OPINION OF ADVOCATE GENERAL LA PERGOLA
delivered on 7 December 1995 *

Subject-matter of the dispute

1. The Federal Republic of Germany (hereinafter 'the applicant') seeks partial annulment of Decision 93/659/EEC, [1] adopted by the Commission (hereinafter 'the defendant') on 25 November 1993 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1990 of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section. The contested decision withholds Community financing in respect of certain expenditure incurred in the *Länder* of Bavaria and Baden-Württemberg in respect of payment of the special premium for beef and veal (hereinafter 'the premium'), governed by Article 4a of Regulation (EEC) No 805/68 of the Council of 27 June 1968, [2] as amended by Regulation No 571/89 of 2 March 1989. [3]

The grounds of the Commission decision

2. The grounds of the contested Commission decision relate to various irregularities discovered in the system adopted for the payment of the premium by the competent German authorities. A summary is given below of the Commission's observations, together with the expenditure headings concerned, for which Community financing was consequently refused. First, it stated that there was a lack of effective administrative controls in Bavaria and Baden-Württemberg (DM 5 040 986). The system prevailing in those *Länder* was not therefore capable of precluding, in respect of cattle imported from France and Belgium (DM 838 636) and exported to Italy (DM 311 529), double payment of the premium. Moreover, the transitional regime provided for in Article 11 of Regulation No 714/89 [4] (hereinafter 'the Regulation') was inadequately applied in respect of older adult animals (DM 1 326 990).

3. First, the Court is called upon to consider, from both the organizational and functional standpoints, all the activities of the national administration responsible for applying Community law. In particular, as far as the first criticism is concerned, it is necessary to establish whether the administrative system set up in implementation of the relevant

* Original language: Italian.

1 — OJ 1993 L 301, p. 13.

2 — OJ, English Special Edition 1968 (I), p. 187.

3 — OJ 1989 L 61, p. 43.

4 — Commission Regulation (EEC) No 714/89 of 20 March 1989 laying down detailed rules applying to the special premium for beef producers (OJ 1989 L 78, p. 38).

Community legislation provides effective guarantees of compliance. There is thus a new element in this case as compared with similar ones dealt with in the past. [5] In those earlier cases, the Court was called on to determine whether the Member State concerned had breached the obligations imposed by Community law, by failing to introduce instructions regulating the controls carried out by local departments. In this case, on the other hand, the national (or rather regional) rules implementing the Community legislation were in fact adopted. Instructions were also adopted 'centrally' in relation to possible problems arising in the course of checks as to the proper payment of the premium. [6] The issue here, therefore, is whether the rules adopted at national level meet the requirement of guaranteed implementation of the controls required by the Community rules, and, more specifically, whether their specific application satisfies the requirements laid down for that purpose by the national legislation.

Legislative background

Rules concerning the premium

4. Before I consider the individual pleas in law, I think it is appropriate to summarize the principles governing the relationship between the Community and the Member States in relation to the present case. By Regulation (EEC) No 805/68 [7] the Community introduced certain public support measures to 'stabilize markets and to ensure a fair standard of living for the agricultural community concerned' (fourth recital).

5. The intervention machinery provided for by those provisions was subsequently partially reviewed. Regulation (EEC) No 467/87 [8] recognizes (first recital) that:

'public intervention has gradually lost its original function as a safety net and has become an outlet in its own right';

and lays down rules to limit public buying, adapting the existing rules to meet the need

5 — I refer, specifically, to the precedent which I consider closest to the present case: the judgment in Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321. On that occasion, Advocate General Van Gerven observed: 'the novelty of this case is to be found in the fact that the dispute does not concern so much the Commission's conclusions from its analysis of individual cases, but rather the consequences drawn by it from an examination of the administrative implementation of a part of the common agricultural policy in certain areas of the Member State in question'; Opinion in the abovementioned case, at p. I-2334, in particular p. I-2335.

6 — I refer to rules both of a general and specific nature. First, at federal level, there are general implementation rules for the payment of premiums to the producers of beef and veal and sheepmeat of 7 October 1987 (BGBL, I, 2266; subsequently amended by the Regulation of 10 April 1989; BGBL, I, 778). Secondly, there are extremely detailed rules applied in the *Länder*, in relation to the procedure for payment of the premium and the verification phase: see the implementing instructions from the Bavarian Ministry of Agriculture and Forests for implementation of the special premium granted to the beef and veal producers of 12 February 1990 (No T6-7643.2-511); notice issued by the Ministry of Rural Areas, Food, Agriculture and Forests of Baden-Württemberg, of 29 March 1989 (concerning general rules on the premium); the circular from the same Ministry of 29 March 1989 (concerning payment of the premium); the letter from the same Ministry of 7 June 1989 (concerning checks carried out under the rules on premiums); and, finally, the detailed inspection form provided for by the federal authorities.

7 — Regulation (EEC) No 805/68 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

8 — Council Regulation (EEC) No 467/87 of 10 February 1987 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and the system of premiums granted in the beef and veal sector (OJ 1987 L 48, p. 1).

to 'restore the market price to its essential role as a guide of supply and demand' (first recital). The same regulation also provides for measures to support the income of producers, so as 'to offset the effect of the adjustment to the intervention' (sixth recital). [9] Producers not benefiting from other measures are granted a special premium, paid only once, for each animal kept (see Article 4a inserted for that purpose in Regulation No 805/68 [10]).

6. The general rules on payment of the premium were laid down by another regulation (No 468/87 [11]). The abovementioned Commission Regulation No 714/89 then laid down detailed rules applying to the premium. [12] I shall need to refer specifically to certain provisions of that regulation in examining the individual pleas in law. I would point out at this stage that they reflect the particular attention devoted by the Community legislature to controls. [13]

General provisions on the financing of the agricultural policy

7. Also relevant to this case are the provisions of Regulation (EEC) No 729/70. [14] The are set out below.

9 — The premiums in force were introduced by Council Regulations (EEC) No 1346/86 of 6 May 1986 (OJ 1986 L 119, p. 39) and No 1347/86 of the same date (OJ 1986 L 119, p. 40).

10 — The original time-limit of 31 December 1988 was extended by Council Regulation (EEC) No 571/89 of 2 March 1989, cited above, footnote 3.

11 — Regulation (EEC) No 468/87 of 10 February 1987 laying down general rules applying to the special premium for beef producers (OJ 1987 L 48, p. 4); amended by Regulation (EEC) No 572/89 of 2 March 1989 (OJ 1989 L 63, p. 1). The measure laid down certain basic elements of the rules: the amount of the premium; the maximum number of qualifying animals per holding; the minimum age of the animals.

12 — Regulation No 714/89 replaced and repealed Commission Regulation (EEC) No 859/87 of 25 March 1987 laying down detailed rules applying to the special premium for beef producers (OJ 1987 L 82, p. 25). Those rules comprise:
(a) provisions on the lodgement of applications and payment of the premium;
(b) provisions on the identification of animals;
(c) procedures for checking the number of male animals declared and conditions ... in particular the period during which cattle are to be kept on the holding, in order to guarantee adequate control;
(d) special provisions to be applied by the Member States which apply the rules under Article 4, when exporting qualifying live animals to non-member countries or despatching them to other Member States.

13 — In that connection, see the third and fourth recitals in the preamble to the Regulation (and also the fifth and seventh): The third recital states: 'in view of the difficulties of furnishing evidence of compliance with the requirements laid down, *it should be specified that applications be accompanied by declarations and undertakings by recipients and that these be subject to both administrative and on-the-spot checks by Member States regarding a minimum number of holdings* and give rise to total recovery of the sums paid should they turn out to be inexact'.
The fourth recital states 'in the light of experience and taking account in an appropriate manner of infractions of minor importance it is necessary *to reinforce the measures for preventing and sanctioning irregularities and frauds*' (emphasis added).

