission’s guidelines set out in documents Nos VI/5330/97 and 17933/2000, and a second plea, alleging incorrect assessment of the facts and the disproportionate nature of the corrections.

The first plea, alleging misinterpretation and misapplication of documents Nos VI/5330/97 and 17933/2000

43 In the first place, the Hellenic Republic maintains that the key controls were carried out. It considers that, of the weaknesses identified, only those concerning the control of the proper keeping of files and of their conformity with the financial control constitute a key control. The correction should therefore not have exceeded 2%.

44 The Court finds that, in the present case, the Commission applied the financial corrections at issue owing, inter alia, to the weaknesses of the administrative and accounting controls provided for in Articles 24 and 27 of Regulation No 2111/2003.

45 First, it is apparent from the summary report that those weaknesses were found, in particular, concerning the checks provided for in Article 24(1)(d) of Regulation No 2111/2003, relating to the keeping of the records of producer and processor organisations and to their tallying with the accounting required under national law. It should be pointed out that this type of control is defined as a key control by Annex 16 to document No 17933/2000, which, moreover, is not disputed by the Hellenic Republic.

46 Second, the flat-rate corrections were also imposed owing to shortcomings concerning the administrative and accounting controls imposed by Article 27 of Regulation No 2111/2003. Those checks also constitute key checks. They are intended inter alia to ensure that the quantity delivered for processing tallies with the aid payments and also to verify, on the basis of the invoices issued and received and on the basis of the accounting data, that the quantity of finished products obtained or purchased tallies with the quantities of finished products sold. They are therefore verifications required in order to check on the criteria for concordance as regards substance.

47 Therefore, in the light of Annex 2 to document No VI/5330/97 and Annex 16 to document No 17933/2000, the Commission was right in considering that the weaknesses pointed out in the present case concerned key controls.

48 As regards the correction rate applied, the Commission considered that the weaknesses found in the key controls had previously been subject to a 5% correction and, in view of the recurrence of those weaknesses, raised the flat-rate correction rate to 10%.

49 In that regard, it should be noted, in the light of the guidelines set out in document No VI/5330/97, that a flat-rate correction may be considered by the Commission where it is not possible to determine precisely the losses suffered by the Community (Case C-418/06 P *Belgium* v *Commission* [2008] ECR I-3047, paragraph 136).

50 For the purposes of the calculation of ineligible expenditure, document No VI/5330/97 imposes a flat-rate of 5% of expenditure when all key controls are applied, but not in the number, frequency or depth required by the regulations, when it can reasonably be concluded both that they do not provide the expected degree of assurance that claims are regular and that the risk of loss to the Fund is significant (see paragraphs 14 and 16 above).

51 That is indeed the situation in the present case, since weaknesses were found in the key controls, which were not applied with the depth required by the regulations, and it is not only a question of failure to carry out ancillary controls.

52 The Hellenic Republic is therefore wrong to maintain that the 2% rate should have been applied in this case. The complaint alleging misinterpretation and misapplication of the Commission's guidelines as set out in documents Nos VI/5330/97 and 17933/2000 cannot therefore be upheld in that regard.

53 In the second place, the Hellenic Republic maintains that there is no legal basis for doubling the correction rate and disputes that the weaknesses found recurred.

54 First, the Hellenic Republic maintains that no legislation provides for the concept of 'recidivism', which was introduced for the first time in document AGRI/60637/2006, which did not apply to the financial years 2005/2006.

55 That line of argument cannot be accepted.

56 It should be pointed out that the fourth subparagraph of Article 7(4) of Regulation No 1258/1999, and Article 31(2) of Regulation No 1290/2005 (see paragraphs 3 and 6 above) provide that the Commission must take into account the gravity of the infringement committed when it evaluates the amount to be excluded following a finding of irregularities.

57 In that connection, the recurrence of the irregularities in question may therefore be regarded as an aggravating factor, which may justify the increase in the financial correction imposed. The increase at issue may in that regard be considered as constituting a measure in the process of determining the overall rate of correction to be borne by the Hellenic Republic (see, to that effect, Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 13).

58 Therefore, the complaint that there is no sufficient legal basis in the applicable legislative provisions for taking into account the recurrence of the shortcomings found must be rejected.

59 Moreover, the rules which the Commission laid down in its guidelines, namely in documents Nos VI/5330/97, AGRI/61495/2002 and AGRI/60637/2006, outline the consequences of a finding that the irregularities found have recurred.

60 The assertion of the Hellenic Republic that 'recidivism', as an aggravating circumstance, was established for the first time in document AGRI/60637/2006 is incorrect. Annex 2 to document No VI/5330/97 provides that '[a] Member State's failure to perfect controls becomes more serious if the Commission has already notified it of the improvements it considers essential'. Also, document AGRI/61495/2002, to which the Hellenic Republic refers in the application, concerns the Commission's treatment, in connection with the clearance of the accounts of the 'Guarantee' section of the EAGGF, of cases of recurrence of the inadequacy of control systems and is designed to define the recurrence rule laid down in document No VI/5330/97. It provides, in essence, that, if the same weaknesses persist, an increase in the rate of flat-rate correction applied at the time of the previous correction is possible and that, in the case of a previous correction of 5%, a rate of 10% may be applied for the new period concerned (see paragraph 18 above).

61 Therefore, the claim that there is no legal basis for increasing the correction in the event of a recurrence of the irregularities found must be rejected.

62 Second, the Hellenic Republic maintains that, in order to establish repeated shortcomings, it is necessary to find exactly the same weaknesses as in the past. It maintains that this is not the situation in the present case, since the system has been improved overall and a correction cannot be increased if some of the reasons for that correction have disappeared.

63 It should be pointed out in that regard that, in order to conclude that the deficiencies found had recurred, the Commission referred in particular to enquiry FV/302/2003, concerning the citrus processing scheme (Annex 4 to the application), which led to the judgment of 11 June 2009 in Case T-33/07 *Greece* v *Commission*, not published in the ECR, paragraphs 56 to 58. In enquiry FV/302/2003, deficiencies had been found inter alia in the administrative and accounting controls, including with regard to the verification of the consistency of the data in the records of the producer and processor organisations with the accountancy tracking imposed by national legislation, owing in

particular to a lack of guidance on the part of the OPEKEPE (Greek payment and control agency for guidance and guarantee Community aid) to the prefectures (nomos) and the lack of experience of the staff responsible for the controls (see the Commission's document of 4 March 2003 concerning the conclusions of enquiry FV/302/2003, particularly paragraph 8, and *Greece* v *Commission*, paragraph 58).

64 The deficiencies found in enquiry FV/302/2003 and those found in the present case are similar, as is apparent from the summary report (see paragraph 39 above) and as has been noted by the Conciliation Body.

65 Moreover, as the Commission's services found, the weaknesses detected in the administrative and accounting controls concern substantial aspects of the control system and their non-performance or inadequate performance lead to a high risk for the EAGGF (see paragraph 39 above). Those weaknesses were therefore decisive for the application of the rate of correction which is the subject of the increase (see, to that effect, judgment of 28 September 2011 in Case T-352/05 *Greece* v *Commission*, not published in the ECR, paragraph 327).

66 It follows that the weaknesses are similar, concern the same sector (citrus fruits), are attributable to the same Member State and were considered to be conclusive for the application of the correction rate which is the subject of the increase. The Commission was therefore not wrong to find that those deficiencies were recurrent.

67 In so far as the Hellenic Republic relies on the results of enquiry FV/2004/312, concerning the aid scheme for tomato-processing, to dispute recurrence, it should be pointed out that, as the Commission states and as is apparent from the summary report summarising the Commission's position before the conciliation procedure, that recurrence is not based on the results of that enquiry but on those of enquiry FV/302/2003 concerning citrus-fruit processing.

68 Therefore, the Hellenic Republic's argument that there are no repeated weaknesses must be rejected in the present case.

69 Furthermore, the argument that the existence of improvements precludes the finding of recurrence must also be rejected. The Hellenic Republic makes the general claim that the system was improved, but does not prove that those improvements specifically concerned the conclusive deficiencies at issue in this case. Moreover, it refers to the conclusions of the Commission's services in connection with enquiry FV/2004/312 concerning tomato processing, which is irrelevant in this case (see paragraph 67 above).

70 Therefore, the arguments that the financial corrections could not be increased in the present case must be rejected.

71 Third, the Hellenic Republic claims that the increase in the correction cannot be automatic and must be reasoned, which is not the situation in this case.

72 As regards the admissibility of that argument, the Court points out that it was raised in paragraph 18 of the application and is therefore admissible, contrary to what the Commission asserts in the rejoinder.

73 As regards its substance, it should be noted that, according to well-established case-law, in the particular context of the drafting of decisions relating to the clearance of accounts, the reasons given for a decision are to be considered sufficient when the addressee Member State was closely involved in the process under which that decision was drawn up and knew the reasons why the Commission considered that the disputed amount should not be charged to the EAGGF (see, inter alia, Case

C-263/98 *Belgium* v *Commission* [2001] ECR I-6063, paragraph 98; Case C-332/01 *Greece* v *Commission* [2004] ECR I-7699, paragraph 67; judgment of 30 September 2009 in Case T-55/07 *Netherlands* v *Commission*, not published in the ECR, paragraph 125).

74 In the present case, it is apparent from the information in the file that the Hellenic Republic was involved in the process under which the contested decision was drawn up and that the matter of the recurrence of the weaknesses at issue was raised in the course of the conciliation procedure, in particular in the Commission's letter of 10 January 2008, in the minutes of the meeting of 4 April 2007, in the opinion of the Conciliation Body and in the summary report. Consequently, it is clear from the information in the file that the Hellenic Republic knew the reasons for the increase at issue, and in particular the irregularities which were the subject of the corrections, the previous financial correction decision, the previous rate of correction and the increase applied, as well as the increased risk of financial loss to the EAGGF.

75 The argument that reasons were not given for the increase in the corrections must therefore also be rejected and, accordingly, the first plea in its entirety.

The second plea, alleging incorrect assessment of the facts and the disproportionate nature of the corrections imposed

76 First, the Hellenic Republic maintains that the administrative and accounting controls, laid down in articles 24 and 27 of Regulation No 2111/2003, were carried out in accordance with rates higher than those laid down by the legislation, even though their traceability is not established.

77 The Court points out that only intervention undertaken in accordance with the Community rules in the framework of the common organisation of agricultural markets is to be financed by the EAGGF (Case C-278/98 *Netherlands* v *Commission* [2001] ECR I-1501, paragraph 38; Case C-300/02 *Greece* v *Commission* [2005] ECR I-1341, paragraph 32, and judgment of 14 February 2008 in Case T-266/04 *Spain* v *Commission*, not published in the ECR, paragraph 97).

78 Moreover, as regards the rules concerning the burden of proof in the area of the clearance of accounts, it should be pointed out that, in order to prove an infringement of the rules on the common organisation of the agricultural markets, the Commission is not required to demonstrate exhaustively that the checks carried out by the national authorities are inadequate, or that the data submitted by them are incorrect, but to adduce evidence of serious and reasonable doubt on its part regarding the checks or data. 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 (Case C-247/98 *Greece* v *Commission* [2001] ECR I-1, paragraphs 7 to 9, and Case C-329/00 *Spain* v *Commission* [2003] ECR I-6103, paragraph 68).

79 In the present case, it is apparent from the information in the file, and in particular from the minutes of the bilateral meeting, that the weaknesses in the administrative and accounting controls found in this case have not been contradicted by the documentary evidence supporting the arguments of the Hellenic Republic.

80 It is also apparent from the opinion of the Conciliation Body that the explanations given by the Greek authorities that those controls did indeed take place, are unsupported by tangible evidence. The Hellenic Republic itself concedes that the traceability of the controls is not immediately obvious. It also acknowledges the weaknesses concerning the duty of investigation concerning accounting controls.

81 Moreover, the Hellenic Republic points out that it adopted new instructions in 2006 in order to remedy the weaknesses found.

82 However, suffice it to say that that argument cannot compensate for the inadequacy of the controls established for the previous marketing years at issue in the present case.

83 Therefore, it is not proved that the Commission's findings concerning the weaknesses observed in respect of administrative and accounting controls are incorrect and that the corrections are not justified in that regard.

84 Second, the Hellenic Republic claims that the payment by cheque is an isolated case and that the flat-rate correction of 10% is disproportionate.

85 In the present case, in the light of the findings made in relation to administrative and accounting controls examined previously, it need only be pointed out that the finding that a payment had been made by cheque was not the only basis for the corrections in this case.

86 Therefore, the arguments put forward by the Hellenic Republic to establish that the correction imposed on account of the payment by cheque was disproportionate must be rejected.

87 The second plea must therefore be rejected in its entirety.

88 It is apparent from all the foregoing that the Hellenic Republic has not put forward any argument capable of calling in question the legality of the contested decision inasmuch as it imposes flat-rate corrections of 10% with regard to the citrus-fruit processing sector.

3. *The third plea, concerning the corrections applied to the cotton sector*

Community legislation

89 Production aid for cotton is governed in particular by Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton (OJ 2001 L 148, p. 3), which repeals Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 (OJ 1995 L 148, p. 48). According to Article 23 thereof, Regulation No 1051/2001 shall enter into force on the day of its publication in the *Official Journal of the European Communities* and shall apply from 1 September 2001.

90 Under Article 1(3) of Regulation No 1051/2001, the marketing year shall run from 1 September to 31 August.

91 Article 11(d) and Article 12(1)(d) of Regulation No 1051/2001 provide that, in order to receive production aid for cotton, cotton ginning undertakings must show that the cotton is the subject of the declaration of areas referred to in Article 16(2) of the regulation.

92 Article 16(2) of Regulation No 1051/2001 provides that the producer Member States shall establish a system of declarations of the areas sown, in particular to ensure that cotton covered by aid applications is of the origin stated.

93 In order to take account of environmental objectives, Member States should determine and adopt the environmental measures they consider suitable to regulate the use of agricultural land for cotton production (recital 13 in the preamble to Regulation No 1051/2001). Accordingly, Article 17 of Regulation No 1051/2001 provides:

‘1. Member States shall determine, for the cotton sector:

— measures to improve the environment, in particular cultivation techniques to reduce the negative impact on the environment,

— research programmes to develop more environmentally-friendly growing methods,

— the means of informing producers of the results of such research and the advantages of using the techniques concerned.

2. Member States shall take the environmental measures they consider suitable in view of the specific situation of the agricultural areas used for cotton production. In addition, Member States shall take the necessary steps to remind producers that they are required to comply with environmental legislation.

3. Member States shall, where appropriate, restrict the areas eligible for production aid for unginned cotton on the basis of objective criteria relating to:

— the agricultural economy of those regions where cotton is a major crop,

— the soil and climate in the areas in question,

— the management of irrigation water,

— rotation systems and cultivation methods likely to improve the environment.

