JUDGMENT OF THE COURT (Sixth Chamber)

13 July 2000 *

In Case C-243/97,

Hellenic Republic, represented by I. Chalkias, Deputy Legal Adviser in the Legal Council of State, and E.-M. Mamouna, Assistant in the Special Department for Community Legal Affairs in the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

applicant,

v

Commission of the European Communities, represented by M. Condou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Greek.

APPLICATION for the partial annulment of Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 on the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30), in the part relating to Greece,

THE COURT (Sixth Chamber),

composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn, G. Hirsch (Rapporteur), H. Ragnemalm and V. Skouris, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 4 July 1997, the Hellenic Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the partial annulment of Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 on the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30), in the part relating to Greece.

2 The action seeks the annulment of that decision in so far as the Commission declared that the following amounts were not chargeable to the EAGGF:

— GRD 10 007 973 085 in respect of olive oil production aid;

— GRD 1 322 433 341 in respect of failure to observe the deadlines for making payments to recipients of olive oil production aid;

— GRD 2 031 347 293 and GRD 2 413 383 890 in respect of exports of olive oil from Greece to non-member countries;

— GRD 2 002 118 894 in respect of tobacco (production in excess of maximum guaranteed quantity);

— GRD 246 543 179 in respect of wine (permanent abandonment of areas under vine);

— GRD 82 224 025, GRD 54 471 120 and GRD 97 597 184 in respect of the public storage of cereals; and

— GRD 1 531 502 946 in respect of missing quantities of durum wheat.

3 The reasons for the corrections imposed are summarised in Summary Report No VI/5210/96 of 15 April 1997 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1993 (hereinafter 'the summary report').

Expenditure by way of production aid for olive oil

Inadequacy of checks

4 It is apparent from the summary report that the flaws in the administration and control system for production aid for olive oil in Greece which were pointed out by the EAGGF during the clearance of accounts for 1992 were still present during the 1993 clearance of accounts. That conclusion is based on the information and

documentation provided by the Greek authorities and on an EAGGF inspection mission between 20 and 24 May 1996 concerning the 1993 and subsequent financial years.

5 It follows in particular from the summary report that the computerised file required by the Community rules is not operational. Although the instrument was developed several years ago by the Ministry of Agriculture, the data on the crop declarations and aid applications are not entered on computer in most of the regional agricultural directorates. Although the producer organisations enter the data for most of their members on computer, the lack of homogeneity between software packages used prevents all the information being fed into a single file and used in order to check producers and mills.

6 The summary report states that the identification of land areas comes up against the same difficulties as before: a total absence of alphanumerical references to enable effective location of the parcels declared and thus avoid multiple declarations of the same parcel. Although part of the areas planted with olive trees is at the same time declared in the integrated system, that system does not include alphanumerical references for those parcels. Nor are the parcels declared identified on the local authority plans, which are sometimes kept in the town halls. The failure of the professional organisations to enter the locations on computer (although they are indicated in the declarations) often makes those data useless for on-the-spot controls of producers by the olive oil agency.

7 It is further apparent from the summary report that the number of olive trees indicated in the crop declarations, and therefore olive-tree statistics, include all the olive trees in production, including those whose fruit will be used as table olives. In the 'nomos' where significant quantities of table olives are produced, the yields of homogeneous areas are said to be reduced in proportion to the percentage of olives pressed, but the national authorities provided no documentation indicating the calculations necessary to make that adjustment.

8 The summary report states that in the 1992/1993 and 1993/1994 marketing years (poor harvests) the professional organisation and the Agricultural Directorate of Lesbos did not establish criteria for detecting producers who had had abnormal harvests. Also, the non-application of the withdrawal of accreditation from mills in respect of which the olive oil agency had brought to light irregularities which should have led to the application of that sanction remains unacceptable.

9 Owing to that situation, the Commission applied for 1993, as it had done for the previous years, a flat-rate correction equal to 10% of the expenditure declared by the Hellenic Republic for that item, namely an amount of GRD 10 007 973 085.