14 — Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218). See also the third, seventh and eight recitals. The first-mentioned provides for the creation of a committee for the European Agricultural Guidance and Guarantee Fund; the second recital mentioned states 'measures must be taken to prevent and deal with any irregularities and to recover the amounts lost as a result of such irregularities or negligence'; the third-mentioned recital — the most relevant one to this case — links the two concepts — cooperation and control — and states 'Community expenditure must be made subject to close supervision' and 'in addition to supervision carried out by Member States on their own initiative, which remains essential, provisions should be made for verification by officials of the Commission and for it to have the right to enlist the help of Member States'.

Article 8(1) provides:

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

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

— prevent and deal with irregularities;

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

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures'.

Article 9(1) provides:

'Member States ... shall take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot.

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

Organizational principles and case-law

8. What principles govern this field and allocate functions as between Community and national administrative authorities?

Let us consider the legislation indicated above.

From the organizational and functional point of view, the Commission takes wide-ranging action to regulate the markets: guidelines, intervention, the extent of financing and the procedures to check proper payment are laid down at Community level. However, it is not incumbent on the Community to deal with detailed matters or specifically check the application of the provisions adopted by it in the sector concerned. Those activities

are delegated to the competent administrative authorities of the Member States. The latter are responsible for organizing the system for payment of financing and for checking the proper functioning of that system, if necessary taking measures to recover sums unduly paid. [15] This establishes a pattern for cooperation between the Community and the Member States, which, as the Court emphasized, is based on reasons of efficiency. [16]

9. That organizational basis has the following important implications.

In the first place, the Member States and the Commission must carry out their respective duties in conformity with the requirements of Article 5 of the Treaty, and the principles of good administration and legal certainty, as interpreted and expounded by this Court. Indeed, the matter under review calls for an approach — to use the words of the Court — 'établi sur la confiance'; [17] and Article 5 is the appropriate point of reference for determining the respective obligations of the Community and the Member State concerned. The national authorities are required to observe the provisions, both express and implied, of Community measures, and to take proper account of their full significance in order to achieve the aims which they pursue. [18] Secondly — and it could not be otherwise — the principle of cooperation involves reciprocal obligations. The Community rules on allocation of the premium and the measures adopted by the Member States to do so both pursue the aim of common organization of the market in the sector concerned. For the same purpose, powers are divided between the two administrative levels involved. Like the individual Member States, the Community may not stray beyond the sphere within which its action should be confined. Furthermore, in the present case, the principle of cooperation operates in conjunction with the principles of good administration and legal certainty. Where the rules adopted or the activities undertaken by the Member States meet the requirements of good administration, it can

15 — See the judgment in Case 54/81 *Fromme* [1982] ECR 1449: 'by providing that the Member States are, in accordance with national provisions laid down by law, regulation or administrative action, to take the measures necessary to recover sums lost as the result of irregularities or negligence, Article 8 of Regulation No 729/70 does no more than confirm expressly an obligation already incumbent on the Member States by virtue of the principle of cooperation enunciated in Article 5 of the Treaty' (paragraph 5). See the Opinion of Advocate General Capotorti in Joined Cases 146/81, 192/81 and 193/81 *BayWa* [1982] ECR 1545.

16 — See most recently Case C-476/93 *Nutral SpA* v *Commission* [1995] ECR I-4125. See the Judgment in Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 11: 'management of financing of the EAGGF is mainly a matter for the national administrations responsible for ensuring strict compliance with the Community provisions ... *only Member States are in fact in a position to obtain and determine precisely the data necessary for preparation of the EAGGF accounts, whereas the Commission is not close enough to traders to be able to obtain from them information which it requires*' (emphasis added); see the judgment in Joined Cases 89/86 and 91/86 *Étoile Commerciale and CNTA* v *Commission* [1987] ECR 3005.

17 — See Case C-48/91, cited in footnote 16 above, paragraph 11.

18 — Thus — in relation to an objection by the Federal Republic of Germany that the provisions of Commission Regulation No 1244/82 of 19 May 1982 (laying down detailed rules implementing the system of premiums for maintaining suckler cows) do not lay down the obligation to adopt particular rules to govern payment of the premium — the Court stated 'it should be pointed out that the Community rules, though not going so far as to impose on Member States the requirement to adopt detailed and rigid rules, *nevertheless entail the obligation to establish a coherent set of measures containing specific guidelines for the officials entrusted with on-the-spot inspections*' (emphasis added) — judgment in Case C-8/88, cited in footnote 5, in particular paragraphs 36 to 38.

be concluded that they have thereby also met the obligations inherent in the principle of cooperation and thus duly observed Community requirements. [19] As regards the principle of legal certainty, it comes into play particularly in the case of administrative action with financial repercussions. Precise provisions are needed to determine the amount of expenditure involved in the activity concerned and the correct payment thereof. In such circumstances, the principle of cooperation operates in conjunction with that of legal certainty: the requirements laid down must not only be specifically determined as regards their amount and properly complied with, but also must not be excessively burdensome for the Community and the Member State. [20]

10. It should not be forgotten, in applying the above principles to this case, that the Community administration — concerned to verify expenditure, limit differences of treatment and possible distortions of the system deriving from fraudulent use of the system of financial aid — strictly supervises the exercise, by the national administrations, of the implementing powers conferred on them. [21]

The point has been fully taken by the Community legislature and the Court itself. Suffice it to mention, on the one hand, the attention given by the legislation to checks and the direct financial liability of the Member States for irregularities discovered [22] and, on the other, the extremely strict criteria laid down in the case-law examining the activity of Member States from various points of view: parameters for examination, [23] burden

19 — The principle of good administration referred to here is linked, in particular, to the requirement that administrative action be complete, whereby 'when the authority takes a decision ... it should take into consideration all the factors which may effect its decision'; see the Order of the Court of First Instance in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235; secondly, and more generally, the administration's conduct must be reasonable: see Case C-10/88 *Italy* v *Commission* [1990] ECR I-1229, paragraph 13: 'the principle of good administration requires that the period be notified in due time'; see also the judgment in Case 14/88 *Italy* v *Commission* [1989] ECR 3677; Case C-34/89 *Italy* v *Commission* [1990] ECR I-3603: the obligation of diligence 'implies that the Member States must take steps to rectify irregularities promptly' (paragraph 12).

20 — Case C-30/89 *Commission* v *France* [1990] ECR I-691.

21 — Case C-48/91, cited in footnote 16. Note should also be taken of the analysis of the organizational basis in this area given by Advocate General Van Gerven in his Opinion of 3 March 1993 in Case C-55/91 *Italy* v *Commission* [1993] ECR I-4834; see, in particular, the first part of the Opinion: 'Preliminary general remarks'.

22 — See Article 8(2) of Regulation No 729/70; 'in the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States'.

23 — The Court stated: 'Member States are required to set up comprehensive administrative checks and on-the-spot inspections *thus guaranteeing the proper observance of the substantive and formal conditions for the grant of the premiums in question*' (emphasis added) — Case C-8/88, cited in footnote 5, paragraph 20.

of proof, [24] technical procedures for checking irregularities. [25]

The foregoing considerations are relevant, as I shall shortly make clear, to examination of the applicant's individual pleas in law on which its claim for annulment is based.

Lack of adequate controls

11. The first plea in law, concerning the inadequacy of the checks carried out by the German *Länder*, is divided into two sets of submissions. Specifically, they involve (1) the appropriateness of administrative verifications; (2) checks concerning the indication of the age of cattle; (3) the criteria for selecting the holdings to be inspected; (4) the identification systems used; (5) the procedures for carrying out inspections concerning the age of the animals and the prescribed documentation.

For the sake of good order, I should first deal with the grounds of the more general pleas (the first and the third). Taking account of the conclusions reached, I shall then examine the more specific pleas. The points that I shall consider first call for a number of general observations on the distinction between administrative checks and inspections, so as to clarify the role of checks within the overall procedure for payment of the premium.