4. Before 31 December 2004, the Hellenic Republic and the Kingdom of Spain shall send the Commission a report on the environmental situation in the cotton sector and the impact of national measures adopted in accordance with paragraphs 1, 2 and 3.’

94 Commission Regulation (EC) No 1591/2001 of 2 August 2001 laying down detailed rules for applying the cotton aid scheme (OJ 2001 L 210, p. 10) repeals Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton (OJ 1989 L 123, p. 23), and, according to Article 19, is applicable from 1 September 2001.

95 Article 9(1) of Regulation No 1591/2001, relating to declarations of areas sown, provides:

‘Before the final date set by the Member State, all Community cotton growers shall submit an application form for area aid, as provided for under the integrated administration and control system, by way of a declaration of areas sown for the following marketing year. The agricultural plot or plots concerned shall be identified in accordance with the system for identifying agricultural plots provided for under the integrated administration and control system. Where applicable, growers shall submit a corrected declaration to take account of the area actually sown to cotton by the date fixed by the Member State, and no later than 31 May preceding the marketing year concerned.’

96 Article 17 of Regulation No 1591/2001 provides that, for the 2001/2002 marketing year, the declarations of areas sown referred to in Article 8 of Regulation No 1201/89 submitted before 1 September 2001 shall be considered equivalent to declarations of areas sown as referred to in Article 9 of Regulation No 1591/2001.

97 Article 13 of Regulation No 1591/2001, relating to checks, provides, in the version applicable from 1 September 2001 to 23 August 2002:

‘1 The inspection body appointed by the producer Member State shall verify:

(a) that the declarations of areas sown to cotton are accurate, by an on-the-spot check relating to not less than 5% of declarations;

…

(f) by cross-checks, that the agricultural plots mentioned in the contracts correspond to those declared by the growers in their declaration of areas sown to cotton.

2. Where irregularities are found in connection with the declaration of areas referred to in Article 9, subject to the application of penalties as referred to in Article 14(1), aid shall be granted for the quantity of cotton for which all the other requirements have been met.

3. Where several bodies are responsible for the inspection arrangements, the Member State shall establish a system of coordination to this end.’

98 Commission Regulation (EC) No 1486/2002 of 19 August 2002 amending Regulation No 1591/2001 (OJ 2002 L 223, p. 3), applicable from 23 August 2002, replaces Article 13(1)(a) with the following words:

‘that the declarations of areas sown to cotton are accurate by an on-the-spot check of not less than 5% of the declarations, to be carried out no later than 15 November of the marketing year concerned.’

Summary report

99 In the course of the enquiries under references OT/2003/01/GR and OT/2003/03/GR, the Commission carried out checks in Greece, from 31 March to 4 April 2003 and from 20 October to 24 October 2003 respectively, concerning production aid for cotton for the 2001/2002 and 2002/2003 marketing years. Following an exchange of letters, a bilateral meeting took place between the Commission and the Greek authorities on 8 December 2005. By letter of 3 July 2007, the Commission communicated its conclusions to the Greek authorities. Following the opinion of the Conciliation Body of 21 January 2008, the Commission communicated its final position by letter of 6 August 2008.

100 As well as findings relating to the exceeding of eligible production, the Commission’s services noted deficiencies of controls, summarised in the summary report.

101 In the first place, as regards the integrated administration and control system (‘IACS’), the Commission’s services considered that, although declarations of areas sown to cotton were included in the IACS areas declaration, compatibility between the two systems was not sufficiently ensured, as had already been found for the 1997/1998 to 2000/2001 marketing years. In particular:

— inconsistencies were noted between the various documents (contracts between farmers and ginners, IACS declarations of areas under cotton), which had obviously not been detected by the Greek authorities and which cast doubts on the effectiveness of the cross-checks and hence the reliability itself of the information used by ginners to check that cotton delivered was covered by a declaration of areas;

— communication between the authorities responsible for the IACS database and those responsible for production aid for cotton, was considered largely inadequate: OPEKEPE's authorities had information about cotton only in the declarations of areas, which did not allow the risk of under-declaration of areas sown to cotton to be covered; similarly, the authorities responsible for IACS reported no anomalies in 2001/2002 and 2002/2003 to the authorities responsible for cotton, although remote sensing showed there were undeclared or poorly declared areas.

102 In the second place, concerning the control of environmental measures, the summary report points out that the 2001 reform of the production aid scheme for cotton introduced environmental measures, which were to be defined and for which a system of checks and penalties was to be laid down by each Member State. It was noted that, in the Hellenic Republic, those measures included restriction of the production area, the setting of a maximum yield and compliance with a code of good practice including mandatory crop rotation.

103 The Commission's services criticised the absence of a system to control those environmental measures and the failure to apply penalties. In particular, the administrative checks to ensure that the maximum yield set for each producer has not been exceeded was regarded as inadequate. Similarly, the on-the-spot checks of areas, which were carried out after the last harvest and therefore too late to check that the yield declared was as stated, should have focused on detecting undeclared areas under cotton and checking compliance with the code of good practice. For example, only areas declared to be under cotton were checked, which meant it was impossible to detect plots under cotton declared as wheat or other crops. Lastly, it was pointed out that no checks for compliance with the code of good practice had been carried out.

104 In its opinion delivered on 21 January 2008, the Conciliation Body asked the Commission to make sure that, having regard to the date on which the environmental requirements in that aid scheme entered into force, conformity with those provisions could be invoked as a legally binding criterion for granting Community aid for cotton cultivated during the 2001/2002 marketing year.

105 In the letter of 6 August 2008, the Commission's services communicated their final position in which the proposed correction was retained. They pointed out that the marketing year begins on 1 September, which does not mean that the measures for area checks (in particular for checking compliance with the environmental restrictions) were optional during the first year, since all eligibility criteria for pre-marketing operations must be checked beforehand. They also pointed out that it was known before 1 June 2001 that discussions had been held on the cotton reform and that the Greek authorities deliberately chose to apply Article 17(3) of Regulation (EC) No 1051/2001 as from the first marketing year, by a ministerial decision which applied from February 2001 and in particular provided for mandatory rotation and a reduction in the areas sown to cotton, which has not been the subject of any control measures at the level of individual farmers.

106 In the third place, with regard to the on-the-spot checks of areas, first, the Commission's services considered that, for the 2001/2002 marketing year, the selection of the holdings to be checked with regard to production aid for cotton was not based on any risk analysis, and the random method of selection was unsuitable given the risks associated with the marketing year in question (undeclared areas of cotton and infringements of good agricultural practice had been detected). Although the selection procedure seems to have been changed for the 2002/2003 marketing year, that procedure was considered unsatisfactory because it took account of risk factors not related to cotton (IACS selection) and did not allow sufficient account to be taken of the unusual yields noted during the marketing year. Consequently, it was held that the changes made to the selection procedure have not improved the system sufficiently to ensure that it covers risks associated with the under-declaration of areas.

107 Second, it was held that the on-the-spot checks were carried out too late and this made it impossible to determine the boundaries of numerous small plots of cotton, which often could only be identified from changes in cotton varieties where differences can be seen in the leaves and the fruit, although the area under cotton can only be measured with a sufficient degree of accuracy if the crop is still in the field, in accordance with the IACS rules. Furthermore, it was only on 22 January 2008, following the request of the Conciliation Body, that the Greek authorities provided data concerning the dates on which on-the-spot checks were carried out. According to the Commission's services, those data provide no reliable information about the proportion of late checks, since a large number of dates (at least 16) are unlikely. Moreover, in addition to these inconsistencies, the existence of late checks (after January) seems to be confirmed, for five prefectorates in 2001/2002 and seven in 2002.

108 Third, it was also found that, in 2001/2002, the instructions to inspectors did not provide for any formal approach to be taken with regard to measurement and traceability of technical tolerances accepted, and that there was little improvement in 2002/2003 when OPEKEPE started carrying out the on-the-spot checks.

Findings of the Court

109 As regards the cotton sector, the Hellenic Republic raises a plea alleging that the 5% flat-rate correction applied to the 2002 and 2003 financial years was unjustified and disproportionate and that the facts were assessed incorrectly.

110 This plea is divided into five parts. The first and second parts allege that the financial correction is disproportionate, the third, fourth and fifth parts allege that the Commission's findings concerning, respectively, the weaknesses of the IACS, the environmental measures and the on-the-spot checks of areas are incorrect.

111 The Court will examine the third, fourth and fifth parts before considering the first two parts of this plea.

The third part, alleging that the Commission's findings concerning the weaknesses of the IACS are incorrect

112 The Hellenic Republic disputes the Commission's findings concerning the weaknesses of the IACS and points to the effectiveness of the cross-checks. It describes the procedure by which the producers declare the sown areas to the IACS and states that aid for cotton is not linked to the area, but paid according to the quantity of cotton delivered by producers to the ginning plant, which is checked. It adds that the fact that the IACS contains some inadequacies, set out in its letter of 26 November 2004, sent to the Commission, had no effect whatsoever on the regularity of payments to beneficiaries.

113 The Court points out that the harmonisation of the production aid scheme for cotton with the IACS was established by Regulation No 1201/89, as amended by Commission Regulation No 1740/97 of 5 September 1997 (OJ 1997 L 244, p. 1) in order to improve the administration and control of the system of aid for cotton and to avoid the risk of double payments on the same land. Recital 9 in the preamble to Regulation No 1591/2001, which repealed Regulation No 1201/89, also provides that, in order to ensure that cotton covered by aid applications is of proper origin, it must be possible to identify areas sown to cotton by means of the system for identifying agricultural plots provided for in Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an IACS for certain Community aid schemes (OJ 1992 L 355, p. 1). That means that the two systems communicate and permit the exchange of data, inter alia by means of cross-checks, as provided for in Article 13(1)(f) of Regulation No 1591/2001 (see paragraph 97 above).

114 According to the case-law, the Member State against which the Commission has justified its decision finding the absence of or shortcomings in the checks carried out in the framework of the application of the EAGGF 'Guarantee' section operating rules cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. If it is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures (Case C-46/97 *Greece* v *Commission* [2000] ECR I-5719, paragraph 58).

115 In the present case, the Hellenic Republic does not adduce detailed evidence to rebut the shortcomings found in the supervisory system at issue. It merely states that the shortcomings of the IACSE had no effect on the regularity of the payments to beneficiaries and that the checks which it carried out were adequate, because they concerned the quantities of cotton delivered by the producers to the ginning plants and the yields.

116 However, the existence of such controls does not compensate for the inadequacies pointed out in the summary report (see paragraph 101 above). In that regard, it is to be noted that where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective (Case C-130/99 *Spain* v *Commission* [2002] ECR I-3005, paragraph 87).

117 Moreover, as regards the shortcomings identified in the checks on parcels of land, the Hellenic Republic refers to the letter of 26 November 2004, sent to the Commission. In that letter, it states inter alia that the various shortcomings are explained by errors of retranscription of areas during the recording of the results of on-the-spot checks in the summary file of checks which is then used to update the computerised file of on-the-spot checks (paragraph 27 of the letter of 26 November 2004).

118 Therefore, it must be stated that the Hellenic Republic thus sets out the reasons for the errors found, but none the less does not establish that the Commission's findings were incorrect or manage to dispel the doubts as to the effectiveness of the supervisory system.

119 Finally, the Hellenic Republic maintains that the 'accuracy of the declaration of area' has become a criterion of eligibility since the entry into force of Regulation No 1486/2002, applicable from the 2002/2003 marketing period, which is therefore inapplicable in the present case.

120 In that regard, the Court points out that the declaration of area sown to cotton has been provided for by Article 9 of Regulation No 1591/2001 (see paragraph 95 above) since before the amendment of that regulation by Regulation No 1486/2002 and that it was, moreover, provided for by Article 8 of Regulation No 1201/89, amended by Regulation No 1740/97 (see paragraph 96 above). Similarly, control of the accuracy of the declarations of areas sown to cotton by an on-the-spot check of at least 5% of the declarations has also been provided for by Article 13 of Regulation No 1591/2001 (see paragraph 97 above) since before the amendment of that regulation by Regulation No 1486/2002 and, before that, by Article 12 of Regulation No 1201/89. The amendment made in that regard by Regulation No 1486/2002 consists only in specifying that that on-the-spot check is to be carried out no later than 15 November of the marketing year concerned (see paragraph 98 above).

121 Therefore, that argument is unfounded.

122 The third part of this plea must therefore be rejected.

The fourth part, alleging that the Commission's findings concerning the environmental measures are incorrect

123 It should be pointed out that the 2001 reform of the aid scheme for cotton production, by Article 17 of Regulation No 1051/2001, imposed an obligation on the Member States to adopt the environmental measures they considered suitable (see paragraph 93 above). By way of those measures, the Hellenic Republic imposed a restriction of the production area, the setting of a maximum yield and compliance with a code of good practice including mandatory crop rotation. Those measures are contained in the ypourgikes apofaseis (ministerial decrees) of 28 February 2001 and 4 and 10 May 2001, adopted after lengthy discussions with producers, as the Hellenic Republic points out.

124 First of all, the Hellenic Republic claims that the results of the checks could not be detected immediately, since the environmental measures were adopted in 2001.

125 In the present case, the Court notes that, by imposing the flat-rate correction of 5% in respect of the inadequacy of the checks of the environmental conditions, the Commission is not calling in question the effectiveness or the validity of the environmental measures adopted, but the failure to check that they have been complied with since their adoption. Therefore, the Hellenic Republic's argument that the environmental measures adopted need time to become effective is irrelevant in the present case.

126 The Hellenic Republic also maintains that compliance with the environmental measures was checked in an appropriate manner.

127 However, the Court points out that that claim is not supported by the documents in the case.

128 As regards, first, control of the yields, the Hellenic Republic stated that it carried out remote sensing checks of areas where yields were found to have been exceeded. However, it is apparent from the summary report that, for the 2001/2002 marketing year, no data were provided and that, for the 2002/2003 marketing year, the data provided show that only 7.5% of the cases of unusual yields were checked. The Hellenic Republic also referred to the method of the average yield over the three preceding years and to the control of yields per arpent. However, those arguments do not prove the existence of controls for ascertaining on an individual basis whether the beneficiaries had fulfilled the obligations imposed by those measures. As the Commission points out, aid could therefore be granted to producers who have not necessarily complied with the environmental measures.

129 Similarly, when it refers, in the second place, to the reduction in areas sown to cotton, the Hellenic Republic does not prove the existence of individual checks in that regard.

130 Concerning, in the third place, control of good practices, the Hellenic Republic itself stated, during the conciliation procedure, that this was difficult, if not impossible, to carry out. It maintains that it established indicators, such as the measure of 'indicative uncut production' (indicative authorised production), designed to achieve a comprehensive control in order to restrict the use of pesticides and fertilisers. However, this was a question of the introduction of general measures to improve environmental indicators which do not establish the existence of a control per individual producer of compliance with the measures put in place.