10 The Greek Government contends that the financial corrections imposed in the olive oil production sector are due to the Commission's having incorrectly assessed the facts and exceeded its discretion.

11 Relying on the arguments already put forward in the context of its action in Case C-46/97, in which judgment is given today, the Hellenic Republic claims, in particular, that:

— in 1988 it had informed the Commission of the insurmountable difficulties which made it impossible to establish the register within the prescribed period and it had sought the Commission's assistance;

— between 1994 and 1996 the competent Greek authorities set up a pilot programme;

— in 1996 a representative of the Commission stated that the Community was taking a new direction and that the scheduled implementation of the register of olive cultivation was cancelled;

— since the judgment of the Court of Justice of 4 July 1996 in Case C-50/94 *Greece* v *Commission* [1996] ECR I-3331 had upheld the 10% correction for 1990, the Commission should not have imposed penalties for the subsequent years on the same ground;

— the computerised file, which has been in existence since 1985, is sufficiently operational and any weaknesses are linked with the absence of an olive-cultivation register;

— the olive-oil production supervisory agency is introducing an annual programme of activities in accordance with the foreseeable risks of irregularities and fraud;

— the number of on-the-spot checks of mills, producers's associations and producers' organisations has increased.

12 In conclusion, the Greek Government maintains that the checks carried out made it possible to ensure that the expenditure declared was properly incurred. Although certain specific errors in the control system existed, they did not affect the fundamental aspects of that system; they consisted in a number of secondary failures, inherent in the free functioning of the market, which are to be found in the systems of all Member States.

13 In that regard, it is sufficient to point out that the position as regards the checks on olive oil production in Greece remains essentially unchanged compared with that found in previous years. Contrary to the obligation laid down in Council Regulation (EEC) No 3453/80 of 22 December 1980 amending Council Regulation (EEC) No 154/75 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1980 L 360, p. 15) to establish the register of olive cultivation by 31 October 1988, there was still no such register in 1993. Similarly, the computerised files continued to be unusable. Finally, the serious structural flaws in the system for the administration and control of applications for aid continued to exist.

14 The pleas in law and arguments put forward by the Greek Government to justify the regularity of the expenditure correspond essentially to those put forward in *Greece* v *Commission* (Case C-46/97) in respect of the clearance of the accounts for 1992. As the Court has rejected those pleas and arguments in paragraphs 4 to 26 of the judgment delivered today in Case C-46/97, they must also be rejected, for the same reasons, in the present case.

15 The financial correction cannot therefore be called in question.

Failure to observe the deadlines for making aid payments

16 The summary report states that EAGGF staff have introduced a programme to check automatically whether or not the ceilings and date-limits on payments specified in the Community regulations are being complied with. The system provides that any expenditure declared in excess of those ceilings will automatically be rejected and will not be taken into account in calculating

advances on the expenditure booked to the accounts, in the appropriations used or in the Community budget accounting procedure.

17 Any expenditure declared after the payment deadlines will be automatically refused on a sliding scale, so that only 80% of expenditure in the first month following the deadline is accepted, 60% in the second month, 40% in the third, 20% in the fourth and 0% thereafter. In order to take account of dossiers which might be the subject of contention or additional checks, 3% of the expenditure is deemed to have been incurred within the prescribed period and is deducted before the first reduction is made.

18 It is apparent from the summary report that those provisions were discussed and approved at a meeting of the EAGGF Committee on 26 and 27 January 1993 and confirmed in document VI/488/92. All Member States were officially informed about any overrun payment deadlines which affected them.

19 In Greece's case the correction amounted to GRD 1 333 432 093.80.

20 The Greek Government claims that the failures to observe deadlines noted in payments to individual small producers and to small producers belonging to associations are solely due to the fact that the deadlines fixed by the Community, 15 September 1993 for the former and 15 October 1993 for the latter, did not allow it to complete the checks laid down for the total number of small producers, which was extremely large. Those overruns were therefore due to a case of *force majeure*, since the competent departments did their utmost to pay the recipients within the prescribed periods, but the volume of cases checked and the purpose of the exercise, to check the regularity of payments, meant that those deadlines could not be scrupulously observed.