Inadequacy of administrative checks and selection criteria for inspections

12. Article 8(1) of the Regulation provides:

'The competent authority appointed by each Member State shall operate administrative checks and on-farm inspections in order to verify that the provisions governing the special premium are complied with. These inspections must be carried out at a minimum number of holdings ... the control measures shall cover in particular:

(a) the presence on the holding run by the producer of the number of male cattle

24 — The Commission must entertain serious and reasonable (or rather, justified) doubts concerning possible irregularities in the conduct of the national administrative authorities, and it is incumbent upon the Member States to furnish proof to the contrary: judgment in Case C-48/91, cited in footnote 16, in particular paragraphs 15 to 18; Case C-8/88, cited in footnote 5. For another perspective, see Case C-48/83 *Luxembourg* v *Commission* [1984] ECR 2931; Cases 55/83 and 56/83 *Italy* v *Commission* [1985] ECR 683 and 703; (only expenditure shown by the Member States actually to have been properly incurred may be reimbursed by the EAGGF).

25 — The Court, in order not to hamper checks and to make the threat of penalties more effective, upheld the legality of extrapolating results obtained from a minimum sample so as to apply to the entire administrative organization of the Member State, or, in cases like this one where powers are conferred regionally, the competent local administrative authorities; see Case C-413/92 *Germany* v *Commission* [1994] ECR I-3781, paragraph 11.

covered by the application or the observance of the 90-head limit per calendar year and per farm for the purposes of Article 4 of Regulation (EEC) No 468/87;

(b) the correctness of the required declarations in fulfilment of the undertakings made by the producer;

(c) compliance with the provisions on identification and marking specified in Article 7'.

13. The criticism contained in the summary report is directly concerned with administrative control measures. The Commission took the view that the control procedures applied by the competent authorities of the *Länder* did not conform with the Community requirements. This was because the checks were intended merely to verify that the application forms for the premium were duly filled in and that the maximum number of premium applications corresponded to that laid down by the regulation.

14. In response to those comments, the applicant contends that administrative checks must be taken to mean 'effective verification of the plausibility of the premium applications' — as provided for and applied — and not a 'definitive' check of compliance with the requirements laid down by the Community rules, which is carried out only by means of inspections. The premium applications were always compared (electronically in Bavaria, manually in Baden-Württemberg) with the data for the previous years; the staff of the competent agricultural departments, displaying a high degree of professionalism and knowledge of the localities and holdings involved, ensure that the prescribed controls are carried out effectively. The efficacy of this action, it is maintained, is also confirmed by the inspections carried out by EAGGF officials, who discovered a minimal level of irregularity (less than 1%). The adequacy of the checks provided for in the *Länder* is apparent, finally, according to the applicant's reply, from an investigation carried out on 12 September 1991 by the Bavarian Ministry of Food, Agriculture and Forests concerning the measures for verifying the correctness of premium applications.

15. In the Commission's view, administrative checks, although different from inspections, should not as a result be limited to superficial inquiries to establish that action is properly taken, but that was the approach adopted in this case. As regards the comparison of results, the defendant contends that there is no supporting evidence. In any event, such a comparison is only of limited value in assessing the plausibility of applications, and, even then, only in connection with inspections. As regards the claimed professionalism of the personnel of the agricul-

tural departments and their particular knowledge of the cases to be investigated, those points are far from proved: the very ratio between the numbers of applications and of officials assessing them does not in the Commission's view indicate that a detailed check is carried out. Finally, the limited number of irregularities found during inspections is the result not of efficiency, as contended by the applicant, but on the contrary, of the inadequacy of the system of control measures, in particular the inadequacies noted by the Commission in the system for the identification of animals. In its rejoinder, it maintains that the plea concerning the outcome of the investigation by the Ministry cannot, being out of time, be considered by the Court of Justice, pursuant both to the Community legislation to be applied, [26] and to Article 42(1) and (2) of the Rules of Procedure of the Court.

16. The matter should be decided, in my view, on the basis of the correct definition contained in the regulation of the term administrative checks. As I have pointed out, the applicant and the defendant take different views. I would point out, to clarify the point, that the Court has defined the essential function of the control measures entrusted to the Member States. It stated that that activity is to be carried out by the national administrative authorities for the purpose of '*guaranteeing* the proper observance of the substantive and formal conditions for the grant of the premiums' (emphasis added). [27]

Both administrative checks and inspections are means of investigation and obtaining knowledge in order to implement the aim set out in the case-law. Both activities pursue the same purpose and are therefore defined and adopted in accordance with the principles of the Community legislation and the requirements which it seeks to satisfy. Under the German system, administrative checks have been limited to formal verification only of the plausibility of premium applications. However, such checks may, by virtue of the regulation, be quite different in extent and importance. The regulation treats them as a means — operating in parallel with inspections, but no less effectively for that reason — of pursuing the abovementioned aims. Control measures should, whatever the means chosen to implement them, be apt to ensure observance of the provisions laid down for payment of the premium. This means that checks serve the purpose assigned to them only where they are organized and carried out in relation to the entire procedure under which the premium is paid, rather than in relation to the specific legislative requirements concerning the number and identification of the animals, the correctness of the declarations made by producers seeking the premium and compliance by the latter with the commitments given by them. To satisfy the requirements of Community law, the checks required of Member States — and that means administrative checks no less than inspections — must, in other words,

26 — Commission Decision C/92/2645 of 6 November 1992 adopted pursuant to Article 1(3) of Commission Regulation (EEC) No 1723/72 of 26 July 1972 (OJ 1992 L 186, p. 1.)

27 — Case C-8/88, cited in footnote 5, paragraph 20.

satisfy the requirement of completeness, properly covering the field in which they are to operate. Furthermore, as I have already indicated, the parameters for checks are to be inferred from the basic principles of the legislation: cooperation between the Commission and Member States, good administration, legal certainty. It is necessary to clarify the role of those principles in relation to each specific case in defining the type of checks and the procedures for carrying them out.

Mere verification of the plausibility of premium applications stems, as I said earlier, from a narrow view of administrative checks, which does not, for the reasons given above, conform with the view taken in the Community legislation. The applicant puts forward a number of arguments in support of the opposite view. However, some of them relate to points which are matters of judgment — as, for example, the professionalism of German administrative officials — which the Court, I think, would find it difficult to evaluate. To appraise the action taken by the competent administrative authorities, attention need merely be focused on the criticism concerning the criteria for selecting the holdings to be inspected. An analysis of that aspect brings us back to the meaning of the term checks in the German system and — a matter of importance here — enables us to see whether, in practice, the inquiries made serve the purposes assigned to them by the Community legislation.

17. In examining the second criticism, it is necessary to decide whether the 'sampling' method adopted by the German system for selecting the holdings to be inspected is satisfactory. The Commission considers that that approach is not capable of implementing the control required by the Community rules, because it is not based on rational criteria.

18. In its oral argument, the applicant contended that the system adopted by it was substantially effective. None of the recipients of the premium, it argued, is sheltered from the possibility of inspections, and all holdings may undergo an inspection, sometimes in several successive years. Sample checking, the applicant adds, is associated with targeted action, justified by objective appraisals, and the German authorities are fully aware of the need to carry out rigorous checks. In that connection, the applicant refers to the decisions of the competent offices of the two *Länder*, which took account of the need to arrange for more frequent inspections if, in the course of a year, a larger number of irregularities was discovered. Furthermore, the applicant considers that the choice of inspection method remains a matter for the discretion of the German administration in implementing the Community legislation: and the correct exercise of that discretion by the applicant was recognized by the Commission itself in a letter of 9 August 1991. Two further arguments are put forward in the application: the system benefits from the *positive side effects* aspects of the control measures taken by the administrative authorities under the national legislation on

agricultural subsidies, [28] the administrative authorities of the *Länder* having expressly called upon the local departments to carry out inspections on the requisite number of holdings. [29]

19. In the Commission's view, the selection of the holdings to be inspected, based as it is on a sampling method, does not rely on rational investigative criteria and fails to meet the Community-law requirement that control measures should be substantially effective. The discretion allowed to national administrations is thus exercised in a manner conflicting with the objectives of the regulation. The Commission gives a number of further details: the letters from the administrative authorities referred to by the applicant date back to 13 August 1990 and do not cover the period in question; in any event, they have no practical impact, since during 1990, despite the high rate of rejections recorded in the previous year, there was no corresponding increase in inspections; thus, the text of the Commission's letter of 9 August in no way justifies the conduct of inspections entirely on the basis of samples. In any event, it recognizes the need to base checks on objective and rational criteria, as well as on the findings available from the method of inspection adopted in Germany. No importance can therefore be attached to the applicant's reference to the 'side-effects' deriving from the fact that the national rules on subsidies and the administrative measures referred to by the latter apply at the same time. According to the Commission, that argument has no bearing on the central problem of the selection of the holdings to be inspected.