131 The Hellenic Republic's argument that the control of compliance with the environmental measures was carried out in an appropriate manner must therefore be rejected.

132 Moreover, the Hellenic Republic draws attention, in the reply, to the Conciliation Body's reservations regarding the possibility of applying to cotton already sown the environmental measures introduced by Article 17 of Regulation No 1051/2001, applicable from 1 September 2001.

133 The Court points out that, in its opinion of 21 January 2008, the Conciliation Body requested the Commission to ensure that, given the date on which the environmental requirements in this aid scheme entered into force, conformity with these provisions can be invoked as one of the legally binding criteria for granting Community aid to cotton grown during the 2001/2002 marketing year.

134 In its final position, the Commission maintained its view that Article 17 of Regulation No 1051/2001 was applicable to the environmental measures adopted by the Hellenic Republic for the 2001/2002 marketing year. It considered, in essence, that 1 September 2001 marks the beginning of the marketing year for cotton sown in 2001 and marketed in the autumn of 2001, but the fact remains that all eligibility criteria for pre-marketing operations, including sowing, must be checked beforehand.

135 The Court notes that the Hellenic Republic does not contest this reasoning. It only refers, in its reply, to the reservations of the Conciliation Body without putting forward substantiated arguments in response to the Commission's arguments.

136 In so far as its argument, which is not included in the application, may be regarded as relating to the plea concerning environmental measures and, therefore, as admissible for the purposes of Article 48(2) of the Rules of Procedure, it is clearly wholly unsubstantiated.

137 Moreover, the argument that the measures specified in Regulation No 1051/2001 were not yet known must be rejected. The Hellenic Republic itself adopted the environmental measures and does not dispute that those environmental measures were immediately applicable. On the contrary, it maintains that those measures were already subject to adequate controls, which means that they were applicable. Since it had decided to adopt those measures in order to implement Regulation No 1051/2001 from the 2001/2002 marketing year, it therefore had to check that the cotton producers complied with them. Moreover, as the Commission pointed out in reply to a written question from the Court, it is apparent from the recitals in the preamble to Commission Regulation (EC) No 1398/2002 of 31 July 2002 fixing, for the 2001/2002 marketing year, the actual production of unginned cotton in Greece and the resulting reduction of the guide price and derogating, for the 2001/2002 marketing year, from certain management rules and aid award procedures in Greece (OJ 2002 L 203, p. 24), that the Greek authorities themselves considered compliance with the environmental measures provided for in Article 17(3) of Regulation No 1051/2001 as a criterion of eligibility to receive aid for the 2001/2002 marketing year.

138 Moreover, the question of the control of environmental measures for the period prior to 1 September 2001 only concerns the 2001/2002 marketing year and therefore constitutes only a part of the complaint relating to the environmental measures on which the flat-rate correction is based, which also concerns the 2002/2003 marketing year.

139 Finally, contrary to what the Hellenic Republic maintains, without otherwise substantiating its argument, the Commission was right to consider that the controls relating to the environmental measures were key controls within the meaning of Annex 2 to document No VI/5330/97. Those controls concern the physical and administrative checks required in order to verify the information on the substantive elements, relating in the present case to the production area, the setting of a maximum yield, and compliance with the good practice implemented by the Hellenic Republic in accordance with Article 17 of Regulation No 1051/2001.

140 It follows that the fourth part of this plea must be rejected.

The fifth part, alleging that the Commission's findings concerning the on-the-spot checks of areas are incorrect

141 First, the Hellenic Republic denies that the on-the-spot checks were carried out late. It maintains that Regulations Nos 1051/2001 and 1591/2001 do not impose a time-limit for carrying out on-the-spot checks on 5% of areas, and that the date of 15 November was set as a limit only from 2003 by Regulation No 1486/2002. It states that, although the check must be carried out on a suitable date, that is to say, at a time which ensures that the area checked has been sown to cotton, it may be carried out as long as the cotton stalk remains on the field, that is to say, in August, in October or even in January or up to the sowing of the following spring. It adds that the database of on-the-spot controls did not indicate a date, because it was not required by the regulations. It points out that the minutes refer to the date on which they were carried out, and show that the checks took place mainly in August or November and that few checks were made after that time.

142 In that regard, it should be noted that, under Article 13(1)(a) of Regulation No 1591/2001, the accuracy of the declarations of areas sown to cotton must be verified by an on-the-spot check.

143 As the Hellenic Republic points out, before 23 August 2002, the date of entry into force of Regulation No 1486/2002, which provides that on-the-spot checks must be carried out at the latest by 15 November of the marketing year concerned, Regulation No 1591/2001 did not lay down a time-limit for carrying out those checks. In other words, that deadline of 15 November has been applicable since the 2002/2003 marketing year.

144 For the 2001/2002 marketing year, those checks had to be carried out within a reasonable time, however, as the Hellenic Republic acknowledges (see, to that effect, *Greece* v *Commission*, paragraph 63 above, paragraph 196), that is, at a time which could be determined with certainty and which ensured that the area checked had been sown to cotton, therefore before or during the harvest.

145 In the present case, on 22 January 2008, following the request from the Conciliation Body, the Greek authorities provided data concerning the dates on which the on-the-spot checks were carried out. However, as the Commission found, those data gave no information about the time distribution of the on-the-spot checks and provided no reliable indication of the proportion of late checks. Moreover, some of the dates given were inconsistent and some checks were particularly late (after January) in 5 prefectorates in 2001/2002 and 7 in 2002.

146 According to the case-law (*Greece* v *Commission*, paragraph 73 above, paragraph 51), it is for the Member State concerned to adduce the most detailed and comprehensive evidence that it has made checks and, if appropriate, that the Commission's assertions are incorrect.

147 The Hellenic Republic, after having stated that there was no mention of a date in the database of on-the-spot checks, provided dates of checks which reveal certain inconsistencies (some dates refer to the years 1901 or 1902) and that the dates of checks are sometimes after the January of the marketing year concerned.

148 In that regard, even though the cotton stalks may be evidence that cotton is being cultivated, as the Hellenic Republic maintains, the Commission was right to find that neither the exact limits of the plots not their yields could be determined with accuracy on the basis of those cotton stalks. Moreover, the deadline for carrying out on-the-spot checks was fixed at 15 November of the marketing year concerned by Regulation No 1486/2002.

149 Furthermore, the Hellenic Republic encloses, in Annex 2 to the reply, data showing that most of the checks took place up to November for both marketing years. The Commission maintains, however, that those data were not transmitted to it during the administrative procedure which led to the adoption of the contested decision, which is confirmed by the replies of the Hellenic Republic to a

measure of organisation of procedure and to the questions put by the Court at the hearing. The legality of a decision concerning State aid is to be assessed in the light of the information available to the Commission when the decision was adopted (see, to that effect, judgment of 15 December 2011 in Case T-232/08 *Luxembourg* v *Commission*, not published in the ECR, paragraphs 54 and 55, and Case T-267/06 *Italy* v *Commission* [2012] ECR, paragraphs 46 to 48; see, by analogy, Case C-333/07 *Regie Networks* [2008] ECR I-10807, paragraph 81). Consequently, those data provided by the Hellenic Republic cannot be taken into consideration for the purposes of assessing the legality of the contested decision.

150 It follows that the Hellenic Republic has not managed to establish that the Commission's findings in that regard are incorrect. Moreover, and in any event, as the Commission points out, the question of late checks is only one of the complaints concerning the key controls on which the flat-rate correction is based (see paragraphs 101 to 108 above).

151 Second, the Hellenic Republic maintains that the risk analysis was carried out and that it culminated in the exclusion of quantities of cotton of unknown origin. The improvement of the computerised system and of the control in actual time of the deliveries of cotton to the ginning plants helped to improve the procedure for selecting samples and therefore the risk analysis.

152 However, that argument does not invalidate the Commission's findings, according to which, for the 2001/2002 marketing year, the risk analysis was based on a random selection from among a stratified population, which was not a suitable method given the risks associated with the marketing year in question. Similarly, for the 2002/2003 marketing year, the Hellenic Republic does not establish that the Commission's findings summarised in paragraphs 106 and 108 above are incorrect.

153 The fifth part of this plea must therefore also be rejected.

154 It follows that the financial correction of 5% cannot, in those circumstances, be regarded as the consequence of an incorrect assessment of the facts.

The first and second parts, alleging that the financial correction was disproportionate

155 In connection with the first part of this plea, the Hellenic Republic maintains that the flat-rate correction of 5%, which has more than doubled the previous corrections of 2%, is disproportionate, because account was not taken of the late amendment to the aid scheme for cotton in 2001 by Regulation No 1051/2001, published in June, that is, in the middle of the cultivation period. It points out that no transitional provision reduced the cost of the new method of calculating co-responsibility and asserts that the costs generated by the measures adopted was considerable.

156 The Court points out that the Commission may refuse to charge [to the EAGGF] the whole of the expenditure in question if it finds that there are no adequate control procedures (see, inter alia, Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraph 122).

157 In the present case, it appears that the deficiencies pointed out by the Commission's services concern important aspects of the control system and the implementation of controls, which play a fundamental role in determining the regularity of the expenditure, so that it could reasonably be concluded that the risk of losses to the EAGGF was significant.

158 It follows that, by imposing, in the present case, a flat-rate correction of only 5% of the expenditure in question, although the controls carried out by the Greek authorities failed to comply with the requirements of the Community legislation, the Commission did not infringe the principle of proportionality (see, to that effect, judgment of 24 March 2011 in Case T-184/09 *Greece* v *Commission*, not published in the ECR, paragraph 72 and the case-law cited).

159 The argument relating to the amendment made by Regulation No 1051/2001 does not affect that finding. It should be pointed out that the obligations concerning the IACS and the on-the-spot checks of areas were included in the previous legislation (see paragraph 113 above). Regulation No 1051/2001 therefore did not amend the criteria for which deficiencies were found in the present case. Moreover, as has already been pointed out (see paragraph 137 above), since it had decided to adopt environmental measures in order to implement Regulation No 1051/2001 from the 2001/2002 marketing year, the Hellenic Republic had to check that the cotton producers complied with them.

160 The Hellenic Republic's argument relating to the amendment of the scheme at issue must therefore be rejected.

161 Finally, the cost of the measures adopted as a result of that new regulation does not justify the deficiencies found and therefore cannot be taken into account for assessing whether or not the financial correction at issue is disproportionate.

162 The arguments put forward in support of this first part therefore do not prove that the correction at issue was disproportionate.

163 In connection with the second part of this plea, the Hellenic Republic claims that the Commission itself noted improvements during the period from 2002 to 2003 and that the correction for that period should therefore have been lower than that imposed in respect of the period from 2001 to 2002.

164 It should be pointed out that, although improvements concerning the 2002/2003 marketing year were noted by the Commission in the letter of 17 July 2004, the Commission's services also noted, in that same letter, weaknesses concerning the on-the-spot checks of areas and the IACS, and indicated that they were, in principle, major weaknesses. Those weaknesses are also apparent from the summary report.

165 Therefore, the mere fact that improvements were noted cannot allow the Hellenic Republic to maintain that the correction rate of 5% should have been reduced.

166 Consequently, the Hellenic Republic has not established that the flat-rate correction of 5% of the expenditure concerned was disproportionate.

167 It follows from all the foregoing that the third plea, relating to the flat-rate correction applied in the cotton sector, must be rejected in its entirety.

4. *The sixth plea, concerning the corrections applied in the bovine premium and extensification payments sector*

Community legislation

168 Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in bovines (OJ 1999 L 160, p. 21), governs the grant of premiums in this sector.

Controls

169 Regulation No 3508/92 provides that each Member State shall set up an IACS covering certain Community aid schemes. Under its sixth recital, the administration of the data collected and its use for the verification of aid applications make it necessary to set up high-performance computerised databases allowing cross-checks in particular to be made.

170 Article 1(1)(b) of that regulation provides, inter alia, that each of the Member States must set up an IACS applying to the premium and payment arrangements for beef and veal producers.

171 Article 2 of Regulation No 3508/92 provides that the integrated system shall comprise several elements, including a computerised database, a system for the identification and registration of animals, aid applications and an integrated control system. Article 3 of Regulation No 3508/92 provides inter alia that the computerised data base shall record, for each agricultural holding, the data obtained from the aid applications.

172 Under Article 8(1) and (2) of that regulation, Member States shall carry out administrative checks on aid applications. Administrative checks shall be supplemented by on-the-spot checks covering a sample of agricultural holdings.

173 As regards those checks, Article 15 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the IACS for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11), provides:

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

174 Article 16 of Regulation No 2419/2001 provides:

‘The administrative checks referred to in Article 8(1) of Regulation ... No 3508/92 shall include in particular:

(a) cross-checks on declared agricultural parcels and animals in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulation of aid granted under Community aid schemes involving declarations of areas;

(b) cross-checks by means of the computerised database to verify eligibility for the aid.

175 Article 25 of Regulation No 2419/2001 provides:

‘1. On-the-spot checks shall cover all livestock for which aid applications have been submitted under the aid schemes to be checked and, in the case of checks of the bovine aid schemes, also the unclaimed bovine animals.

2. On-the-spot checks shall include in particular:

(a) a check that the number of animals present on the holding for which aid applications have been submitted and the number of unclaimed bovine animals corresponds to the number of animals entered in the registers and, in the case of bovine animals, to the number of animals notified to the computerised database;

(b) in relation to the bovine aid schemes, checks,

— of the correctness of entries in the register and the notifications to the computerised database on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,

— that information held in the computerised database corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,

— that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed,

— that all bovine animals present on the holding are identified by ear-tags and accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database [; t]hese checks shall be made individually for each individual male bovine still kept under the retention obligation for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 4(6) of Regulation ... No 1254/1999. In all other cases the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample;

…'

Slaughter premium

176 Article 11(1) of Regulation No 1254/1999 provides:

'A producer keeping bovine animals on his holding may qualify, on application, for a slaughter premium. It shall be granted on slaughter of eligible animals or their export to a third country and within national ceilings to be determined.

The following shall be eligible for the slaughter premium:

(a) bulls, steers, cows and heifers from the age of eight months,

(b) calves of more than one and less than seven months old and of carcase weight of less than 160 kilograms,

provided they have been held by the producer for a period to be determined.'

177 Article 26 of Regulation No 2419/2001 provides:

'1. As regards the special beef premium provided for in Article 4(6) of Regulation ... No 1254/1999 and the slaughter premium provided for in Article 11 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In this case the Member States shall carry out on-the-spot checks either:

(a) in at least 30% of all slaughterhouses, selected on the basis of a risk analysis, in which case the controls shall cover a sample of 5% of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check, or

(b) in at least 20% of those slaughterhouses which have been approved beforehand according to particular criteria of reliability to be determined by the Member States and are selected on the basis of a risk analysis, in which case the controls shall cover a sample of 2% of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check.