21 It should be pointed out that Article 12b(1) of Commission Regulation (EEC) No 3061/84 of 31 October 1984 laying down detailed rules for the application of the system of production aid for olive oil (OJ 1984 L 288, p. 52), as amended by Commission Regulation (EEC) No 928/91 of 15 April 1991 (OJ 1991 L 94, p. 5), provides that '[a]fter fixing the average of the yields for the four previous marketing years, the Member State shall pay the production aid to growers whose average production is less than the quantity indicated in the first indent of Article 5(2) of Regulation No 136/66/EEC, within 90 days of submission of the aid application accompanied by evidence of processing of the olives at an approved mill'. Commission Regulation (EEC) No 2796/93 of 12 October 1993 amending Regulation (EEC) No 3061/84 laying down detailed rules for the application of the system of production aid for olive oil (OJ 1993 L 255, p. 1) added a new subparagraph to that provision, which states: 'However, Greece and Portugal are authorised to pay the aid for the 1992/93 marketing year by 15 October 1993 at the latest'.

22 In accordance with Article 12b(2) of Regulation No 3061/84, as inserted by Commission Regulation (EEC) No 98/89 of 17 January 1989 (OJ 1989 L 14, p. 14), and amended by Regulation No 928/91, 'Member States shall pay the production aid to producers whose average output is at least equal to the quantity referred to in the first indent of Article 5(2) of Regulation No 136/66/EEC within 90 days of the determination by the Commission of the actual production for the marketing year concerned and of the unit amount of the production aid provided for in Article 17a(3) of Regulation (EEC) No 2261/84'. Regulation No 2796/93 has also added a subparagraph to that provision, which states: 'However, Greece, Portugal, Italy and Spain shall be authorised to pay the balance of the aid for the 1991/92 marketing year by 15 October 1993 at the latest'.

23 It is common ground, first, that the deferred deadline for payment of aid for olive oil production laid down in Regulation No 2796/93 was not observed.

24 It is also common ground that the Greek Government put forward the argument alleging a case of *force majeure* only after the date laid down in Regulation

No 2796/93 and took no steps to have that date varied by the Community authorities, even though the difficulties which it describes were known in advance.

25 In those circumstances, it cannot plead a case of *force majeure* as regards compliance with the deadline laid down in Regulation No 2796/93. The financial correction imposed cannot therefore be called in question.

Export refunds and consumption aid

26 It is apparent from the summary report that, on the basis of unofficial documents kept by a trader, the EAGGF became aware of fraudulent exports of olive oil from Greece in the period 1990 to 1993. Containers allegedly containing olive oil and thus eligible for export refunds contained other products and were therefore not eligible for refunds. As the Greek authorities appeared to be making little progress, the EAGGF initiated its own inquiry in 1993 on the basis of Article 9 of 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), which was extended to certain non-member countries (the Republic of Cyprus and the Lebanese Republic) as well as Greece.

27 On a number of occasions the investigators noted that, although a batch of containers (up to ten at a time) had been declared as having been exported to Australia or the United States of America, only one of them had actually been shipped directly from Piraeus to the port of destination, while the others had gone via the port of Limassol. Inquiries carried out with the assistance of the Australian customs authorities disclosed that only a very small percentage of containers declared as having been exported to Australia actually arrived there. Furthermore, the majority of those actually arriving were declared to contain goods other than olive oil.

28 During a mission evidence of export fraud in the Community was discovered. In Cyprus (in March 1993) and Lebanon (in October 1993) investigators found that a Greek company had made false declarations in Greece while exporting so-called olive oil to non-member countries during the period 1990 to 1993. It also became clear that almost all the containers in question had passed through the port of Limassol before leaving for Beirut rather than Australia or the United States of America, as declared on export from Greece. Examination of the relevant Cypriot customs documents revealed that the containers actually contained soya oil.