20. I cannot share the applicant's view. Its 'probabilistic' argument no doubt has its logic (being, as it were, of mathematical origin) but it is not convincing when appraised in the context of the relevant legislation and the interdependency of the inspection methods provided for therein. What, in fact, does that interdependence imply? Administrative checks and inspections are separate investigative methods even if, as mentioned earlier, they share the same function. Thus, when recourse is had to one method, it is necessary to consider how it can be used in conjunction with the other. Only thus can the overall control system be complete and efficient. And it was that system, in which administrative checks and inspections complement each other, that was adopted in this case. That said, clarification is needed. Investigation by sampling is not necessarily a method of inspection which is irrational or inimical to the principle of good administration. However, it becomes so in this case, since it is based on a mere statistical presumption. It was decided that there was equal probability, without distinction, of improper conduct on all holdings which were theoretically liable to inspection. But it could have been provided that the percentage of holdings to be

28 — The competent administrative authorities, it is claimed, obtained through their activity in implementation of the German legislation knowledge relevant to the inspections concerning premiums.

29 — In both *Länder*, when attention was drawn to the need to carry out the requisite number of inspections, express reference was made to the need to comply with Community-law requirements (instruction from the Ministry of Food, Agriculture and Forests of Bavaria of 13 August 1990; instruction of the Ministry of Rural Areas, Food, Agriculture and Forests of Baden-Württemberg of 7 June 1989 and circular from the same Ministry of 29 March 1989).

inspected should be selected not at random but on the basis of the outcome of appropriate administrative checks: by means of a first screening of cases in which the probability of irregularities appeared to be higher, once again, of course, for the purposes of ensuring proper payment of the premium. [30] That would, as the Commission points out in the words of its expert, constitute a less indiscriminate and more rational form of inspection, conforming to the provisions of the regulation. However, there is no trace of such use of the two methods of investigation in the German system, either in the legislative provisions or in practice. [31] Inspection by sampling was chosen to the exclusion of any other method. It was not considered that it should necessarily be combined with any form of administrative checks, on which inspections based purely on chance might rationally be based.

21. I would add, in that connection, a comment on administrative checks. The underlying criterion for selecting the holdings to be inspected is, under the German system, merely that there is an even *chance* of irregular conduct on the part of all possible recipients of the premium and — I repeat — no distinction is drawn between them. That, in my opinion, constitutes indirect but important confirmation of the inadequacy of the administrative checks provided for and carried out in the *Länder*: the control is merely a 'paper' check — as, moreover, is pointed out in the summary report — and does not serve to select, on the basis of any prior assessment of risk factors, the holdings which should then be inspected. The inspection is in fact preceded by a merely formal verification of the plausibility of the application for a premium, involving no essential assessment of the way in which those seeking the premium manage their holdings.

In conclusion, the choice made in the German system is at variance with the Community requirements and does not satisfy the principle of good administration.

22. The other arguments advanced by the applicant must now be considered. The first concerns the Commission's 'approval' of the selection criterion adopted. In this respect too, the applicant's view cannot be upheld. The Commission letter referred to is clear in its terms: in view of the 'total absence of selection criteria' encountered in the inspections of the Erding and Leonberg offices, the

30 — In support of the interpretation advocated, see Commission Regulation (EEC) 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36); in particular with reference to the need to combine inspections with administrative checks, see Article 6(4): 'Applications subjected to on-the-spot checking shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted ...'.

31 — On the contrary, with reference to on-the-spot inspections, the instructions of the Bavarian Ministry of Food, Agriculture and Forests of 12 February 1990, on the implementation of the special premium regime for beef and veal producers (I 6-7463.2-511) specifically provides that: 'on-the-spot inspections *are carried out at random* (at least 10%) but must cover the entire territory' (Article 8.2.2, emphasis added).

Commission considered that 'the inspection rate was entirely arbitrary and, consequently, not particularly representative or efficient'. And even the statement — the undisputed statement — by the Commission expert that the local departments were, during the inspection itself, questioned on this point, shows that the German administrative authorities were aware of the shortcomings of that method of selection.

No importance can therefore be attached to the applicant's arguments concerning the 'side-effects' of the checks carried out under the national legislation on subsidies or to the other submissions concerning the communications sent out by the authorities to officials concerning inspections. In neither case does the defendant deal with the question posed by the absence of objective criteria governing the inspections undertaken by the administration. We are told nothing about the compatibility of the system provided for by the national legislation with the Community requirements. As to the letters mentioned, they refer solely to the number of holdings to be inspected, a matter not in dispute. As regards, therefore, the results of the investigations mentioned in the reply, I consider that the Court can take no account of them. The Commission specifically complained of infringements of the Community rules in the course of the procedure. The applicant should therefore have presented those documents before 15 December 1992, the final date set by the Commission in its Decision of 6 November 1992, under Article 1(3) of Commission Regulation (EEC) No 1723/72 of 26 July 1972 on recognition of the expenditure of the European Intervention Fund. [32]

In addition, the late production of that evidence cannot be justified under Article 42(1) of the Rules of Procedure of the Court. The applicant says nothing regarding the 'reasons for the delay' in offering that evidence expressly referred to in that provision.

Indication of the age of the animals

23. Article 2 of Regulation No 714/89 provides:

'applications for premium ... shall ...:

— indicate the age of the animals'.

The contested decision is based, in that connection, on the fact that the German administrative authorities did not call for specific and exhaustive information as to the age of the cattle but merely required a declaration

32 — See the judgment in Case C-54/91 *Germany* v *Commission* [1993] ECR I-3399, and the Opinion of Advocate General Tesauro in that case.

from holders to the effect that the animals were at least six months old — a method of identification which the inspection by the EAGGF officials showed to be specifically deficient since the documentation for a very large number of animals did not contain any information whatsoever concerning age. That fact, together with the actual features of the system (and in particular, as emphasized at the hearing, the fact that the system is 'self-managed' by the persons to whom it applies), gave rise to major difficulties in verifying the age of the animals, both during administrative checks and in on-the-spot inspections.

24. The applicant responds by criticizing the Commission's remarks. There were, it says, no specific Community requirements concerning the age of the animals. The prevailing practice of merely obtaining confirmation of the minimum age from the holders was therefore justified, *inter alia* because of the difficulties of precisely determining the age of animals. The applicant also puts forward a substantive argument in its application. The system adopted in the *Länder* provides for differentiated marking according to the time of the application. Such rotation, distinguishing the animals for which a premium is sought from one period to the next, prevents double payment of the premium and ensures that the entire aid mechanism functions properly. To keep the animals on the holding until a new period with identical marking commenced would be a rather unprofitable option for the holder. [33]

25. The defendant considers that the term 'indication of age' must be construed in accordance with Community legislation and its purpose, so that it is meaningful throughout the control procedure. Under other legal systems, it has been contended, the control system provides for a card for every animal qualifying for a premium, which documents *inter alia* its age, with a reasonable degree of certainty. As regards the German system of ear-marking by rotation, that provides a 'guarantee' of the propriety of the premium procedures only to the extent to which the underlying system of identifying the animals and establishing their age is efficient, a system which the defendant criticized in its decision.