These on-the-spot checks shall comprise a posteriori scrutiny of documents, a comparison with the entries in the computerised database and checks of summaries relating to the slaughter certificates, or information in place thereof, which were sent to other Member States in accordance with Article 35(3) of Regulation (EC) No 2342/1999.

2. On-the-spot checks in the slaughterhouses shall comprise physical checks of slaughtering procedures carried out on the day of the on-the-spot check on the basis of a sample. Where necessary, it shall be checked whether the carcasses presented for weighing are eligible for aid.'

178 Commission Regulation (EC) No 2342/1999 of 28 October 1999 laying down detailed rules for the application of Regulation No 1254/1999 provides inter alia, in Article 37, in its amended version [Commission Regulation (EC) No 1042/2000 of 18 May 2000 (OJ 2000 L 118, p. 4)], that the premium shall be paid to producers who have held the animals for a minimum retention period of two months ending less than one month before slaughter or ending less than two months before export, and that, in the case of calves slaughtered before the age of three months, the retention period shall be one month.

Extensification payments

179 Article 13(1) of Regulation No 1254/1999 provides:

'Producers receiving the special premium and/or the suckler cow premium may qualify for an extensification payment.'

180 Article 13(2) of that regulation provides that the extensification payment, fixed at EUR 100 per special premium and suckler cow premium granted, is subject to the condition that in respect of the calendar year concerned the stocking density on the holding concerned is less than or equal to 1.4 LU per hectare (subject to lower amounts fixed by the Member States in accordance with the second subparagraph of Article 13(2) of that regulation).

181 Under Article 12(1) of Regulation No 1254/1999, the stocking density shall be expressed in LU per unit of forage area of the holding used for the animals carried on it.

182 Under Article 12(2) of Regulation No 1254/1999, for determining the stocking density on the holding, account shall be taken of:

'…

(a) the male bovine animals, suckler cows and heifers, sheep and/or goats for which premium applications have been submitted, as well as the dairy cows needed to produce the total reference quantity of milk allocated to the producer. The number of animals shall be converted to LU by reference to the conversion table in Annex III;

(b) the forage area, meaning the area of the holding available throughout the calendar year for rearing bovine animals and sheep and/or goats. The forage area shall not include:

— buildings, woods, ponds, paths,

— areas used for other crops eligible for Community aid or for permanent crops or horticultural crops, except permanent pasture for which area payments are granted pursuant to Article 17 of this Regulation and Article 19 of Regulation ... No 1255/1999,

— areas qualifying for the support system laid down for the producers of certain arable crops, used for the aid scheme for dried fodder or subject to a national or Community set-aside scheme.

Forage area shall include areas in shared use and areas which are subject to mixed cultivation.'

183 Article 13(3)(a) of Regulation No 1254/1999 provides:

'[B]y way of derogation from Article 12(2)(a), the stocking density of the holdings shall be determined by taking into account the male bovine animals, cows, and heifers present thereon during the calendar year concerned, as well as the sheep and/or goats for which premium applications have been submitted for the same calendar year. The number of animals shall be converted to LU by reference to the conversion table in Annex III.'

184 Article 32(3) of Regulation No 2342/1999 provides that, in order to check that the total number of animals calculated in accordance with the provisions of Regulation No 1254/1999 meets the stocking density requirements laid down in that regulation, Member States shall determine each year at least five census dates for the animals and shall inform the Commission thereof.

185 The animal census on those dates may be carried out, as the Member States choose, according to one of the two methods provided for in Article 32(3) of Regulation No 2342/1999. According to the first method, Member States are to ask each producer to declare, on the basis of his farm register, prior to a date to be determined by the Member State, the number of LUs or the number of animals of each of the two categories of male animals referred to in Annex III to Regulation No 1254/1999 (that is, on the one hand, the category containing male bovine animals and heifers older than 24 months, suckler cows and dairy cows and, on the other, male bovine animals and heifers from six months to 24 months). The second method, which is allowed only to Member States which have a computerised database in accordance with the requirements of Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1) and which consider that that database offers adequate assurances as to the accuracy for the purpose of applying the extensification payment scheme, involves the use of the data contained in that database in order to determine the number of LUs.

186 Under the fourth subparagraph of Article 32(3) of Regulation No 2342/1999, where Member States decide that the census dates may be any day of the year, they may provide that stocking density shall be calculated *pro rata temporis* for the period on which the animals are present on the holding.

187 Article 32(4) of Regulation No 2342/1999 provides:

'By way of derogation from paragraph 3, Member States may give producers the option of choosing a simplified scheme.

In that case, the producer must indicate on the "area" aid application:

(a) that he declares that he has complied each day with the maximum stocking density laid down in Article 13 of Regulation (EC) No 1254/1999 up to the date of his "area" aid application,

and

(b) that he undertakes to comply each day with that stocking density between the date of his "area" aid application and 31 December.

…

The declaration and undertaking referred to in this paragraph shall be subject to the control and penalty provisions provided for under the integrated system.

…'

Summary report

188 In connection with the enquiries under references AP/2003/09a, AP/2003/11, AP/2004/04 and AP/2005/05, the Commission carried out checks in Greece in May 2003, September 2003, March 2004 and April 2005 respectively. The Commission's observations in respect of Article 8 of Regulation No 1663/95 were formulated in the letters of 9 September 2003, 22 January 2004, 5 August 2004 and 29 July 2005 respectively. A bilateral meeting was held on 1 October 2004 concerning the first two enquiries, on 11 March 2005 concerning the third enquiry and on 7 June 2006 concerning the fourth enquiry. The Commission notified the Greek authorities of the minutes of those meetings on 30 November 2004, 22 June 2005 and 22 September 2006 respectively. The Greek authorities replied to them on 28 December 2004, 21 July 2005 and 20 October 2006 respectively. On 3 May 2007, the Commission formally communicated its conclusions to the Greek authorities for the four enquiries.

189 Following the opinion of the Conciliation Body of 8 January 2008 and information provided by the Greek authorities, the Commission communicated its final position of 16 June 2008, which is contained in the summary report.

190 In the first place, it is apparent from the summary report that, as regards the bovine premiums, the Commission's services found inadequacies relating to cross-checks and on-the-spot checks.

191 As regards, first, cross-checks (see paragraphs 169 and 174 above), it is clear from the summary report that, during the 2002 marketing year, computerised cross checks between the identification and registration database and the database with bovine premium claims were used for the first time in Greece as administrative controls. Although that was considered to be a step forward, the application was described as unsatisfactory. In particular, it was found that basic eligibility criteria had not been cross-checked in 2002. There was therefore a risk that ineligible animals had been accepted for payment. The Commission's services also found that there were anomalies (no registration or incorrect registration in the identification and registration database) with regard to a large number of claimed animals and considered that the numerous undocumented changes made to the identification and registration database affected the eligibility of all claimed animals. It was also pointed out that the Greek authorities had not been able to supply figures of the number of animals found in anomaly, with documentation justifying the change in their status. Consequently, a risk remained that unjustified changes were made in the system, leading to overpayment.

192 As regards, second, on-the-spot checks, they were considered to be of insufficient quality. In particular, it is apparent from the summary report that the manner in which those checks were carried out revealed numerous weaknesses and shows that they were not in accordance with Article 25 of Regulation No 2419/2001 (see paragraph 175 above). Accordingly, the Commission's services mentioned that unclaimed animals were not checked, that supporting documents and information in relation to animals claimed in the 12 months prior to the check were not checked, that there was no check of the place of retention, that the checks on the control documents and on the status of the animals checked were inadequate, and that there were difficulties with reconciling results of previous checks.

193 The Commission's services also mentioned the lack of on-the-spot checks of animals claimed for slaughter premium. In that regard, the Conciliation Body proposed that the planned correction be reconsidered, pointing out the limited value of on-the-spot checks in the case of the slaughter premium, since, for the slaughtered cattle, the main controls are those at the abattoirs and the ex-post checks of the farmers' records.

194 The Commission maintained its position, however, on the ground that the conjunction of several deficiencies had an impact on key controls of all bovine premiums, including the slaughter premium. It considers that the absence of on-farm on-the-spot checks on slaughter premium involves an additional risk for the EAGGF regarding that scheme that cannot be completely compensated for by slaughterhouses' checks and administrative checks (that should anyway always be carried out in any slaughter premium control system), particularly because the checks in slaughterhouses carried out during mission AP/2003/09 revealed important weaknesses. It accepts that on-farm on-the-spot checks are less crucial than for other aid schemes, as such checks would normally be documentary controls only, which is why the correction rate for the slaughter premium is not higher than for the other bovine premiums.

195 The Commission's services also pointed out the absence of checks on the status of animals and the cow/heifer ratio concerning the suckler cow premium.

196 In the second place, with regard to the extensification payments, correct establishment of eligible forage area and the number of LUs on farm are considered key controls. The Commission's services found that the Greek system for control of the number of LUs was still not in compliance with the rules in 2002 and 2003 (either the *pro rata temporis* method relying on the identification and registration database or the simplified system with five census dates), nor did it cover 100% of claimants five times a year as envisaged by the Hellenic Republic, although some progress was made in 2003 due to the increased use of the identification and registration database. The situation was considered to have improved slightly in 2003, but no tangible progress could be evidenced as regards the measurement of the eligible forage area for the 2002/2003 period. As regards the establishment of LUs, the Commission's services pointed out that Greece continued to apply an alternative system of checks (probably affected by the weaknesses found in the on-the-spot checks in Greece).

197 The Commission therefore applied a flat-rate correction of 10% for the 2002 marketing year for the deficiencies of key controls concerning the main bovine premiums and of 5% for the 2003 marketing year due to the insufficient checks of unclaimed animals and the weaknesses as regards on-the-spot checks, to be applied to the whole of Greece, since problems had been noted in numerous regions. In respect of the weaknesses found with regard to extensification payment, a flat-rate correction of 10% was applied for the 2002 and 2003 marketing years. However, the corrections were adjusted to take into account the corrections already applied to the same budget posts due to late payment.

Findings of the Court

198 As regards the bovine sector, the Hellenic Republic raises a sixth plea, alleging that the corrections imposed in respect of bovine premiums and extensification payments are incorrect and the statement of grounds is defective.

199 First of all, in so far as the Hellenic Republic raises the plea that the statement of grounds is defective, it should be pointed out that that plea is by no means substantiated and that, in any event, in accordance with the case-law cited previously, (see paragraph 73 above), the reasons for the contested decision concerning the corrections relating to the bovine sector must, in the present case, be regarded as sufficient, since the Hellenic Republic was closely involved in the process under which that decision was drawn up and knew the reasons why the Commission considered that the disputed amount should not be charged to the EAGGF. This plea must therefore be rejected.

200 Secondly, the Hellenic Republic contests the corrections imposed for the bovine sector alleging misinterpretation and misapplication of Regulation No 1258/1999 and of document No VI/5330/97 and also incorrect assessment of the facts. In essence, it challenges the Commission's findings concerning the controls relating to the bovine premiums and to the extensification payments.

201 It is therefore necessary to examine, in the present case, whether the Hellenic Republic has proved, in accordance with the case-law referred to previously (see paragraph 78 above), that the Commission's assessments were incorrect.

Checks relating to bovine premiums

– Cross-checks

202 The Hellenic Republic concedes that the carrying out of cross-checks presented certain technical problems of inconsistencies between, on the one hand, the identification and registration database and, on the other, the bovine aid claim database, owing to the complexity of the system implemented for the first time in 2002. It points out, however, that, for 2003, improvements were made to the veterinary database and additional cross-checks were introduced.

203 Nevertheless, it must be stated in that regard that the existence of improvements in 2003 is not enough to establish that the findings made by the Commission's services in the present case, summarised in the summary report (see paragraph 191 above) are incorrect.

204 The Hellenic Republic also maintains that the percentage of animals rejected in 2003 owing to the further controls added to the 2002 controls was only 8.04%, which shows that most of the animals rejected were the result of controls which already existed in 2002.

205 However, that argument, which appears to confirm the existence of inadequacies in the previous controls, does not prove that the Commission's findings were incorrect.

206 Therefore, the Commission was right to consider that the lack of certain controls had led to the risk that ineligible animals had been accepted for payment.

207 The Hellenic Republic also claims that there was no risk to the EAGGF. It maintains that, when cross-checks were made for the years 2004 and 2005, the computerised control was extended to 2002 and the amounts overpaid were offset against the aid payments for the financial years 2004 and 2005.

208 However, according to settled case-law, although it is for the Commission to prove that Community rules have been infringed, once it has established such an infringement it is for the Member State to demonstrate, if appropriate, that the Commission made an error as to the financial consequences to be attached to that infringement. Furthermore, the Commission is not required to prove that there has been a loss but may simply adduce sound evidence of such loss (see, to that effect, Case C-5/03 *Greece* v *Commission* [2005] ECR I-5925, paragraphs 38 and 39 and the case-law cited).

209 In the present case, it is not apparent from the documents in the case that the Hellenic Republic has proved that the amounts overpaid were recovered by being offset against the aid payments for the financial years 2004 and 2005.

210 In reply to a measure of organisation of procedure, the Hellenic Republic stated that the base for calculating flat-rate corrections was constituted by the expenditure declared by OPEKEPE in the amount of EUR 182 380 702.09 for 2002/2003 and that the sum of EUR 10.8 million had not been deducted from it.

211 However, it must be stated that, by so doing, the Hellenic Republic is simply making assertions and provides no evidence of the sum of EUR 10.8 million mentioned. It refers in that regard to the opinion of the Conciliation Body. However, in its opinion of 8 January 2008, the Conciliation Body stated that the Greek authorities had mentioned that they had recovered EUR 10.8 million of unduly paid aid for 2002/2003 and that, if that information was verified and had not yet been taken into account, that would justify a corresponding adjustment in the amount of the correction. That opinion therefore by no means proves that that sum had actually been recovered by being offset against aid payments for 2004 and 2005.

212 Moreover, the Commission stated, in its final position, that it had taken into account the recoveries declared to the EAGGF by the Greek authorities when calculating the financial corrections. It added that certain aspects still needed clarifying, such as the way in which the sums unduly paid had been recovered from farmers who did not lodge a claim after 2002. The documents in the case do not show that the Greek authorities adduced more specific evidence in that regard.

213 It follows that the Hellenic Republic has not proved, by relevant supporting documentation, that the amounts unduly paid were recovered by being offset against the aid payments for the financial years 2004 and 2005. The validity of the basic premise of its argument is therefore not established.

214 Therefore, the argument concerning cross-checks, which is not otherwise substantiated, must be rejected.

– On-the-spot checks

215 The Hellenic Republic contests the Commission's findings concerning on-the-spot checks.

216 First, it is apparent from the documents in the case that those on-the-spot checks were considered to be of insufficient quality in the light of the provisions of Article 25 of Regulation No 2419/2001 for several reasons (see paragraph 192 above).