29 During the mission to Lebanon it was found that imports of olive oil into Lebanon are prohibited irrespective of its origin unless it is accompanied by an import licence issued by the competent Lebanese authorities. During the years 1990 to 1992 no imports of olive oil declared to be of Greek origin had taken place. Finally, consignments which were declared to be of olive oil on being exported from Greece and were transshipped through Cyprus were declared as soya oil on arrival in Lebanon.

30 It was apparent from the information provided by the Lebanese authorities that other Greek undertakings had committed similar frauds. Consequently, the Commission began an inquiry in Cyprus in September 1994 in order to establish what was in the containers in question, the transport arrangements and, accordingly, their destination. That inquiry revealed that two Greek companies had made false declarations in Greece while exporting what was alleged to be olive oil to non-member countries in 1992 and 1993. Examination of the relevant Cypriot customs documents established that the product exported was actually soya oil.

31 The summary report states that, as all exports of olive oil from Greece are subject to physical control, the investigators wondered how that fraud could have attained such dimensions. They therefore arranged a mission to the Piraeus customs office and the National Laboratory in November 1994.

32 It emerged that no appropriate customs controls had taken place and that the National Laboratory was unable to provide any evidence of analyses certifying the nature and quality of the oil. Furthermore, at the time when that mission took place, although the fraud had already been established, no steps had been taken to put a stop to existing practices or to investigate the conduct of the departments concerned.

33 According to the summary report, the fact that exports of olive oil were recorded as undergoing a 100% physical control by the customs authorities and the National Laboratory created a climate of confidence in which some dishonest exporters were able to develop fictitious trade in that product, since the risk of being caught in an official inspection was zero. Moreover, the Greek authorities failed to demonstrate that in combating the illegal activities they had taken sufficient action to initiate the necessary legal proceedings (both criminal and civil) to put an end to such traffic.

34 For all those reasons, the summary report concludes that, in respect of its exports of olive oil to the abovementioned non-member countries, the Hellenic Republic had failed to satisfy the conditions of Article 8 of Regulation No 729/70, which provides that Member States, in accordance with national provisions laid down by law, regulation or administrative action, are to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence. Consequently, the export refund and consumption aid granted in respect of the consignments in question were excluded from Community funding. The financial correction based on Article 8(2) of Regulation No 729/70 was therefore calculated at GRD 2 031 347 293 and GRD 2 413 383 890.

35 The Greek Government maintains that the financial correction was imposed on it essentially because it discovered the frauds referred to in the summary report. The Commission therefore infringed Article 8(2) of Regulation No 729/70 and in any event exceeded its discretion.

36 The Greek Government claims that it is common ground that:

— the frauds were discovered at the conclusion of the inquiry and the scrupulous cross-checks carried out by the competent Greek authorities;

— the necessary notifications to the Commission and the communications provided for 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 and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11) were carried out and all the information available to the Greek administrative authorities was forwarded to the competent Community services;

— criminal proceedings were initiated against the suspected offenders;

— administrative penalties affecting the operation of the undertakings were imposed;

— the debts have been certified by the competent contributions services and measures to enforce payment (the seizure of movable and immovable assets and imprisonment in default of payment) will follow;

— a proportion of the aid unduly paid has been, or is in the process of being, recovered by means of set-off or the seizure of letters of guarantee;

— an administrative inquiry under oath has also been initiated against customs officials from the Piraeus customs export office.

37 In that regard, it should be pointed out that, according to Article 8(1) of Regulation No 729/70, Member States, in accordance with national provisions laid down by law, regulation or administrative action, are to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence.

38 In the present case the Greek Government does not dispute the fact, referred to in the summary report, that the serious frauds discovered were able to develop owing to the absence of appropriate customs controls. The Greek authorities therefore failed to do what was necessary to prevent the irregularities committed.