26. The issue is therefore how the age of the animals is to be indicated under Community law. The information required by the national administrative authorities should in every case be directed towards the exercise

33 — Under that system, the animals for which a premium application has been made in a given period are marked on one ear, and those in the successive period, 8 months later, have the other ear marked. This means that animals for which a premium is received in the first period cannot give rise to a premium in the second period and renders the system 'reliable'. That is because, as the minimum age of the animals is 6 months, they would, in the third period, be at least 22 months old (6 months plus 8 months of the first period plus 8 months of the second period): which would take them past their peak profitability (18 months).

of adequate controls. Under the laws of other Member States, as I stated earlier, a card is required for every animal qualifying for a premium, thus documenting its age with a reasonable degree of certainty. That is not the only possible solution. What is important, however, is that the 'indications' required by Community law should have, at national level, the full significance attaching to them by virtue of the very aims of the regulation. That is not the case here. The German system of division into periods does not in itself provide any proof of the matters at issue here, and in no way resolves the doubt raised by the Commission concerning the efficacy of the practice adopted in the two *Länder* to determine the age of the animals.

Inspections: identification of the animals

27. Article 7(1) of Regulation No 714/89 provides:

'Animals for which a premium application ... is lodged shall ... bear a clearly visible permanent identification consisting of either perforation or marking of the ear or of an ear notch'.

28. Are the identification methods used in the *Länder* 'clearly visible and permanent' and therefore capable of obviating double payment of the premium? The Commission thinks not. The marking, it states, is carried out by the applicants for premiums themselves without official supervision and does not provide sufficient guarantees. The inspections carried out by EAGGF officials in fact reveal that the perforations tend to close up again and the marks can be easily removed. The high rate of rejections of applications by the German authorities is attributable, moreover, to the fact that the way the animals are marked does not adequately identify them.

29. The applicant contends, on the other hand, that the system used is 'technically' adequate: the removal of marks and the closing up of perforations complained of by the Commission are in fact unlikely and rare, it says. [34] In that connection it has produced to the Court evidence in the form of an expert's opinion on the quality of the marking. It submits that the adequacy of its control measures is also substantiated, and not undermined, by the proceedings pending before the German administrative courts relating specifically to failure to pay the premium as a result of shortcomings discovered in the identification of animals. The Commission, according to the applicant, implicitly approved the way in which the *Länder* organized the system, both because, in relation to other cases (and in particular in the case of Council Directive 92/102/EEC of 27 November 1992 on the identification and

34 — It adds that federal provisions exist under which, in the event of defective identification, the identification operation must be repeated.

registration of animals [35]) the Community laid down similar identification procedures, and because the Commission, having received notice under the regulation of the system adopted in Germany, gave it a positive assessment. [36]

30. The Commission responds with a number of arguments. Both the inspection and the evidence obtained by Community officials from German producers disclose the deficiencies of the identification system used: the Commission expert at the hearing stated that the animals displayed 'a multitude' of perforations which made identification of them difficult, or indeed impossible.

Secondly, the applicant's reference to the letter and the legislation mentioned earlier is not relevant to the present decision. The provision referred to concerns another case and in any event was adopted only subsequently; the communication of 23 November, on the other hand, merely evaluated in the abstract the identification system adopted, and did not assess the compatibility of the marking system as a whole, as provided for and applied in practice, with the requirements of the Community legislation.

31. Those are the submissions of the parties. In my opinion, decisive importance is to be attached to the fact — which emerged in the course of the inspection carried out by the EAGGF officials and was confirmed at the hearing by the Commission's expert — that it was difficult to identify the animals because their ears had been marked, perforated and notched on several occasions. The first point which I think should be emphasized is that in the *Länder* identification operations are carried out by the producers themselves. The administration does not directly supervise them. However, identification of the animal is an essential part of the due process of paying out the premium and undertaking the associated checks. [37] That follows from the logic and the wording of the legislation. [38] To entrust to the producers — the very beneficiaries of the premium — an activity having such important consequences runs counter to the completeness and rigour of the checks which must be regarded as required of the Member States by virtue of the principle of good administration. If the intention was to leave marking to the producers, it could have and should have been carried out under the direct supervision of the administration.

32. I should like to add a second point to that general consideration. The applicant supports its view by stating that there is a final check prior to payment of the premium: if the marking is defective, it says, the premium is not disbursed, as is apparent from

35 — OJ 1992 L 355, p. 32.

36 — Letter of 23 November 1989 and, earlier still, telex of 2 July 1987 (the latter concerning the similar procedure provided for by Article 6(1) of Regulation No 859/87).

37 — In that connection, see the conclusions drawn by the Court of Auditors in its Annual Report for 1991 (OJ 1992 C 330, p. 91, paragraph 3.76).

38 — See the seventh recital in the preamble to Regulation No 714/89.

the large number of cases in which administrative proceedings are pending on that point. However, that reasoning overlooks the fact that the Court is called upon specifically and solely to assess the technical adequacy of the identification system, namely its fulfilment of the requirements of 'permanence' and 'clear visibility' of the marking. Failure to adopt a system displaying those features entails breach of the Community requirements. That, and only that, was the matter to be dealt with in connection with this aspect of the action. It is of no importance how domestic law might have reacted to possible irregularities in the functioning of the system adopted. Decisions rejecting applications for premiums and the resultant proceedings before administrative courts do not change the fact that the identification system was not designed in accordance with the requirements of Community law. In any event, as the Commission points out, the abovementioned litigation — which arose precisely because, in breach of the regulation, arrangements had not been made for adequate forms of marking and identification of the animals — indirectly confirms the doubts raised by the objective findings of the EAGGF inspectors.

33. A further comment is appropriate. On-the-spot inspections are envisaged for a small percentage of the holdings. But the number of irregularities detected on those holdings has been high. It is legitimate to presume that the frequency of irregularities may be the same on holdings where no inspection is carried out, which amount to 90% of the total number. This factual inference should be taken into account together with the inefficiency or inadequacy of the system for identifying the animals which was observed.

34. Let us now consider the Commission's alleged knowledge and implied approval of the German system. The Commission concedes that, at some point, it expressed the view that, in the abstract, the system adopted in Germany was compatible with the Community provisions. However, it insists that it did not thereby intend in any way to rule out the possibility that, when the system was examined in practice, the opposite conclusion might be arrived at. In any event, it is now for the Court to consider both the provisions of the contested rules for identifying the cattle and their practical application. I have already given my view as to the decision to be taken. I would merely add that the applicant's reference to Directive 92/102 is not relevant to this case. That measure was adopted subsequently, has no bearing on the matters of fact at issue and in no way helps clarify the central issue of the practical application of the system of identification. And, as far as the expert's opinion produced in the reply is concerned, I consider that the Court cannot take cognizance of it. I refer to my observations in paragraph 22 in that respect.

Inspections: lack of documents and records

35. It is stated in the decision under review that, after verifying that the means of identification were in order, the national inspectors confined themselves to checking whether the number of animals on the holding corresponded with the number of animals indicated in the premium applications. The German administration did not adopt any measures designed to ensure compliance with the requirement that the animals should remain on the holding and the requirement as to the age of the animals.

36. The applicant's response comprises matters of fact and of law: the professionalism of the staff ensured that the inspections were effective; the inspection forms expressly required the inspectors to verify that the animal was on the holding for the prescribed minimum period.

The legal argument, on the other hand, concerns the absence of Community provisions requiring the applicant to maintain additional documentation. That requirement, it claims, applies pursuant to Article 7(1), second subparagraph, of the regulation only with respect to those Member States which adopt systems of identification 'other than in specific connection with the special premium'.

37. In its pleadings, the Commission points out that its criticism does not relate to the failure to maintain additional documentation but rather, simply, to the objective inadequacy of the national inspections. According to the Commission, the EAGGF officials found that the inspectors had confined themselves to verifying the number of animals present on the holding, without putting to the producers the questions required by the form and without making inquiries as to observance of the requirements laid down in the legislation.