217 Accordingly, unclaimed animals were not checked. Such a check is expressly required under Article 25(1) of Regulation No 2419/2001. The Hellenic Republic claims that instructions were given to that effect to the inspectors from 2002 and that the situation improved in 2003 and 2004. However, that argument does not prove that the Commission's findings in that regard were incorrect.

218 The Commission's services also noted that there was no control of supporting documents. The Hellenic Republic refers in that regard to isolated weaknesses, which cannot be attributed to the country in general, and maintains that it may be established from ancillary controls that the producers fulfil their obligations. However, it must be stated that such an argument is not enough to dispel the Commission's doubts regarding the quality of the checks at issue.

219 Moreover, the Commission's services point out the failure to check information in relation to animals claimed in the 12 months prior to the check. In that regard, the Hellenic Republic refers to the circulars concerning the bovine premium scheme of 2002 and 2003, sent to the departments responsible for carrying out the checks, which, it points out, set out the provisions of Article 25 of Regulation No 2419/2001. Similarly, as regards the checks of the place of retention of the animals, provided for by Article 25(2)(b), third indent, of that regulation, the Hellenic Republic maintains that the relevant circular provides that producers must indicate the exact location of their cowshed and that the location of the animals is checked.

220 However, by so doing, the Hellenic Republic is merely repeating the arguments put forward during the *inter partes* proceedings, but does not adduce specific and concrete evidence that those checks were carried out and, therefore, does not dispel the Commission's doubts in that regard.

221 The Hellenic Republic also disputes that there were difficulties reconciling [the results] with the results of previous checks, because few differences are identified at first. That argument does not prove, however, that the Commission's findings were incorrect.

222 Having regard to the foregoing, the Hellenic Republic provides no proof that the Commission's findings concerning the insufficient quality of the on-the-spot checks in the light of the provisions of Article 25 of Regulation No 2419/2001 were incorrect.

223 Second, as regards more particularly the slaughter premium, the Hellenic Republic contests the Commission's conclusions and claims that, since 2002, on-the-spot checks have taken place in slaughterhouses, in accordance with Article 26 of Regulation No 2419/2001 and in larger percentages than those required by the legislation.

224 In that regard, the Court finds that the flat-rate corrections are applied in the present case for weaknesses in the identification and registration database and for inadequacies in the on-the-spot checks. As the Commission points out, the weaknesses previously found in relation to the identification and registration database and the cross-checks (see paragraphs 202 to 214 above) and the on-the-spot checks (see paragraphs 215 to 222 above) also concern checks on animals for which the slaughter premium was claimed.

225 In particular, the absence of on-the-spot checks in that connection was particularly worrying as regards those farmers claiming only slaughter premiums, as the only checks carried out were cross-checks, that were not fully operational, at least for the 2002 marketing year.

226 Therefore, the conclusions previously stated concerning the insufficient quality of the checks on bovine aid apply also in relation to the slaughter premium. The fact that Article 26 of Regulation No 2419/2001 lays down control measures concerning more specifically on-the-spot checks in slaughterhouses does not mean that the checks provided for in relation to bovine aid schemes by Article 25 of that regulation are inapplicable.

227 In that context, even if, for the slaughter premium, documentary checks may be considered conclusive, as the Conciliation Body pointed out and as the Commission acknowledges, that in no way reduces the inadequacies found in the present case.

228 Moreover, the on-the-spot checks in slaughterhouses also include physical checks, carried out by sampling, of the slaughter procedures implemented on the day of the on-the-spot check, in accordance with Article 26(2) of Regulation No 2419/2001.

229 The arguments of the Hellenic Republic do not affect that conclusion. It maintains that the inspector compares the slaughter claim, including the animals for which a premium is sought and the numbers of their ear tags, and the record of the holding in order to check compliance with the retention period. It states that, since a 2003 circular, it has been clearly laid down that the record of the holding must be checked for the slaughter premium.

230 However, those arguments cannot dispel the doubts expressed by the Commission. It is also apparent from the documents in the case that the checks carried out by the Commission's services in operational slaughterhouses during enquiry AP/2003/09a revealed important weaknesses, which are not disputed in the present case.

231 Similarly, the fact that checks in slaughterhouses are allegedly carried out in larger percentages than those required by the legislation in no way reduces their inadequacy in terms of quality.

232 The Commission was therefore fully entitled to consider that the absence of on-the-spot checks in holdings for slaughter premiums constituted an additional risk for the EAGGF, a risk which could not be wholly offset by slaughterhouse checks and administrative controls.

233 In the light of all the foregoing, the arguments put forward by the Hellenic Republic to contest the Commission's findings regarding bovine premiums, including slaughter premiums, do not prove that the corrections applied in this case were incorrect.

Corrections concerning extensification payments

234 According to Articles 12 and 13 of Regulation No 1254/1999, producers may qualify for an extensification payment only if their holding does not exceed a stocking density, determined according to the number of LUs in relation to the forage area destined for grazing the animals held on the holding. It follows that the grant of the extensification payment involves the accurate determination of the forage area and of the number and category of animals on the holding.

235 First, as regards the determination of the forage area, the Hellenic Republic maintains that since 2002 there has been a cartographic infrastructure and that it has given instructions concerning the eligibility of areas since 2002, which are controlled by the IACS programme. There is also an on-the-spot check.

236 However, the Court finds that the documents in the case show that the checks on the available forage areas were considered insufficient for both 2002 and 2003. Accordingly, it was found that mountain regions had wrongly been declared to be eligible forage areas and the Greek authorities have not adduced evidence of improvements in that regard. The arguments of the Hellenic Republic and, in particular, the existence of clear instructions for the on-the-spot checks, by no means establish that the findings made for the years at issue were incorrect.

237 Second, concerning the checks on the LUs, it should be pointed out that the Member State may choose, in order to check compliance with the stocking density defined in Article 13(2) of Regulation no 1254/1999, between two methods. The first is laid down in Article 32(3) of Regulation No 2342/1999 (see paragraphs 185 and 186 above). The second method, which derogates from the first method, is laid down by Article 32(4) of Regulation No 2342/1999 (see paragraph 187 above). It is a simplified scheme, which consists in a declaration and an undertaking by the producer to comply with the maximum stocking density. In that case, the control and penalty provisions provided for under the integrated system (Regulations No 3508/92 and No 2419/2001) apply.

238 In the present case, the Hellenic Republic maintains that it applied the method of the simplified scheme laid down in Article 32(4) of Regulation No 2342/1999 and that the producers all submitted an aid claim under that scheme. It adds that the scheme laid down in Article 32(3) of Regulation No 2342/1999 only required a check on the number of animals during the on-the-spot check provided for under the integrated system and that those checks were made over five one-week periods, because it was impossible to carry out all the counts on a single date. For 2003, the count had been carried out by means of the identification and registration database and covered 100% of the claims. It maintained that there was no risk of the animals being counted twice and the check was reliable.

239 In that regard, in so far as the Hellenic Republic invokes the application of the simplified scheme of Article 32(4) of Regulation No 2342/1999, it need only be stated that the controls of the LUs were therefore based on the on-the-spot checks imposed by the integrated system and on the identification and registration database which is part of the IACS. The weaknesses previously pointed out in respect of the on-the-spot checks (see paragraphs 216 to 222 above) and the anomalies identified in the summary report concerning the identification and registration database were therefore capable of affecting the controls of the LUs.

240 Moreover, inasmuch as the Hellenic Republic raises arguments concerning the scheme in Article 32(3) of Regulation no 2342/1999, its arguments must be rejected. It maintains that it fixed five one-week periods for practical reasons connected with the extensive nature of livestock farming in Greece. however, that system is not in accordance with the 'normal' scheme imposed by Article 32(3) of Regulation No 2342/1999, since it is not based on five census dates or days for the animals during the year, but on five one-week on-the-spot census periods (see, to that effect, judgment of 9 September 2011 in Case T-344/05 *Greece* v *Commission*, not published in the ECR, paragraph 94).

241 Moreover, it is necessary to reject any argument of the Hellenic Republic designed to maintain and to show that the application of a system to check the stocking density laid down by the Community legislation encounters practical difficulties in Greece. It is apparent from settled case-law that a Member State may not plead practical difficulties in order to justify its failure to implement appropriate controls imposed by Community law (see Case C-28/89 *Germany* v *Commission* [1991] ECR I-581, paragraph 18, and Case T-344/05 *Greece* v *Commission*, paragraph 240 above, paragraph 101 and the case-law cited).

242 Therefore, the Commission was entitled to conclude that the checks relating to extensification payments did not provide a sufficient guarantee of reliability. The finding of an improvement in 2003 owing to the increased use of automated cross checks relating to the identification and registration database, noted by the Commission, was considered insufficient to justify a differentiation between 2002 and 2003 and the arguments of the Hellenic Republic, already put forward during the *inter partes* proceedings, do not affect that conclusion.

243 It follows that the Commission was right to express a reasonable and serious doubt as to the Hellenic Republic's fulfilment of its obligations concerning the control of claims for extensification payments submitted in respect of the years 2002 and 2003.

244 Consequently, the Hellenic Republic has not proved that the Commission relied on a misinterpretation and misapplication of the applicable provisions or on an incorrect assessment of the facts. The sixth plea, relating to bovine premiums and extensification payments, must therefore be rejected.

5. *The ninth plea, concerning the corrections applied in the olive oil sector*

Community legislation

245 The common organisation of the market in oils and fats was established by Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221).

246 Article 5 of Regulation No 136/66, as amended by Council Regulation (EC) No 1638/98 of 20 July 1998 (OJ 1998 L 210, p. 32), institutes production aid for olive oil, which is intended to contribute towards establishing a fair income for producers. The aid is granted to olive growers on the basis of the quantity of olive oil they actually produce.

247 Article 11a of that regulation, in its amended version, provides inter alia that the individual Member States shall take the necessary steps to penalise infringements of the aid scheme provided for in Article 5. Where infringements are reported by the inspection agencies, the Member States shall decide on action to be taken within 12 months of the report and inform the Commission thereof.

Computerised files

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

249 Article 16(2) of Regulation No 2261/84 provides:

'These files must contain at least the following information:

(a) for each olive grower and for each marketing year for which he has made an application for aid:

— the information contained in the crop declaration provided for in Article 3,

— the quantities of oil produced for which an application for production aid has been made and the quantities for which aid is paid,

— the information resulting from the on-the-spot checks made on the olive grower;

(b) for producer organisations and associations of producer organisations, all information needed to verify their activities in connection with the present aid system and also the results of checks made by the Member States;

(c) for oil mills and for each marketing year the data appearing in the stock records, information on technical equipment and pressing capacity and the results of checks made pursuant to this Regulation;

(d) the indicative annual yields for each homogeneous production zone.'

250 Article 27 of Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/1999 to 2004/2005 marketing years (OJ 1998 L 293, p. 50), as amended, provides:

'1. The permanent computerised files of olive and olive-oil production data provided for in Article 16 of Regulation (EEC) No 2261/84 shall include:

(a) the alphanumerical database and the graphical reference database of the olive cultivation GIS provided for in Articles 23 and 24 and the results of the checks provided for in Article 25;

(b) the files of new planting containing the information referred to in Article 5 and the results of the checks provided for in Article 29;

(c) the files of producer organisations and associations thereof containing the information referred to in Article 16(2)(b) of Regulation ... No 2261/84;

(d) the files of mills containing information on the conditions for approval referred to in Article 7, the stock records provided for in Article 8 and the results of the checks provided for in Article 30;

(e) the files of the homogeneous production zones containing the information referred to in Article 6.

2. The files referred to in paragraph 1, with the exception of the graphical reference database, shall enable the data of the current and four previous marketing years at least to be consulted directly and immediately. ...

The Member States may establish decentralised files provided the latter are of homogeneous design, are compatible with each other and are accessible centrally at the paying agency and the control agency. The olive cultivation GIS databases must be compatible with those of the integrated system.

The identification codes of olive growers, producer organisations and associations thereof, mills and homogeneous production zones shall be either assigned to the individual persons or bodies concerned once and for all or automatically convertible to enable aggregates and searches over the five marketing years referred to in the first subparagraph to be conducted immediately.

Without prejudice to the checks to be carried out, in particular cross-checks between files, and the results to be notified, the files shall contain archives of the historical data available for the marketing years prior to those referred to in the first subparagraph and, from 31 October 2001 at the latest, shall allow the information contained in them;

— to be automatically aggregated at regional and Member State level,

— to be automatically compared between files.'

Register of olive cultivation

251 Article 1(1) of Regulation (EEC) No 154/75 of the Council of 21 January 1975 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1975 L 19, p. 1), requires the Member States concerned to establish a register of olive cultivation to cover all olive-growing holdings within their territory.

252 Regulation No 1638/98, as amended by Council Regulation (EC) No 1513/2001 of 23 July 2001 (OJ 2001 L 201, p. 4), provides, in Article 2(1) to (3):

'1. Notwithstanding Regulation ... No 154/75, work on the olive cultivation register during the 1998/1999 to 2002/2003 marketing years shall focus on the creation, updating and utilisation of a geographic information system (GIS).

The GIS shall be created using the data from the olive cultivation register. Additional data shall be supplied from the crop declarations attached to the aid applications. The information in the GIS shall be geographically situated using computerised aerial photographs.

2. Member States shall verify that the information in the crop declarations corresponds to the information in the GIS. If this information does not correspond, the Member State shall carry out verifications and on-the-spot checks.

...

3. If, during the verifications and checks referred to in paragraph 2, the information in the crop declaration is found to be incorrect, particularly as regards the number of olive trees, the Member State shall apply, for one or more marketing years, and depending on the size of the discrepancies observed:

— a reduction in the quantity of olive oil eligible for aid, or

— exclusion of the olive trees concerned from eligibility for the aid,

— in accordance with rules and criteria to be laid down by the Commission.'

253 Article 28(2) of Regulation No 2366/98 provides, in essence, that, in regions where the olive cultivation GIS has not yet been completed, on-the-spot inspections shall be conducted on 10% of all crop declarations in the 2000/2001 to 2002/2003 marketing years.

Crop declarations and checks

254 Article 1 of Regulation No 2366/98 provides that, for the purposes of granting aid for the production of olive oil before 1 December of each marketing year, olive growers shall lodge crop declarations covering their olive trees in production and details of the olive groves they manage as at 1 November of the marketing year to which the declarations correspond.

255 Under Article 2 of Regulation No 2366/98:

'... crop declarations shall include at least:

(a) the surname, forenames and address of the olive grower;

(b) the location or locations of the holding;

(c) the total number of olive-trees in production, including scattered olive trees;

(d) the land register references of the olive-growing parcels of the holding or, where no land register is kept, a full description of the holding and of the olive-growing parcels;

(e) for each olive-growing parcel: the number of olive trees in production, the principal variety, and details of any irrigation or associated crops present.'