39 In those circumstances, the financial correction applied is justified.

Expenditure in the tobacco sector

40 It is apparent from the summary report that the point 'reduction of premiums where the maximum guaranteed quantities are exceeded' has already been the subject of a financial correction in 1992. The report states that the Community rules obliged Member States to recover the overpaid premiums immediately where the maximum guaranteed quantities had been exceeded. Recovery of those premiums was to commence even before the new tobacco harvest in order to ensure that operators complied with the new maximum guaranteed quantities. In the present case, however, it was found that recovery occurred long after the date

on which the rules came into force, thus rendering them ineffective from a financial point of view owing to currency depreciation. On 31 March 1996 the total amount recovered was GRD 15 054 038 996; an amount of GRD 51 672 985 was still to be recovered.

41 The summary report points out that recovery was spread over 31 months, although the Greek authorities should have seized the relevant securities in September 1993. By analogy with 1992, the Commission calculated a rate of interest of 10% over an average of 15.5 months on the amount recovered late. To the correction of GRD 1 950 445 999 thus calculated, the outstanding amount of GRD 51 672 985 was added; the final amount of the correction was therefore GRD 2 002 118 894.

42 The Greek Government refers to the arguments which it has put forward in Case C-46/97, in which judgment is given today.

43 It should be pointed out that in paragraphs 67 to 76 of that judgment the Court rejected those arguments.

44 In those circumstances, and for the same reasons, the financial correction effected under this item cannot be called in question as regards the 1993 financial year either.

Expenditure in connection with the wine sector

45 According to the summary report, the control system introduced to monitor the permanent abandonment of areas under vines was not sufficient to compensate for the lack of a reliable system of identifying and listing the relevant areas.

46 The summary report states that on-site inspections revealed that national controllers were unable to explain satisfactorily why certain areas had been accepted. Furthermore, in the absence of a land register or a vineyard register, the EAGGF mission representatives were unable to secure objective guarantees as to the identification of plots and areas, the identity of the owners and the precise locations.

47 The summary report states that EAGGF staff discovered anomalies in selected plots in the course of on-the-spot inspections in 1995. They considered that the 1% additional inspections to which the Greek authorities refer are not sufficient to remedy the lack of a reliable system of identifying and establishing plots, such as a land register and/or vineyard register.

48 The Commission therefore withheld financing at a flat rate of 2% of total expenditure in respect of permanent abandonment of areas under vine. The financial correction therefore came to GRD 246 543 179.

49 The Greek Government contends that the flat-rate financial correction of 2% is not based on a correct assessment and evaluation of the system of substitution in inspection matters and exceeds the limits of the Commission's discretion. As regards the assertion in the summary report that the control system put in place for the permanent abandonment of areas under vine is insufficient to remedy the lack of a reliable system of identifying and listing plots, the Hellenic Republic

refers first of all to the arguments which it has elaborated on that point in Case C-46/97.

50 The Greek Government further states that the report relating to the EAGGF control mission carried out between 19 and 23 July 1993 does not indicate that the system used to check plots was unreliable: it merely mentions difficulties resulting from the absence of a land register and detailed geographical maps, which makes it necessary to use a specialist familiar with the area, since isolated plots are principally recognised by reference to adjoining plots. The Government maintains that the system of locating plots thus applied enabled the control mission to isolate all the plots in respect of which permanent abandonment premiums had been paid: there was an on-the-spot inspection to check the area covered and to ensure that the prohibition on replanting had been complied with.

51 The Greek Government states that the preliminary check, which follows the administrative control of applications, consists in all cases of on-the-spot checks prior to the grubbing-up of existing vines. The results of those on-the-spot checks and the results of the land surveys are displayed at the town hall; thus any claims which may arise can be lodged and are initially examined by a committee composed of three members which carries out an on-the-spot inspection prior to grubbing-up, without the participation of the original inspector. An appeal lies to an appellate committee, which then carries out an administrative control and an on-the-spot inspection.