38. In my opinion, inspections represent the most advanced and effective way of checking the proper conduct of operations relating to the premium. Inspections should therefore display the rigour necessitated by the function which they perform. Only thus can it be justified, within the organizational structure under review here, that inspections are limited to a percentage of the holdings receiving the premium. If an investigation of that kind were required for all the holdings, the control system would be uneconomical and would hamper the proper marketing of the products, thereby definitively undermining the very functioning of the market. In that light, inspections are intended to establish, with the greatest possible degree of certainty, that the requirements, whether objective or subjective, laid down for payment of the premium are satisfied. The administrative inspection, as stated earlier, is not merely a formality. It is necessary to check whether

those requirements have actually been completely satisfied. It is therefore easy to understand why the investigations should be severe, even more so in relation to the specific activity of inspection. We have seen that the Member States are under an obligation to ensure that the controls required of them satisfy the criterion of good administration. The aim to be attained is *certainty*, let it be said once more, or at least *reasonable confidence* that all the provisions laid down for the grant of the premium have been respected. In view of the doubts raised by the objective findings of the EAGGF inspectors, the applicant's submissions are not such as to prove that the inspections were carried out with the requisite rigour.

39. Examination of the various pleas in the application has shown that, as a whole, the control measures applied in the two *Länder* are to be regarded as unsatisfactory. In the first place, the objective findings of the inspections indicate a lack of information as to the age of the animals, inadequacy of the means of identification used, and superficial on-the-spot inspections. Secondly, the interpretation of the provisions of the regulation adopted by the applicant with regard both to the very meaning of control measures and to the requirements concerning identification of the animals runs counter to the principles that can be inferred from those provisions. That fact, together with the indications that the system is inefficient, such as the large number of administrative proceedings concerning irregularities of marking, provide legitimate basis for the 'serious and reasonable' doubt expressed by the Commission regarding the propriety of the German administration's conduct. It does not seem to me that Germany has adequately dispelled that doubt. I therefore consider that the Commission measures taken in connection with the charge at issue here cannot be regarded as unlawful.

The import and export of animals already benefiting from a premium

40. With regard to animals benefiting from a premium, the regulation contains a specific provision, within the more general terms of Article 7. The second paragraph of Article 7(1) provides that the Member States may use:

'methods of identification ... other than in specific connection with the special premium ... providing that such methods enable each animal to be identified .... Where this is the case, the number of the animals in question must be stated on the premium application and this application must be furnished:

— by a document which shall accompany the animal throughout its life ... ;

— ... by a register in which the animal is registered under its number, and which is

kept by the competent authorities or, if national legislative and administrative rules permit and in agreement with the Commission, by the producer'.

The third paragraph provides:

'However, animals so identified which are consigned, after payment of the premium, to another Member State must be marketed in a specific way at the time of consignment'.

The criticisms in the summary report concern the failure to take appropriate measures to ensure that animals imported from Belgium and France and those exported to Italy do not benefit from the premium twice.

41. The monitoring of imports and exports of cattle touches upon a delicate aspect of the matter in hand. The movement of animals may give rise to the risk of more than one premium being paid. However, the cornerstone of the regulation is the absolute rule that the premium may be granted only once for the same animal. Where there are no appropriate rules to coordinate the various national markets, so as to guarantee that the premium is not paid more than once, such rules must, *de lege ferenda*, certainly be adopted.

The question to be considered by the Court arises, however, solely in relation to the obligations of the Member States under the regulation in force. What criterion was to be observed by the applicant to avert the feared risk of double payment? The question seems to me to be twofold, and the two aspects must clearly be kept separate. We are concerned with the system of identifying animals which, in one case, are imported (from Belgium and France) and, in the other, are exported (to Italy).

42. In the first case — and here we look at the positions taken by both parties — the principle of cooperation between the Community and the Member States is important. The Commission complains that Germany did not adopt suitable measures to identify imported cattle, merely calling on the Community to take action for a proper solution to be found to the problem of double payment of the premium in the Member State of destination or in the State from which the animal came. The applicant allegedly failed to display the diligence required by the complexity of the case. For its part, Germany contends that it was the Commission which

'broke off' the cooperation with the national authority by failing to follow up, at least in the year to which the clearance procedure relates, the urgent requests made by it to deal with the case. [39]

43. Let us try to clarify the issue. The Commission called on Germany to act fairly vis-à-vis the Community: in this case, it was under a duty to adopt rules and practices for the identification of cattle which were technically capable — again, this is the essential point — of avoiding possible double premium payments. [40] However, the defendant itself took no action to deal with the outstanding problem. It did not respond to the requests made by the applicant, which had expressly called on the Commission to take action in the common interest. Now, the basis of cooperation is reciprocal fairness on the part of those involved and their coinciding wish to take action to balance the interests involved. The principle of genuine cooperation — *Gemeinschaftstreue*, which is very reminiscent of the *affectio foederis*, the *Bundestreue* exemplified in certain provisions of German constitutional law — cannot operate on an imperfect basis. The Court rightly took that view in laying down the basis of the rules governing the relationship both between the Communities and the Member States and between the institutions themselves. [41]

44. In the present case, neither the regulation at issue nor any other Community provision required the Member States to adopt a specific and differentiated method of identifying imported animals. According to the Commission, as has been seen, Germany should, pursuant to the Community rules, have supplemented the provisions of the regulation by adopting appropriate forms and safeguards for control measures to ensure that there was no double payment of premiums in respect of imported animals. I consider, however, that no such obligation can be considered to be imposed, not even by implication, by the provisions of the regulation. The movement of cattle necessarily, as I pointed out, affects the coordination of national markets. This area can be effectively governed only by provisions and measures adopted — as subsequently happened — at Community level. [42] The adoption of rules in this area was therefore, primarily, a matter for the Commission: both because of the 'supra-national' nature of the problem and because of the objective difficulty, in the absence in a uniform system of marking, of determining the origin of the cattle purchased. If that is so, the applicant is not responsible for any unlawful omission and

39 — Those requests from Germany take the form of letters (in December 1989 and November 1990); discussions within the Beef and Veal Committee (in May 1991); oral communications in November 1989 and during the EAGGF inspections in Bavaria and Baden-Württemberg.

40 — See the judgment in *Italy* v *Commission* (cited in footnote 19).

41 — See the guidance on cooperation given, with regard to State aid, in the judgment in Case 94/87 *Commission* v *Germany* [1989] ECR 175.

42 — Uniform rules of this kind were adopted, as we have seen, only in 1992, by means of Directive 92/102, cited in paragraph 29 of this Opinion.

should not have to bear the expenditure for which the Commission has withheld clearance. [43]

45. Let us now consider the origin of and solution to the question of specific marking at the time of export. The first paragraph of Article 7 of the Regulation, as we have seen, lays down precise requirements for the identification of animals in respect of which a premium is applied for and which meet the qualification requirements laid down by the legislation.

The identification must be 'clearly visible [and] permanent', consisting of irremovable marking of the ear of the animal, either by perforation or marking or an ear notch. These marking requirements apply throughout the Community: it is the 'standard' marking system. However, in the following paragraphs, Article 7 provides that the Member States may use a system different from the one mentioned above, provided that in such circumstances they observe the technical requirements of the regulation for identification of each qualifying animal: a mark or number on the ear of the animal, or the use, according to the circumstances, of a document or a register. Immediately following the latter provisions, Article 7 provides: 'however, animals so identified which are consigned, after payment of the premium, to another Member State must be marked in a specific way at the time of consignment'.

46. The Commission is of the opinion that the proper marking provided for must be used for all animals, however identified pursuant to Article 7, whether by the standard system or by some other marking method preferred by the Member State. But, the provision specifically uses the word 'so': and it must be concluded that the legislature wishes the words used to bear their literal meaning. Use of the word 'so', rather than any other term, therefore means that the requirement of the additional distinctive marking of exported animals after payment of the premium refers, texturally, to one case only: namely, the case where the animal does not bear the marking provided for by the first paragraph but has been identified by another of the methods allowed by the regulation.

47. That reading of the provision, advocated by the applicant, is justified not only by its literal wording but also by the logical scheme of Article 7. The standard system provided for in the first paragraph relies on the permanence and clear visibility of the marking. The requirements laid down for the alternative systems which the Member States may adopt, on the other hand, reduce the

43 — I think it is appropriate to refer, even though they postdate the facts of this case, to two legislative measures on fraud undermining the financial interests of the Community, which support the solution which I advocate. Article 209a, introduced by the Maastricht Treaty, provides (in the second sentence of the second paragraph) that, in order to coordinate their action aimed at protecting the interests of the Community, the Member States are to 'organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations'. To the same effect, and more specifically, the rules laid down in Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy (OJ 1991 L 67, p. 11) centre anti-fraud action specifically on close cooperation between the Member States and the Commission (on all these points, see the tenth recital in the preamble). And it is on the basis of the guidance given by those legislative measures that I attach particular importance to the Commission's inaction in the present case, preventing materialization of the cooperation which the applicant had repeatedly and expressly requested.

identification marks to the essential minimum of physical incisions on the animal and, to offset this, require that the premium application can be verified on the basis of the documents required to accompany it. In the latter case, where the animal is consigned to another Member State of the Community, and there is a risk that it might be the subject of a premium at the point of arrival as well, it is necessary to provide for specific marking additional to the identification already affixed to the animal under the national system. That requirement thus forms part of the very logic of the regulation, inspired by the principle that the premium must be paid only once.

48. But can that obligation also be deemed to apply to animals which have already been identified under the standard system? I think the answer is no. The characteristics of that additional marking are not in fact specified. It must be concluded that they are to meet the requirements of indelibility and recognizability displayed by the standard identification marking. Could it nevertheless be that double marking, with the same characteristics, might be regarded as conforming with the principle of good administration and effective administrative action? How could this help reduce the risk of double payment of the premium in respect of exported animals? I think it is more appropriate to read the provision as meaning that only the other systems of identification which the Member State may use are to be supplemented by the specific marking which follows payment of the premium and applies in the case of export. Marking under the standard system, on the other hand, was not considered for the particular circumstance involved in this case. The reason is this: that provision was included in the regulation on the clear basis that the marks, perforations or notches on the animal's ear identify it for all possible purposes of the Community premium system, including the requirement of only one payment. An animal bearing the standard identification marking must therefore be regarded, throughout the Community, and that of course includes the State into which it has been imported, as already having been the subject of a premium, which cannot be paid again. The applicant's claim is well founded. [44]

I must therefore suggest that the Court uphold the plea concerning imports of

44 — And in fact the legislative history of the provision clearly confirms that the approach which I advocate is correct. Originally, Commission Regulation (EEC) No 859/87 of 25 March 1987 laying down detailed rules applying to the special premium for beef producers (OJ 1987 L 82, p. 25) provided, in Article 6(2), that 'Animals for which a premium application ... is lodged shall, on consignment, be permanently marked but in a different fashion from [standard identification] in order to prevent any confusion between cattle covered by the different arrangements'. Subsequently, Commission Regulation (EEC) No 1120/87 of 23 April 1987 amending the abovementioned regulation (OJ 1987 L 109, p. 11) introduced — in terms which were then maintained in Regulation No 714/89, in a single paragraph — the identification system available by way of derogation and the need for specific markings at the time of consignment of the animals covered by those provisions. The arrangement thus created, according to which animals covered by both sets of rules had to be specifically marked when consigned to another Member State, substantially confirmed by Regulation (EEC) No 2430/87 (OJ 1987 L 224, p. 10), were definitively verified by Regulation No 714/89. The latter removed the provision requiring specific — and 'different' — marking of animals identified under the standard system, but maintained the specific marking requirement for animals covered by the derogation. This legislative progression proves two things: the first is that the specific and 'different' markings laid down for animals identified under the standard system were expressly eliminated by the legislature. The second is that the origin of the paragraph of Article 7 of Regulation No 714/89 at issue here relates directly and solely to animals identified under the alternative rules. Those two facts, it seems to me, incontrovertibly relate the obligation for specific marking at the time of consignment to the latter animals, a second mark (at this stage, in the absence of specific provisions, having the same characteristics as the first) being considered unnecessary for animals already identified in accordance with the regulation in a 'clearly visible permanent' manner.

animals from Belgium and France and exports to Italy.

Application of transitional provisions

49. The transitional provisions are contained in Article 11 (paragraphs 2 and 3) of the regulation, which provides:

'Member States ... may open, from 3 April to 4 June 1989, a period for the lodging of transitional premium applications for animals whose fattening is almost completed.

In this case, the producer must declare in his application:

— that the animals concerned are at least 12 months old at the date of lodging of the application,

— that he is keeping them on his holding for at least one month,

— that the animals will be slaughtered or exported to third countries before 3 September 1989.

The animals concerned must have a clearly visible and permanent identification mark'.

50. The non-recognition of the expenses incurred under those rules is broken down as follows: 4% (equivalent to DM 379 140) relates to documentary findings by EAGGF officials showing that, as regards 5.6% of premium applications, the premium had been paid irregularly (that percentage was reduced to 4% following information forwarded by Germany during the objection procedure); 10% (equivalent to DM 957 850) relates to more general inadequacies of the system adopted in the two *Länder*. The specific grounds of objection relate to clearly identified irregularities encountered in the payment of the premium. It is stated in the Commission's letter of 29 September 1992 that, in relation to 36 applications in response to which the premium was paid punctually, the following was discovered: sale or butchering of the animal before the end of the prescribed period; lack of documentary evidence; changes made to certificates. That specific criticism, with which the applicant appears to be acquainted (see paragraph 18 of the application), has not been directly challenged. It must therefore be deemed to be accepted.

51. That is not, however, the case, as regards the non-recognition of expenses on grounds of general inadequacies in the operation of the transitional arrangements. Although constituting an express derogation from the general system, the rules laid down, with respect to adult cattle as well, specific requirements — regarding both inspections and identification of the animals — again in order to limit cases of double payment of the premium. The contested measure was adopted on the grounds of alleged failure to observe those requirements. More specifically, the summary report complains of: (a) identification of the animals not conforming to the legislative requirements; (b) cases of double payment of the premium; (c) irregularities in the slaughter documents; (d) insufficient supervision. I shall consider these points in the following order: (a), (c), (b), and, finally, (d).

52. The first point. In compliance with the eight recital, for animals covered by the derogating rules, mere colouring of the head or back of the animals was allowed. [45] During the inspection it was found that the great majority of animals lacked identification conforming to the requirements of the Community legislation. As the Commission expert stated at the hearing, more particularly there was a lack of specific guidance from the administrative authorities regarding the colouring carried out: an essential precondition for efficient supervision.

53. The applicant made no adequate response to that specific criticism either in the written procedure or at the hearing. It merely sought to justify the adequacy of the identification in accordance with the regulation by reference to the limited period of time for which the animals have to remain on the holding after marking.

However, the applicant made no comment on the substance of the criticism, namely the lack, to which the Commission referred, of any coordination by the competent authorities regarding the various colourings used. The Commission expert stated that the inspections had disclosed that the animals were identified differently from one holding to another and, what is more serious, without the national inspectors being familiar with the types of identification used on the various holdings. Those circumstances, in the Commission's view, show that the inspections were objectively incapable of ensuring effective control. The applicant has not challenged that view.

45 — The eight recital in the preamble to Regulation No 714/89 states, 'in view of the marketing requirements for male cattle held by producers at the time when this regulation enters into force, a temporary exception to the obligation to keep the animals on the holding for a specified period after lodgment of the application should be granted, on condition however that the cattle in question are of the prescribed age and have been fattened on the holding for at least two months; *whereas it is necessary, furthermore, to lay down for these animals, which by virtue of their age are difficult to handle, an exception to the marking system*' (emphasis added).

54. The Commission's observations are, I think, justified by the outcome of the inspections and support the conclusion that the identification system adopted under the derogating rules was not in conformity with

the regulation. In the absence of coordination, the activities of the competent authorities did not meet the requirements of sound administration and, indeed, display a 'lack of interest' in the aims of the control measures to be applied which, together with the objective findings of the officials, is indicative of inadequate organization of the control system at regional level, of the kind mentioned by Advocate General Van Gerven in a case similar to this one. [46]

55. The second point made in the summary report concerns the irregular application of the national rules for implementation of the regulation. The rules adopted in Germany provide that the declarations accompanying a producer's application for a premium must include one to the effect that the animals were duly slaughtered in the course of the period concerned. [47]

It is apparent from the summary report that the EAGGF is unable to verify that slaughtering has taken place because of the inadequacy of the relevant documentation. [48] In particular, the Commission noted the absence or inaccuracy of particulars concerning the date and place of slaughter of animals purchased live by dealers; no clear definition of the animals concerned; no precise details of the price and the weight of the animals or the name of the applicant for the premium, or the dealer. Furthermore, most of the certificates were drawn up by dealers, without being stamped by a slaughterhouse. Those inadequacies made it impossible to check properly whether the animals for which a premium was claimed had actually been slaughtered before the appropriate date, or whether the animals slaughtered were in fact those for which a premium application had been lodged.

56. The applicant alleges, in the first place, that the EAGGF's statement that 'almost all slaughter certificates' were completed by dealers is incorrect. It claims that only half of such certificates were at fault, this being due to the fact that many slaughterers were originally wholesale dealers, and the documentation still referred to their original business. Secondly, the applicant maintains that it can be inferred from the information contained in the dealer's invoices that the animal for which a premium was claimed was actually

46 — See the Opinion of Advocate General Van Gerven in *Germany* v *Commission*, cited in footnote 5, in particular paragraph 7: 'a lack of interest manifested at federal level or between the *Länder* ... merges into the other grounds ... in particular inadequate supervisory rules adopted by, and in consultation with, the competent *Länder* in the Federal Republic of Germany and inadequate supervision of the officials responsible for carrying out checks at local level'; see also paragraphs 25 to 28 of the judgment.

47 — I think it is appropriate to draw attention to the particular importance of documentation under the transitional arrangements. Because of the limited period for which the animals are required to be kept on the holding (one month as from the date of the application) and between that date and slaughter or export of the animal (a maximum of five months), the documentation essentially becomes the only means by which the regularity of the payment of the Community premium can be verified.

48 — The documentation required by the national rules is extremely detailed. Among other things, it provides that evidence of slaughtering is to be provided by means of 'health inspections; slaughter certificates (weight of the carcass); certificates in respect of the animal to be slaughtered (live weight) with annexed documents proving slaughter': see the circular from the Ministry of Rural Areas, Food, Agriculture and Forests of Baden-Württemberg of 29 March 1989, Article 5.

slaughtered within the prescribed period. Indeed, it would have been uneconomic to keep it on the holding beyond the slaughter date laid down by the legislation. Because of this, and because of the professionalism of the competent departments and their familiarity with the localities, the applicant claims that the conditions for due grant of the premium had to be considered fulfilled.

57. The Commission does not share that view. I too consider that those arguments do not serve to challenge the objective and clear fact that the documentation concerning slaughter of the animals for which a premium is claimed was inadequate. As regards the information which producers must provide under the national provisions, it is appropriate, in this case too, to distinguish between the rules and the way in which they were applied in practice. As I pointed out in connection with the other submissions, the deficiencies of the system in force in the *Länder* are in various cases omissions or other irregularities in the *specific application* of those rules, which cannot be remedied, and have not in fact been remedied, by the special knowledge which, according to the applicant, the competent authorities have of the German holdings.

58. The Commission's third observation is more general. Essentially, the applicant is accused of failing to coordinate the two sets of arrangements properly: because of ineffective control measures, inadequate systems of marking and merely formal inspections, the same animals, not having been subject to adequate controls, could have given rise to double payment of the premium; first under the 'standard' regime, and then under the derogation.

59. Specifically because of the claimed substantive link between the transitional regime and the standard regime, the arguments put forward cannot be dissociated from the more general context in which control measures are applied, as considered and evaluated in relation to the first plea in the application. The applicant contends that the control measures carried out in the two *Länder* (and in particular inspections) were as a whole apt to avoid cases of double payment. The other, more specific, submissions in the application which are relevant here may be summarized as follows: specifically with respect to the animals covered by the derogation, the inspection form expressly required inspectors to check whether it was likely that the applicant had already obtained the premium; the administration had itself indicated several times that double payment of the premium was unlawful; the German implementing regulation required a register to be kept from the date of the application for the premium until the date of slaughter.

60. In response, the defendant draws attention to the inadequacies discovered in the actual carrying out of inspections. Both the provisions of the administrative circular and the form containing the questions to be asked by the inspectors are incapable of avoiding double payment of the premium, since they are not very detailed. Further-

more, the register proves nothing as regards double payment of the premium, since the period which it covers comes after any payment of the premium under the standard regime.

61. Those arguments are very similar to those put forward regarding the control measures applied under the standard regime and I can therefore refer to my earlier conclusions regarding that regime, together with those concerning paragraphs (a) and (c) of the present plea: the transitional arrangements lacked the essential requirements for proper implementation at national level of the control measures in the manner provided for by the Community rules. On the basis of the above points concerning inspection activity both under the standard regime and the transitional regime, I am of the opinion that it can be concluded that whichever regime is considered, the result is unchanged: the implementation of controls is unsatisfactory. Quite apart from the requirements of the forms — which in my opinion are sufficiently detailed — the results of the inspection undertaken by the EAGGF officials raised justified doubts as to whether the inspection, as actually conducted, was as detailed and complete as it must be, as indicated above, under the Community rules. And all the conclusions reached concerning the various criticisms associated with the present plea show that under the transitional regime the practices adopted make it difficult to identify the animals for which a premium has already been paid or to establish, as required, that the conditions concerning slaughtering have been satisfied. The control measures are, consequently, not applied in such a way as to ensure that the premium is not paid more than once.

62. The defendant considers, finally, that the considerable decentralization of administrative organization in Bavaria and Baden-Württemberg, *inter alia* because the authorities in the two *Länder* failed to issue guidance or instructions, 'exacerbated' the difficulties encountered in carrying out the control measures.

63. I am not persuaded by that argument. I should point out that on another occasion the Court of Justice stated that 'it is for all the authorities of the Member States, whether it be the central authorities of the State or the authorities of a federated state, or other territorial authorities, to ensure observance of the rules of Community law within the sphere of their competence. However, it is not for the Commission to rule on the division of competences by the institutional rules proper to each Member State, or on the obligations which may be imposed on federal and *Länder* authorities respectively'. [49] Competence concerning basic organizational arrangements, with specific reference to the division of functions

49 — Case 8/88 *Germany* v *Commission* (cited in footnote 5), paragraph 13; see also Joined Cases 51/71 to 54/71 *International Fruit* [1971] ECR 1107, paragraph 4.

between the federal authorities and those of the *Länder*, must therefore be regarded as beyond the Commission's purview: that is exclusively a national matter.

I wish only to add that, in my opinion, the rules laid down by the *Länder* provided for the coordination of which the Commission denies the existence. The legislation and rules adopted were often detailed and precise. It was only in their practical application that, as I have observed, they are to be regarded, on the basis of most of the observations made, as unsatisfactory for the purposes of Community law.

For the above reasons, albeit subject to that last clarification, I consider that the Court should not uphold the applicant's arguments concerning the criticism relating to the transitional arrangements.

Conclusion

64. On the basis of the foregoing considerations, I suggest that the Court:

— annul Commission Decision 93/659/EEC of 25 November 1993 as to the sum of DM 1 150 165 in respect of the expenditure not recognized in relation to imports of cattle from France and Belgium and exports of cattle to Italy;

— dismiss the applicant's claims for the rest;

— since both parties have been partially unsuccessful, I propose that the costs be shared pursuant to Article 69(3) of the Rules of Procedure.