256 Article 4(1) of Regulation No 2366/98 provides:

'To constitute a basis for the payment of aid to olive growers under the common organisation of the market in oils and fats in force from 1 November 2001, additional olive trees planted after 1 May 1998 must be identified geographically and included in a national or regional programme approved by the Commission under the procedure laid down in Article 38 of Regulation [No 136/66].

Olive trees shall be deemed to be identified geographically where they appear in the graphical reference database provided for in Article 24 or, failing this, where the competent agency of the Member State has cartographical information allowing the trees to be located.'

257 Article 28(3) of Regulation No 2366/98 provides:

'During the on-the-spot checks, all the information in crop declarations and aid applications shall be verified, and in particular:

— the location of each parcel and the number of olive trees therein,

— the destination of the oil in the case referred to in Article 10(1),

— consistency between the olive trees on holdings and the quantity of oil covered by aid applications.

– Aid applications specifying an inconsistent quantity of oil shall be rejected.'

Mills

258 Under Article 8(b), first indent, of Regulation No 2366/98, Member States shall make provision, from the 1998/1999 marketing year, for stock records linked to the financial accounts to be kept. Article 8(d) of that regulation provides for a system of additional checks concerning the quantities of olives pressed, the quantities of oil and olive residue obtained, the stocks of oil present and the amount of electricity consumed.

259 Under Article 30(1) of Regulation No 2366/98, Member States shall provide, from the 1998/1999 marketing year, for an in-depth check of the consistency of the information and data supplied by the mills. Article 30(2) stipulates what that in-depth check shall comprise.

260 Article 9a of Regulation No 2366/98 lays down the penalties (withdrawal of approval, financial or other penalties) in the event of failure by the mills to fulfil their undertakings referred to in Article 13(1) of that regulation, as laid down in Articles 7, 8 and 9 of the same regulation.

Summary report

261 In the course of the enquiries under references OT/2004/02/GR and OT/2004/05/GR, the Commission carried out checks concerning production aid for olive oil, from 16 to 20 February 2004 in the prefectures of Laconia (Greece) and Messinia (Greece) and from 29 November to 3 December 2004 in the prefectures of Iraklion (Greece) and Rethymno (Greece), respectively. The Commission's observations pursuant to Article 8 of Regulation No 1663/95 were set out in two letters of 17 November 2004 and 7 September 2005 respectively. The Hellenic Republic made observations on 9 March and 21 November 2005. A bilateral meeting between the Hellenic Republic and the Commission was held on 15 November 2005 concerning the first enquiry and on 22 June 2006 concerning the second enquiry. The Commission notified the Hellenic Republic of the minutes of those two meetings on 17 February and 13 September 2006 respectively. The Greek authorities replied to them on 20 March and 26 October 2006 respectively. On 10 August 2007, the Commission formally communicated its conclusions to the Greek authorities for both enquiries. On 11 October 2007, the Greek authorities requested conciliation and sent the Commission information concerning the breakdown per marketing year of the expenditure declared in 2006, which the Commission took into account in its final position, communicated to those authorities on 6 August 2008, following the opinion of the Conciliation body of 12 February 2008.

262 In the summary report, the Commission's services found that the computerised files were not operational, there was no olive cultivation register, the crop declarations were unreliable, on-the-spot checks on crop declarations and checks on mills were deficient and there was insufficient follow-up to penalties proposed by the agency for the control of aid for olive oil ('AYMEEE'). Those inadequacies in the performance of key controls as well as the shortcomings in secondary checks (excessive time taken to adopt a decision on penalties on mills, lack of checks on additional olive trees, non-application of the flat-rate reduction, lack of supervision by the paying agency) were considered to justify the flat-rate corrections imposed.

263 First, regarding the fact that the computerised files were not operational, the Commission's services pointed out that computerised files existed at several bodies but they did not meet the regulatory requirements laid down by Article 27(2) of Regulation No 2366/98, since they did not allow the data of the current and four previous marketing years, in this case the marketing years 1998/1999 to 2002/2003, to be consulted directly and immediately. They noted that it was possible to decentralise the files, provided they were compatible with each other and were accessible centrally at the paying agency and the control agency (Article 27(2) of Regulation (EC) No 2366/98). It has not

been demonstrated that OPEKEPE actually had centralised access. In addition, the data are decentralised at each producer organisation, and no compatibility is ensured between the different systems.

264 Moreover, the Commission's services noted that the files did not contain the data required by Article 16(2)(a) and (c) of Regulation No 2261/84 (no computer files on parcels providing details of the location of each parcel and the number of olive trees present on it) and contained inconsistencies. Similarly, it was considered that the data on mills were considered insufficient (stock records were kept only in relation to the mills checked) and prevented any centralised analysis of oil/olive yields, for example.

265 As regards cross-checks, following the bilateral meeting of 15 November 2005, the Greek authorities, in their letter of 20 March 2006, provided results of cross-checks carried out between the computerised files. However, those data were considered insufficient. The Commission's services pointed out, inter alia, that, owing to the lack of a centralised agricultural parcel database up to and including the 2001/2002 marketing year, the 2002/2003 crop declarations used for payment of the aid were declarations from previous years and therefore provided only a very vague indication of the parcels concerned. Therefore, cross-checks could not be carried out, either between olive cultivation declarations or with the area declarations submitted under other aid schemes. Moreover, the cross-checks of crop declarations for 2002/2003 with the crop declarations for setting up the olive cultivation GIS submitted in 2003 were carried out by the Greek authorities late, during the 2004/2005 marketing year and, in the case of the 2002/2003 marketing year, they only covered some of the producers. Furthermore, the finding of over-declarations of olive trees, which led to the exclusion from aid of 773 producers, is not the result of cross-checks, but is due to the application of the penalties provided for in Article 15(2) of Regulation No 2366/98. Finally, the results of checks on certain anomalies were not provided for 2002/2003.

266 The Greek authorities pointed out to the Conciliation Body that OPEKEPE had centralised access to computerised files on aid payments and the results of cross-checks and that AYMEEE kept data on all mills. However, the Commission considered that that was not sufficient to ensure that the Greek system met the definition of computerised files under Article 16 of Regulation No 2261/84 and Article 27(2) of Regulation No 2366/98, which require stock records for all mills and not just those checked and, for each olive grower, details of the information contained in the crop declaration, the quantities of oil produced and for which aid was paid, and the results of the on-the-spot checks.

267 Second, it is alleged that the Hellenic Republic failed to fulfil the obligation to establish an operational olive cultivation register and started work on setting up the olive cultivation GIS only late (full use from the 2003/2004 marketing year).

268 Third, the crop declarations were considered unreliable. The summary report finds that there is no parcel identification and register system (borders between parcels often missing, parcels cultivated by more than one producer, parcels sometimes made up of pieces of land at a distance from each other, the name of a very large parcel may be used for more than one parcel cultivated by more than one producer), which makes the information given in the crop declarations imprecise, both in terms of the location and of the identification of the parcels. On top of this, other shortcomings were found in the crop declarations (no indication of the date on which the olive trees were planted, information on irrigation not matching the reality on the ground and not used in the checks on yields, the number of productive trees always equal to the number of trees declared, which is highly unlikely). In 2002 and 2003, olive cultivation parcels were not identified in accordance with a format compatible with the land parcel identification system (LPIS) under construction.

269 Fourth, the on-the-spot control of crop declarations was considered deficient. The summary report points out that, in the absence of an operational olive cultivation GIS in 2002 and 2003, the alternative checks apply, in accordance with Article 28(2) and (3) of Regulation (EC) No 2366/98.

It was found that the minimum rate of checks was not complied with at national level and that the on-the-spot checks did not meet the relevant requirements (instructions providing only for verification of the location of each parcel and the number of olive trees on it, too few verifications of the consistency of yields, no traceability of checks, different attitude taken by inspectors to non-productive olive trees) for the 2002/2003 marketing year. It is pointed out that the Greek authorities incorporated these aspects in the instructions for inspectors applicable from the 2003/2004 marketing year onwards.

270 Fifth, the checks on mills were also considered deficient. The Commission's services noted that there was no link between the stock records and the financial accounts. They also pointed out that it was difficult to make conclusive checks on consistency to rule out fictitious over-assessment of the quantities produced, because the staff were family members, there was no stock, pressing services are often paid for in oil and there was no electricity meter. Checks on turnover and stocks included in tax declarations, which would have enabled reliable verifications to be made, were not carried out.

271 Sixth, as regards the follow-up to penalties proposed by AYMEEE, the summary report points out that findings justifying withdrawal of approval were not acted upon, which makes the check on mills ineffective. Following their hearing before the Conciliation Body, the Greek authorities provided summary data on the results of checks on mills for the 2002/2003 marketing year. However, according to the Commission, those data do not match the data resulting from the detailed list sent by AYMEEE in 2006. Neither the total number of mills checked nor the number of mills penalised, receiving a warning or fined tally. The data being too concise, it is not possible to know where the difference comes from. Moreover, those data indicate that the mills were penalised, but do not say what AYMEEE's original proposals were, or on what date the penalties were applied. The Commission's concerns relate mainly to the time taken for the penalties to be applied and the reduction in the level of penalties as compared with the original proposals.

272 Since those shortcomings found in the key controls for the 2002/2003 marketing year had already been notified under previous enquiries and had already been the subject of a flat-rate correction of 10% for the 1999/2000 to 2001/2002 marketing years, the correction rate was raised to 15%, in accordance with the recurrence rule, for the 2002/2003 marketing year.

Findings of the Court

273 As regards the olive oil sector, the Hellenic Republic raises a ninth plea, claiming that the corrections imposed were incorrect, and alleging insufficient reasoning for the contested decision and infringement of the principle of proportionality.

The claim that the corrections imposed were incorrect

274 The Hellenic Republic disputes the reasons for the imposition of the corrections, namely that the computerised files were not operational, there was no olive cultivation register, the crop declarations were unreliable, on-the-spot checks on crop declarations and checks on mills were deficient and there was insufficient follow-up to the penalties proposed by AYMEEE.

275 It is necessary to examine, in this case, whether the Hellenic Republic has demonstrated, in accordance with the case-law previously cited (see paragraph 78 above), that the Commission's assessments were incorrect.

– The non-operational nature of the computerised files

276 The Hellenic Republic refers to the databases existing in each of the national departments according to their areas of competence. It states that it has proved that the files contained all the information required by the applicable provisions and maintains that Article 16 of Regulation No 2261/84 does not require all the files to be centralised. It adds that, since the 2002/2003 marketing period, OPEKEPE has had centralised access to the computerised files.

277 It should be pointed out that the computerised files must contain certain information. Moreover, under the second subparagraph of Article 27(2) of Regulation No 2366/98, when they are decentralised, those files must be of homogeneous design, compatible with each other and accessible centrally at the paying agency and the control agency. Furthermore, under the first subparagraph of that provision, the files must enable the data of the current and four previous marketing years to be consulted directly and immediately (see paragraph 250 above).

278 In the present case, it should be noted that the Hellenic Republic referred to the various Greek databases concerned in the various departments. In so doing, however, it provided no evidence whatsoever that the Commission's findings are incorrect, in particular as regards the incompatibility of the files. In that regard, it should be pointed out that the Commission did not criticise the Hellenic Republic for having the files decentralised, but called in question the compatibility between the various systems, and it has not been established in this case that that finding is incorrect. Moreover, the documents in the case do not show that evidence that OPEKEPE had centralised access to the computerised files was adduced for the 2002/2003 marketing year at issue.

279 In addition, the Commission also found that the computerised files were incomplete and that they did not enable the data of the current and four previous marketing years, in this case the 1998/1999 to 2002/2003 marketing years, to be consulted directly and immediately (see paragraph 263 above, contrary to the provisions of Article 27(2) of Regulation No 2366/98.

280 Similarly, as the Commission has pointed out, Article 16 of Regulation No 2261/84 (see paragraph 249 above) requires a stock record for all mills, not only those which are checked and, for each olive grower, the information contained in the crop declaration, the quantities of oil produced for which aid has been paid and the results of the on-the-spot checks, which necessitated inter alia sufficiently complete computerised files of the parcels and a stock record of all the mills, which in the present case were lacking.

281 The Hellenic Republic also maintains that the cross-checks did take place. It should be pointed out that, according to the information provided by the Greek authorities in their letter of 20 March 2006 and from the matters clarified at the bilateral meeting of 22 June 2006, the Commission was able to establish the existence of cross-checks. However, it is apparent from the summary report that those checks were insufficient having regard to the relevant requirements. The general assertions made by the Hellenic Republic do not therefore call the Commission's findings in question (see paragraph 265 above).

282 Finally, that conclusion is in no way affected by the argument of the Hellenic Republic that the Commission itself conceded that there had been improvements.

283 Consequently, the Hellenic Republic has not proved that the Commission's assessments regarding the non-operational character of the computerised files were incorrect and that complaint must therefore be rejected.

– The failure to complete the olive cultivation register

284 The Hellenic Republic recalls the legislative context of the olive cultivation register and the oil cultivation GIS. It points out that, under Article 2(1) of Regulation No 1638/98, work on the olive cultivation register is focused on the creation of a GIS. It maintains that the checks carried out (administrative, on-the-spot, in the mills, etc) on 10% of the producers, in accordance with Article 28(2) and (3) of Regulation No 2366/98, compensated for the fact that the olive cultivation register was not completed.

285 First of all, the Court points out that the Hellenic Republic does not dispute that no olive cultivation register had been compiled for the 2002/2003 marketing year at issue.

286 Also, the obligation to focus work on the olive cultivation register towards the creation, updating and utilisation of the GIS, stemming inter alia from Regulation No 1638/98 (see paragraph 252 above), only supplements the obligation to set up that record, which lies with the producers under Regulation No 154/75. It is apparent from the second subparagraph of Article 2(1) of Regulation No 1638/98 that the GIS is created on the basis of the data in the olive cultivation register (judgment of 27 October 2005 in Case C-387/03 *Greece* v *Commission*, not published in the ECR, paragraph 63, and Case T-33/07 *Greece* v *Commission*, paragraph 63 above, paragraph 94).

287 As regards the oil cultivation GIS, it is apparent from the summary report that the Greek authorities themselves considered that their oil cultivation GIS had been completed only for the 2003/2004 marketing year, which means that it was not completed for the 2002/2003 marketing year at issue in this case.

288 The Hellenic Republic maintains that checks were carried out (administrative, on-the-spot mill checks) in order to compensate for the lack of a completed olive cultivation register, in accordance with Article 28(2) of Regulation No 2366/98.

289 However, it should be pointed out that the increase in the number of checks provided for in Article 28(2) of Regulation No 2366/98, as regards the regions where the creation of the olive cultivation GIS has not been completed, is intended to compensate for the lack of the data which that system would be able to provide, such as aerial photographs, but does not replace the data which should already have been available (judgment of 27 October 2005 in *Greece* v *Commission*, paragraph 286 above, paragraph 65, and Case T-33/07 *Greece* v *Commission*, paragraph 63 above, paragraph 95).

290 Consequently, the Hellenic Republic does not prove that the Commission's findings concerning the lack of an olive cultivation register were incorrect and that complaint must therefore be rejected.

– The unreliability of the crop declarations

291 The Hellenic Republic contests the Commission's findings concerning the identification of parcels made in the crop declarations. It maintains that each parcel is identified by a number and that, in order to facilitate the on-the-spot checks, the producers delimit the parcels and mark the trees which surround them. Similarly, it has been possible to check the date on which the olive trees were planted since 1 May 1998, even five to six years later.

292 The Court points out that the crop declaration, which is needed for the aid application, must include, in accordance with Article 2 of Regulation No 2366/98, inter alia, the land register references of the olive-growing parcels of the holding or, where no land register is kept, a full description of the holding and of the olive-growing parcels, and, for each olive-growing parcel, the number of olive trees

in production, the principal variety, and details of any irrigation or associated crops present. Similarly, Article 4 of that regulation provides that, to constitute a basis for the payment of aid, additional olive trees planted after 1 May 1998 must be identified geographically.

293 In the present case, it is apparent from the Commission's findings that the crop declarations had, for the marketing year at issue, numerous weaknesses, described in the summary report (see paragraph 268 above). The claims of the Hellenic Republic do not prove that those findings are incorrect. In particular, the vagueness of the information given in the crop declarations, whether concerning the location or the identification of the parcels, is not affected by the arguments of the Hellenic Republic. The same applies to the other weaknesses found in the crop declarations linked in particular to olive trees. Finally, as the Commission points out, in 2002 and in 2003, the olive cultivation parcels were not identified in accordance with a format compatible with the LPIS under construction, which is not contested as such.

294 Clearly, therefore, the claims made by the Hellenic Republic before the General Court are not enough to prove that the findings made were incorrect.

295 That complaint must therefore be rejected.

– The weaknesses of the on-the-spot checks

296 First, the Hellenic Republic maintains that on-the-spot checks were carried out for more than 10% of the crop declarations and that, in any event, the Commission's calculation, which culminated in a slightly lower percentage (9.91%), represents an insignificant difference which did not affect the payments.

297 The Court points out that, under Article 28(2) of Regulation No 2366/98 (see paragraph 253 above), in regions where the olive cultivation GIS has not yet been completed, on-the-spot inspections shall be conducted on 10% of all crop declarations in the 2002/2003 marketing years.

298 The assertions of the Hellenic Republic do not establish that the Commission's calculations, according to which that minimum percentage of 10% was not respected in the present case, was incorrect.

299 Second, the Hellenic Republic claims that the checks were carried out satisfactorily. It maintains that the olive producer is required to communicate information on the production and distribution of olive oil and the stock status. That combined information makes it possible to cross the crop declaration with the aid application and to reject the latter in the event of inconsistency.

300 However, by so doing, the Hellenic Republic does not reply to the Commission's criticisms, summarised in the summary report (see paragraph 269 above), from which it is apparent that certain checks, such as the consistency of yields, required under Article 28(3) of Regulation No 2366/98 (see paragraph 257 above), are very infrequent. The Commission also complains of the lack of maps and sketches, of the shortcomings of checks and of traceability of those checks in counting the number of olive trees per holding. It also criticises the different attitude taken by inspectors to non-productive olive trees in the 2002/2003 marketing year. Those findings are unaffected by the assertions of the Hellenic Republic.

301 Therefore, the Hellenic Republic has not adduced evidence that the shortcomings found in the on-the-spot checks were incorrect. Its argument that the inadequacy of the rate of checks had no effect on payments, raised in the reply, must be disregarded since, in any event, the correction imposed is not the consequence only of that inadequacy (see inter alia paragraphs 283, 290 and 294 above).

302 That complaint must therefore be rejected.

– Shortcomings of the mill checks

303 The Hellenic Republic maintains that, in the mill checks, the inspectors take into account various factors concerning inter alia the stock record, check that the books and registers are kept properly and compare them with the information on production, electricity consumption, physical and stock records. Those checks also take account of the family links of the farmers.

304 However, it must be stated that those arguments have no effect on the findings made by the Commission in this case.

305 It is apparent from the summary report that the Commission's services criticise the Hellenic Republic for the absence of a link between the stock records and the financial accounts, required under Article 8(b), first indent, of Regulation No 2366/98, and for the difficulty in making conclusive checks on consistency to rule out fictitious over-assessment of the quantities produced (see paragraph 270 above).

306 In its claims, the Hellenic Republic adduces no evidence to show that the Commission's findings were incorrect. In particular, the comparison made by the inspectorates do not answer the Commission's criticism concerning the finding that there was no stock record linked to the financial accounts. Similarly, the Hellenic Republic does not adduce any evidence to show that the Commission's statements concerning the difficulties encountered in mill checks were inaccurate.

307 Therefore, that complaint must be rejected.

– Insufficient follow-up to the sanctions proposed by AYMEEE

308 As regards the failure to follow up the sanctions proposed by AYMEEE in respect of mills, the Hellenic Republic maintains that it has complied with the legal procedure, which permits suspension of operation pending the adoption of a final decision.

309 It need only be stated that, in so doing, the Hellenic Republic is not denying the delay in applying sanctions, in infringement of Article 11a of Regulation No 136/66 (see paragraph 247 above), and the reduction in the level of sanctions applied as compared with the original proposals, criticised in the present case (see paragraph 271 above).

310 Therefore that complaint must also be rejected.

311 It follows that the Hellenic Republic has not established that the corrections imposed were incorrect.

The level of the correction applied, infringement of the principle of proportionality and insufficient reasoning

312 First, the Hellenic Republic contests the automatic increase of the correction from 10% to 15%, which does not take into account the significant improvement in the quality of the checks. It alleges infringement of documents Nos VI/5330/97 and AGRI/61495/2002.

313 First of all, the Court points out that it is apparent from all the foregoing that the Hellenic Republic has been unable to prove that the Commission's findings were incorrect (see paragraphs 274 to 310 above).

314 Second, the Hellenic Republic does not dispute that the shortcomings found had already been notified in previous enquiries and were the subject of a flat-rate correction of 10% for the 1999/2000 to 2001/2002 marketing years.

315 It should be pointed out that the fourth subparagraph of Article 7(4) of Regulation No 1258/1999 provides that the Commission must take into consideration the gravity of the infringement committed in its evaluation of the amount to be excluded following a finding of irregularities.

316 As has already been pointed out (see paragraph 57 above), the recurrence of the irregularities in question may be regarded as an aggravating factor, which may justify the increase in the financial correction imposed.

317 In that connection, account may be taken of the improvements made. Document No VI/5330/97 provides that the infringement becomes more serious if the Member State fails to improve its controls and document AGRI/61495/2002 accordingly states that the Commission shall take into account any corrective or compensating measures taken by the Member State (see paragraphs 17 and 18 above).

318 In the present case, as the Hellenic Republic points out, the Commission itself referred to the improvements made in relation to the preceding marketing years, as is apparent from the minutes of the meeting of 13 September 2006 relating to enquiry OTS/2004/05/GR.

319 However, in those minutes, the Commission considered that those improvements did not compensate for the weaknesses found. In particular, cross-checks and centralised files was considered to be still at a general level without allowing for systematic cross-checks on the parcels, and it was considered that their content was not in accordance with the legislation. Moreover, some of the shortcomings found were not improved, such as the mill checks and the follow up of the recommendations of AYMEEE.

320 Therefore, in spite of the improvements indicated, deficiencies have persisted and concern key controls. In that regard, it should be pointed out that, when one or more key controls are not applied or applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, it is reasonable for the Commission to consider that there was a high risk of wide-spread loss to the EAGGF (see, to that effect, *Greece* v *Commission*, paragraph 286 above, paragraph 105).

321 Therefore, the mere fact that improvements were found cannot enable the Hellenic Republic to maintain that the correction rate of 10% previously applied could not be increased in the present case, in particular having regard to the nature of the irregularities found, the importance of their impact for determining the regularity of expenditure and their recurrent nature.

322 It is apparent from the foregoing that, in the circumstances of the present case, the existence of certain improvements observed is not incompatible with an increase in the correction rate to take account of the repetition of the deficiencies found and of the increased risk of financial losses for the EAGGF.

323 It follows that the complaint alleging infringement of the Commission's guidelines stemming from documents Nos VI/5330/97 and AGRI/61495/2002 must be rejected.

324 The Hellenic Republic claims that, at the end of the minutes of 13 September 2006, relating to the second enquiry, the Commission, owing to the improvements noted, ruled out the possibility of applying the provisions relating to recurrence of inadequacy of the control systems for the 2002/2003 period.

325 It should be pointed out that, at the end of the bilateral meeting of 22 June 2006 relating to the second enquiry, the minutes of 13 September 2006 mention that the Commission 'sees no reason at this stage of the proceedings to reduce the level of flat-rate correction applied to previous years even if, owing to

improvements noted in yield checks and cross-checks, it rules out the possibility of applying the provisions laid down in the event of recurrence of inadequacy of the control systems for the 2002/2003 period (document AGRI 60637/2006)'.

326 However, unlike those minutes, the minutes of 17 February 2006 relating to the first enquiry under reference OTS/2004/02, expressly mentions the fact that the Commission, at that stage, did not rule out applying the provisions laid down in the event of recurrence.

327 Moreover, it must be observed that Article 7(4) of Regulation No 1258/1999 provides that the amount to be excluded must be evaluated having regard in particular to the degree of non-compliance found, after a detailed procedure in which both parties participate. If, at the end of that procedure, the evaluation differs from the evaluation in which a previous procedure had culminated, the Commission is fully entitled to determine the amount to be excluded on the basis of its most recent evaluation. Otherwise, the Commission could not be sure that the EAGGF finances only interventions undertaken in accordance with the Community rules within the framework of the common organisation of agricultural markets (*Greece* v *Commission*, paragraph 63 above, paragraph 175).

328 In the present case, the letter of 10 August 2007, subsequent to the minutes of 13 September 2006 and common to both enquiries, refers to the application of the provisions relating to recurrence and states the reasons for it. Similarly, the final position of 6 August 2008 confirms the application of the provisions relating to recurrence. The Conciliation Body itself acknowledged that the decision to rely on the recurrence of deficiencies in order to increase the correction rate in the present case did not conflict with a strict interpretation of document AGRI/61495/2002/GR.

329 Therefore, in the present case, the argument relating to the Commission's assertion in the minutes of 13 September 2006 does not affect the conclusion that the improvements noted did not, in this case, preclude the application of a correction rate of 15%.

330 In so far as the Hellenic Republic disputes that the risk to the EAGGF has increased, it should be pointed out that, so far as concerns the degree of correction, it is for the Member State to demonstrate that the Commission made an error as to the financial consequences to be attached to the irregularities found (Case C-59/97 *Italy* v *Commission* [1999] ECR I-1683, paragraph 55; *Belgium* v *Commission*, paragraph 73 above, paragraph 37; *Greece* v *Commission*, paragraph 63 above, paragraph 168). In the present case, it must be said that the Hellenic Republic provides no support for its claims.

331 Second, the Hellenic Republic claims that the increase applied in the present case was automatic and not specifically reasoned.

332 In that regard, it should be pointed out that the increase in the correction rate to 15% did not have to be applied automatically, but only after consideration of the possible corrective or compensatory measures adopted by the Member State and without disregarding the improvements made (see, to that effect, judgment of 31 March 2011 in Case T-214/07 *Greece* v *Commission*, not published in the ECR, paragraph 90). Moreover, the reasons given for a decision are to be considered sufficient when the relevant Member State was closely involved in the process under which that decision was drawn up and knew the reasons why the Commission considered that the disputed amount should not be charged to the EAGGF (see the case-law cited in paragraph 73 above).

333 In the present case, it need only be pointed out that the repeated nature of the deficiencies found was pointed out during the *inter partes* proceedings, in which the Hellenic Republic participated (see paragraphs 326 to 328 above).

334 Furthermore, during those proceedings, it was stated (see paragraph 319 above) that the improvements made with regard to cross-checks and centralised files were still insufficient.

335 It follows that, contrary to what the Hellenic Republic maintains, the reasoning of the contested decision is sufficient in accordance with the case-law cited in paragraph 73 above.

336 Third, the Hellenic Republic alleges that the correction applied is disproportionate.

337 It is settled case-law that the Commission may refuse to meet the cost of all the expenditure incurred if it finds that there are not sufficient control mechanisms (see, to that effect, judgment of 24 February 2005 in Case C-318/02 *Netherlands* v *Commission*, not published in the ECR, paragraph 45).

338 In the present case, it is apparent that the shortcomings noted by the Commission's staff concern significant aspects of the control system and also the carrying out of controls which play an important role in the determination of the regularity of the expenditure, so that it might be reasonable to conclude that the risk of losses for the EAGGF was considerable.

339 Consequently, the correction rate of 15% of the expenditure concerned cannot be regarded as excessive and disproportionate in the present case.

340 It follows from all the foregoing that the arguments put forward by the Hellenic Republic do not establish that the Commission was wrong to apply a correction rate of 15% or that it infringed its obligation to state reasons in that regard.

341 Consequently, this plea must be rejected in its entirety.

342 It follows that all the pleas directed against the financial corrections applied in the olive oil sector must be rejected.

6. *The tenth and eleventh pleas, concerning the corrections applied to expenditure in the financial audit sector*

Community legislation

Time-limits for payment

343 Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5), provides, in recital 4 in the preamble:

'Whereas the common agricultural regulations include deadlines for payment of aids to beneficiaries by Member States; whereas all payments effected after those deadlines, and for which the delay in payment is unjustified, must be regarded as ineligible, and therefore cannot, in principle be the subject of an advance on the booking of expenditure; whereas, however, in order to modulate the financial impact in proportion to the delay incurred in payment, the reduction in the advances should be graduated as a function of the size of the delay recorded.'

344 Article 4 of Regulation (EC) No 296/96, as amended, provides:

'1. On the basis of data sent in accordance with Article 3, the Commission shall adopt decisions and make the monthly advances against booking of expenditure, without prejudice to the provisions of Article 14 of Regulation No 2040/2000.

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

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

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

— one month shall be reduced by 10%,

— two months shall be reduced by 25%,

— three months shall be reduced by 45%,

— four months shall be reduced by 70%,

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

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

The reductions referred to in this Article shall be made in accordance with the rules laid down in Article 14 of Regulation (EC) No 2040/2000.'

Time-limits for payment in relation to less-favoured areas

345 Article 51 of Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the (EAGGF) (OJ 2004 L 153, p. 30, corrigendum OJ 2004, L 231, p. 24), which includes inter alia support for less-favoured areas, provides:

'1. Amendments to rural development programming documents and rural development measures included in single programming documents under Objective 2 financed by the EAGGF Guarantee Section shall be duly substantiated, in particular giving the following information:

(a) the reasons and any implementation problems justifying adjustment of the programming document;

(b) the expected effects of the amendment;

(c) the implications for financing and verification of commitments.

2. Acting in accordance with the procedures referred to ..., the Commission shall approve any amendments to rural development programming documents, financial table annexed to the decision referred to in the first subparagraph of Article 48(1) and rural development measures included in single programming documents under Objective 2 financed by the EAGGF Guarantee Section whenever they have a bearing on:

(a) priorities;

(b) the main features of the support measures as indicated in Annex II;

(c) the overall maximum amount of Community support ...;

(d) the distribution of the financial allocation made for the measures contained in the programming document, where it exceeds:

— 15% of the total eligible cost of the programme concerned for the entire programming period, if the Community contribution is based on the total eligible cost,

— 20% of the total eligible public expenditure for the programme concerned for the entire programming period, if the Community contribution is based on the eligible public expenditure,

calculated on the basis of the last column (total) of the financial table annexed to the Commission Decision approving the programming document ... as last amended.

3. The amendments referred to in paragraph 2 shall be submitted to the Commission in a single proposal per programme no more than once per calendar year.

The first subparagraph shall not apply:

(a) where amendments are required as a result of a natural disaster or other exceptional occurrence with a major impact on the Member State's programming;

(b) where an amendment of the financial table annexed to the decision referred to in Article 48(1) is necessary as a result of an amendment of a regional rural development programming document.

4. Amendments of a financial nature which are not covered by paragraph 2(d) and amendments to the Community contribution rate as referred to in the first indent of point 9(2) B of Annex II shall be communicated to the Commission together with the financial table amended in accordance with point 8 of Annex II. They shall enter into force on the date on which they are received by the Commission.

Amendments of a financial nature as referred to in the first subparagraph may not exceed the ceilings provided for in paragraph 2(d) when totalled over a calendar year.

5. Amendments other than those covered in paragraphs 2 and 4 shall be communicated to the Commission at least three months before their entry into force.

Such amendments may enter into force earlier if the Commission confirms to the Member State before the end of the three-month period that the notified amendments comply with Community legislation.

If the notified amendment does not comply with Community legislation, the Commission shall inform the Member State thereof and the three-month period provided for in the first subparagraph shall be suspended until the Commission receives a compliant amendment.'

Summary report

346 The summary report refers to three enquiries, under references FA/2005/70/GR, FA/2006/108/GR and FA/2006/137/GR, the results of which were notified by the Commission in January, April and August 2006 respectively. After an exchange of letters between the Commission and the Hellenic Republic for each of the procedures, the joint invitation of 15 January 2007 to a bilateral meeting and the holding of that meeting, the Commission, by letter of 28 June 2007, sent out the minutes of the meeting for each procedure. By three letters of 24 January 2008, the Commission formally communicated its conclusions

to the Hellenic Republic. Following opinion 08/GR/360 of the Conciliation Body of 10 July 2008, for the three procedures jointly, the Commission communicated its final position to the Hellenic Republic by letters of 8 October, 6 October and 19 September 2008 respectively.

347 First, as regards the enquiry under reference FA/2005/70/GR, it was found inter alia that, for less-favoured areas, the limit for expenditure had been set at the sum of EUR 115 770 000, but that the total expenditure reached the sum of EUR 121 992 923.70, an excess of EUR 6 222 923.70. Under Article 51(4) of Regulation No 817/2004, amendments of a financial nature which are not covered by Article 51(2) of that regulation must be communicated to the Commission and enter into force on the date on which they are received by the Commission. In the present case, the Hellenic Republic did not inform the Commission of that amendment until 29 September 2004. The sum of EUR 6 222 923.70 is therefore not eligible, since the expenditure was effected before the amendment request was submitted to the Commission. The argument that the total sum paid for 2004 (EUR 125.6 million) is lower than the sum envisaged in the 2004 financial table (EUR 145 million) cannot be accepted, because the amount of EUR 145 million corresponds to the total amount available for the programme and therefore cannot be taken into account for a specific measure.

348 Second, in connection with the enquiry under reference FA/2006/108/GR, delays were found with regard to payments made during the financial year 2005 concerning arable crops and additional payments in the beef and veal sector. In order to avoid a double correction with the flat-rate corrections imposed for the same financial year and the same budget item, the correction was reduced. It is, in the end, EUR 4 521 536.62 and takes account of the flat-rate corrections already applied so as to avoid double corrections.

Findings of the Court

349 The Hellenic Republic raises a tenth plea, concerning the enquiry under reference FA/2005/70/GR, and an eleventh plea, concerning the enquiry under reference FA/2006/108/GR.

The tenth plea, concerning the enquiry under reference FA/2005/70/GR, alleging infringement of the rules governing the clearance of accounts procedure and of Regulation No 817/2004, failure to state reasons and infringement of the principle of proportionality

350 The Hellenic Republic contests the correction relating to less-favoured areas, imposed in respect of the exceeding of the financial ceiling. It maintains that the Commission was informed of the amendment at issue and that the amount of the excess is still eligible expenditure, because the total amount paid during the financial year was not exceeded.

351 The Court points out that the Hellenic Republic does not deny that the financial ceiling originally envisaged for less-favoured areas was exceeded in the amount of EUR 6 222 923.70 (see paragraph 347).

352 It is also apparent from the summary report, which is not contested in that regard, that that amendment fell within the scope of Article 51(4) of Regulation No 817/2004, which provides that amendments of a financial nature must be communicated to the Commission and enter into force on the date on which they are received by the Commission.

353 The documents in the case, inter alia the summary report, show that that excess is the result of an amendment of which the Commission was informed on 29 September 2004 and that the expenditure at issue was effected before the Commission was notified, as was confirmed at the hearing and recorded in the minutes of the hearing.

354 Therefore, the expenditure effected for an amount higher than the initial allocation for the measure at issue before 29 September 2004 cannot be regarded as incurred in accordance with the Community rules.

355 It is true that Article 51(4) of Regulation No 817/2004, which is applicable in the present case, does not require the Commission's approval for the entry into force of the amendment at issue, as the Hellenic Republic points out.

356 However, even though that provision requires that financial amendments are communicated to the Commission only for information purposes, the conditions of the notification it requires are not satisfied in this case.

357 The argument of the Hellenic Republic that Regulation No 817/2004 allows Member States to amend the programming documents and financial tables does not invalidate that conclusion. The provisions of that regulation specifically include the possibility of amendments, both as regards the content and the procedure to be followed, and the Hellenic Republic does not establish that the Commission's finding that Article 51(4) of Regulation No 817/2004 had not been respected is incorrect.

358 Furthermore, the Hellenic Republic's complaint that the final report contains no reasoning concerning the less-favoured areas and that the contested decision is insufficiently reasoned must also be rejected.

359 The Hellenic Republic was closely involved in the process under which that decision was drawn up and, during the various exchanges with the Commission, both the amounts of the correction at issue and the legal basis for it (Article 51(2) and (4) of Regulation No 817/2004) were mentioned. Consequently, it knew the reasons for the contested decision, which must therefore be considered sufficiently reasoned in the light of the relevant case-law cited above (see paragraph 73 above).

360 Finally, the Hellenic Republic alleges infringement of the principle of proportionality. It maintain that the ceiling was exceeded as regards the less-favoured areas, but that the total ceiling fixed for the rural development programme for 2004 was not exceeded, and claims that no harm was caused to the EAGGF.

361 The Court points out that Article 3(1) of Regulation No 1258/1999 provides that rural development measures outside Objective 1 programmes undertaken in accordance with Community rules shall be financed under Article 1(2)(c) of that regulation.

362 Moreover, it is settled case-law that the EAGGF finances only interventions undertaken in accordance with the Community rules in the framework of the common organisation of agricultural markets. Accordingly, it is for the Member States to bear the burden of any other sum paid, and in particular any amounts which the national authorities wrongly believed themselves authorised to pay in the context of the common organisation of those markets (see, to that effect and by analogy, Case C-332/00 *Belgium* v *Commission* [2002] ECR I-3609, paragraphs 44 and 45; see also, to that effect and by analogy, Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraphs 52 and 53).

363 As has been established in paragraphs 354 and 356 above, the ceiling of expenditure relating to less-favoured areas was exceeded and the Commission was not informed of this in accordance with the procedure laid down in Article 51(4) of Regulation No 817/2004.

364 Having found that irregularity, the Commission could therefore legitimately adopt the contested decision, notwithstanding the Hellenic Republic's argument that the total ceiling set for the rural development programme for 2004 had not been exceeded. It should be pointed out that, in order to guarantee the effectiveness of the scheme to support rural development and the attainment of its objectives, it is important that the measures eligible for support should be in accordance with the Community legislation and that the Member States should contribute to that outcome by complying

with the legislative framework contained in the regulations establishing the rules for the support of rural development, an outcome which would not be achieved if Member States could redistribute the funds in infringement of the applicable provisions (see, to that effect, *Netherlands* v *Commission*, paragraph 73 above, paragraph 118).

365 Therefore, it must be concluded that the Commission has not infringed the principle of proportionality.

366 Consequently, the tenth plea must be rejected.

The eleventh plea, concerning the enquiry under reference FA/2006/108/GR, alleging infringement of the rules governing the accounts clearance procedure, misapplication of Regulation No 296/96, incorrect assessment of the facts, failure to state reasons and infringement of the principle of proportionality

367 The Hellenic Republic states that the delays in payment are due, for arable crops, to investigation of claims which were allowed and, for beef and veal, to compensations with subsequent payments.

368 It should be pointed out that the financing costs chargeable to the EAGGF must be calculated on the assumption that the time-limits laid down by the applicable agricultural rules have been observed. Accordingly, when national authorities pay aid after expiry of the time-limit, they are charging irregular and thus non-eligible expenditure to the EAGGF, as confirmed by the fourth recital in the preamble to Regulation No 296/96 (see, to that effect, Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 126, and Case T-243/05 *Greece* v *Commission* [2007] ECR II-3475, paragraph 116).

369 Moreover, under Article 4 of Regulation No 296/96 (see paragraph 344 above), advances against booking shall be reduced for expenditure effected after the deadlines laid down, in accordance with the rules set out in that article. Only if expenditure effected after the deadlines is equal to 4% or less of the expenditure effected before the deadlines will no reduction shall be made, irrespective of the number of months' delay.

370 In the present case, it should be pointed out that the Hellenic Republic does not contest the existence of late payments. Nor does it deny that the expenditure effected late exceeded that 4% threshold.

371 Therefore, it by no means establishes in the present case that the facts were incorrectly assessed or that the Commission infringed Regulation No 296/96 or the rules governing the accounts clearance procedure.

372 The Hellenic Republic maintains that the correction at issue should have been specifically reasoned.

373 However, the documents in the case show that the reasons given before the Court to justify the time-limits for payment were explained to the Commission by letter of 3 July 2006 and rejected by it, on the ground that the reasons invoked could not justify payment delays. Moreover, the minutes of the bilateral meeting state that the correction was maintained on the ground that, for legal cases, the 4% threshold should be sufficient. Furthermore, as regards the corrections concerning the bovine sector, it is apparent from the administrative procedure that the Commission reduced the amount of the correction for excess payments in order to avoid a double correction and passed the effect of this on to the late payments. A detailed table showing the financial impact of the deductions already made from late payments is contained in the summary report.

374 Therefore, the Hellenic Republic, which was closely involved in the process under which the contested decision was drawn up, knew the reasons why the Commission considered that the correction at issue was justified. Moreover, it provides no reason or legal basis requiring more specific reasoning than that required in the matter by the settled case-law cited previously (see paragraph 73 above). It follows that the complaint alleging failure to state reasons must be rejected.

375 The Hellenic Republic also alleges infringement of the principle of proportionality, on the ground that the Commission applied the scale of correction laid down by Regulation no 296/96 without exercising its discretion.

376 As the Commission points out, the first subparagraph of Article 4(2) of Regulation No 296/96 confers no discretion on the Commission.

377 It is true that the second subparagraph of Article 4(2) of Regulation No 296/96 allows the Commission to apply a different time scale if exceptional management conditions are encountered or if well-founded justifications are introduced by the Member State.

378 However, this is a provision introducing a derogation and must, accordingly, be interpreted narrowly (*Greece* v *Commission*, paragraph 368 above, paragraph 115).

379 Moreover, it is incumbent on the Hellenic Republic to show that the conditions laid down in the second subparagraph of Article 4(2) of Regulation No 296/96 are met, that is to say, prove that exceptional management conditions are encountered for certain measures or provide well-founded justifications. The Hellenic Republic must demonstrate inter alia that the delays did not exceed reasonable limits (see, to that effect, Case C-331/00 *Greece* v *Commission* [2003] ECR I-9085, paragraph 117, and Case T-33/07 *Greece* v *Commission*, paragraph 63 above, paragraph 372).

380 In the present case, it therefore needed to show that there were prior claims concerning arable crops the examination of which justifies payment delays (see, to that effect, *Greece* v *Commission*, paragraph 63 above, paragraph 375). That is not the situation in this case. Nor has the Hellenic Republic justified the payment delays in respect of the compensations in the bovine sector.

381 Consequently, the complaint alleging infringement of the principle of proportionality must be rejected.

382 Finally, the Hellenic Republic states that no harm has been caused to the EAGGF, on the ground that a reduction of EUR 4 678 975.85 had been applied pursuant to Regulation No 296/96 at the advances stage, that is, an amount higher than the final correction.

383 However, that argument cannot be accepted. As has been pointed out previously (see paragraph 368 above), the financing costs chargeable to the EAGGF must be calculated on the assumption that that time-limit has been observed. Accordingly, when the Greek authorities pay aid after expiry of the time-limit, they are charging non-eligible expenditure to the EAGGF (see, to that effect, *Italy* v *Commission*, paragraph 368 above, paragraph 126, and judgment of 20 June 2006 in Case T-251/04 *Greece* v *Commission*, not published in the ECR, paragraph 78). The argument that the correction finally imposed (EUR 4 521 536.62) is lower than the deduction originally made (EUR 4 678 975.85), is irrelevant in that regard.

384 It is apparent from all the foregoing that the eleventh plea must therefore be rejected.

385 In consequence, the action must be dismissed in its entirety.

Costs

386 Under Article 87(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 Hellenic Republic has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders the Hellenic Republic to pay the costs.

Forwood Dehousse Schwarcz

Delivered in open court in Luxembourg on 22 January 2013.

[Signatures]