52 In so far as the Greek Government relies on the arguments already put forward in Case C-46/97, it is sufficient to state that the Court has rejected them in paragraphs 37 to 39 of the judgment in that case. It has held that the control system does not have the objective nature required by the Community regulations.

53 Furthermore, it is settled case-law of the Court of Justice that a Member State against which the Commission has justified its decision finding the absence of or

shortcomings in the controls carried out in connection with the application of the EAGGF Guarantee Section 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 (see Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 7).

54 In the present case the Greek Government does not dispute that the system employed in locating plots was as described in the summary report, but merely asserts that that system made it possible to carry out an on-the-spot control in order to check the plot and to ensure that the prohibition on replanting was complied with.

55 However, that assertion is not sufficient to eradicate doubts as to the reliability of the control system. The Greek Government has not invalidated the Commission's findings regarding the experimental system of preliminary control of plots by displaying notices showing the results of the land surveys, the fact that the agricultural engineer himself carries out the administrative and physical control both before and after grubbing-up, the absence of proof that the initial on-the-spot checks applied to 100% of applications and the low proportion — scarcely 1% — of so-called additional checks ensuring the cross-checking of information, and also the irregularities established during the check (incomplete grubbing-up of vines).

56 In those circumstances, the financial correction of 2% cannot be called in question.

Expenditure in connection with cereals

Public storage of cereals

57 It is apparent from the summary report that the shortcomings found during 1991 and 1992 in the administration and control system for the public storage of cereals persisted in 1993. The report states that although on paper the system appears to be well thought out, not all the provisions were applied uniformly and strictly, especially those relating to surveillance. Thus in the 'nomos' of Thessaloniki, Larissa and Imathia surveillance was extremely lax, which enabled certain storers to deplete the public stocks.

58 As regards purchases, it is apparent from the summary report that quality checks by approved laboratories on lots offered are not made on anonymous samples, which is contrary to ethical practice and undermines the system. As regards storage itself, the checks are ineffective since it is only rarely that the officials responsible for physical checking routinely measure warehouses or silos. Finally, as regards sales, the provisions are incorrectly applied.

59 According to the summary report, the Greek authorities acknowledged that the system set up was applied poorly and the dangers which that entailed and began to make improvements. The Commission applied a flat-rate correction of 2% of expenditure in respect of public storage, which came to the sums of GRD 82 224 025, GRD 54 471 120 and GRD 97 597 184.

60 The Greek Government argues that the flat-rate correction must be annulled on the ground that, in the case of 1993, the cereal-storage control system is not open

to criticism. It claims in that regard that the situation in 1993 is radically different from that existing in 1991 and 1992, since:

— the instructions issued to the regional authorities by Didagep, the paying agency, have been strictly and uniformly applied;

— the checks carried out on stored wheat to ascertain that its quality had not deteriorated or its quantity fallen have been intensified, enabling the relevant sanctions to be applied to the intervention operators;

— the checks of the quality of lots offered have been carried out in accordance with the notices issued, which were based on the relevant Community regulations.

61 The Greek Government further claims that the competent authorities have carried out new checks on their own initiative on the quality and quantity of stored wheat. It maintains that apart from those controls and the annual controls, the regional agents of the Ministry of Agriculture inspect the local intervention depots each month and draw up new monthly inventory files. Those intensive and draconian controls have led to the administration of an immense volume of 1 000 000 tonnes of wheat, with very rare cases of qualitative deficits.

62 The Greek Government maintains that the Commission's indications have been followed as much as possible. However, there have also been incorrect indications on the Commission's part, such as those relating to quality controls of the lots offered which were allegedly carried out by unapproved laboratories, whereas that examination was carried out by approved State laboratories and bodies operating in full compliance with the law (Thessaloniki Control Centre, the General State Chemical Laboratory) whose analyses are not open to dispute.

63 It should be pointed out that Article 5 of Commission Regulation (EEC) No 689/92 of 19 March 1992 fixing the procedure and conditions for the taking-over of cereals by intervention agencies (OJ 1992 L 74, p. 18), provides that any operator who stores bought-in products on behalf of the intervention agency is to monitor their presence and state of preservation regularly and inform the aforesaid agency without delay of any problem arising in that respect. The intervention agency is to check the quality of the stored product at least once a year. Samples for that purpose may be taken when the annual inventory is established.

64 Council Regulation (EEC) No 3492/90 of 27 November 1990 laying down the factors to be taken into consideration in the annual accounts for the financing of intervention measures in the form of public storage by the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ 1990 L 337, p. 3) provides in Article 2 that Member States are to take all measures necessary to ensure the proper preservation of products which have been the subject of Community intervention.

65 As regards the new system of public storage of cereals which has been applicable in Greece since 1991, it is apparent from the documents before the Court that

that system formed the subject of an inquiry which began in 1992 and was completed in 1994. Control missions in May and July 1993 found lacunae, which were reported to the Greek authorities by letters of 7 June 1993 and 12 August 1994, which are summarised in the summary report.

66 The Greek Government has failed to show that those findings were inaccurate. It merely asserts that those controls have become more frequent, but does not challenge the series of lacunae found during the control missions. Thus, it does not contradict the finding that, in the case of purchases, the checks on the quality of the lots offered carried out by the approved laboratories were not based on anonymous samples.

67 In those circumstances, the financial correction cannot be called in question.

Missing quantities of durum wheat not declared

68 It is apparent from the summary report that following the investigation carried out in Greece between 1992 and 1994 it was established that 22 721.164 tonnes of durum wheat were missing from intervention stocks. The EAGGF treated those quantities as having left the stock accounts in May 1993. However, the Greek authorities did not take account of that factor in the annual declaration. Consequently, the Commission made a financial correction of GRD 1 531 502 946 in respect of that quantity.

69 The Greek Government maintains, in that regard, that of the sum of GRD 1 531 502 946, corresponding to the missing quantity of 22 721.164 tonnes, a sum of GRD 486 427 209, corresponding to 7 216.564 tonnes, had been repaid to the EAGGF, with the consequence that the EAGGF substantially benefited by receiving it twice.

70 It further states that, in so far as the amount not recognised includes the deficits found in resect of the undertakings Intraco, Kupriakoudi and Xirantria Nestou and relating, respectively, to 5 000 tonnes, 2 291 tonnes and 6 000 tonnes of durum wheat, it is necessary to take account of the fact that the Ministry of Agriculture charged the amounts to the operators, although those amounts have still not been received owing to complications arising from court proceedings and decisions staying enforcement of the charging decision. Collection of that sum is still suspended and the relevant amount cannot therefore be charged to Greece at present. Greece undertakes to pay the amount in question to the EAGGF as soon as it receives payment, whether on a voluntary basis or by means of set-off.

71 It should be pointed out that, pursuant to Article 5(1) of Regulation No 3492/90, all missing quantities and quantities which have deteriorated because of the physical conditions of storage, transport or processing or by reason of overlong preservation are to be recorded in the accounts as having left the intervention stock on the date when the loss or deterioration was established.

72 In the present case it is common ground that during the checks carried out in Greece in May 1993, 22 721.164 tonnes of durum wheat were found to be missing from intervention stocks. In accordance with Article 5(1) of Regulation No 3492/90 the Commission treated those quantities as having left the stock accounts in 1993. The financial consequences to be drawn therefore concern the 1993 financial year.

73 Nor have the Greek authorities disputed the deductions notified to them by letter of 12 December 1994.

74 As regards the Greek Government's assertion that the EAGGF account has been credited with the price in question, it must be observed that that assertion does not affect the Commission's obligation to clear the accounts presented by the Member States in respect of the expenditure financed by the EAGGF for the 1993 financial year in accordance with the Community rules.

75 In those circumstances, the financial correction cannot be called in question.

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

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Hellenic Republic to pay the costs.**

Schintgen Kapteyn Hirsch

Ragnemalm Skouris

Delivered in open court in Luxembourg on 13 July 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber