OPINION OF ADVOCATE GENERAL GEELHOED
delivered on 14 October 2004 [1]

I — Introduction

1. In this case, the Hellenic Republic seeks the annulment of Commission Decision 2002/881/EC of 5 November 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). [2] The present action concerns the Commission's refusal to repay a total amount of EUR 36 761 035.91 to the Hellenic Republic.

II — Legal framework

2. The legal framework concerning the financing of the common agricultural policy and the clearance of EAGGF Guarantee Section accounts has already been subjected to exhaustive examination on several occasions in various Opinions and judgments. For a full explanation of this legal background, I refer inter alia to the Opinion of Advocate General Jacobs of 22 January 2004 and the judgment in *Germany* v *Commission*. [3]

III — Facts

3. By Decision 2002/881, the Commission excluded from financing under the Fund certain expenditure incurred by the Member States. As is clear from Article 1 of Decision 2002/881 and the annex thereto, the following expenditure is excluded from financing in respect of the Hellenic Republic:

— EUR 2 438 896.91 in respect of the fruit and vegetables sector for the financial years 1997 to 2001,

1 — Original language: Dutch.

2 — OJ 2002 L 306, p. 26.

3 — Opinion of Advocate General Jacobs in Case C-332/01 *Greece* v *Commission* [2004] ECRI-7699, points 4 to 9 and 18 to 22; and Case C-344/01 *Germany* v *Commission* [2004] ECR I-2081, paragraphs 2 to 14.

— EUR 11 352 868 in respect of animal premiums for the financial years 1999 to 2001, and

— EUR 22 969 271 in respect of animal premiums for the financial years 1998 and 1999.

4. By an application lodged at the Court Registry on 3 January 2003, the Hellenic Republic brought an action under the first paragraph of Article 230 EC for the annulment or amendment of the contested decision in so far as it concerns corrections applied with regard to aid for the fruit and vegetables sector and the flat-rate corrections applied with regard to animal premiums.

IV — Aid in the fruit and vegetables sector

A — *Facts and pre-litigation procedure*

5. During a mission carried out in Greece from 23 to 26 February 1999 and a mission carried out from 22 to 24 March 1999, the Commission observed significant shortcomings and deficiencies in the management and monitoring of aid in the citrus fruit sector, primarily with respect to the following points:

— deduction by producer organisations of 3% of the aid paid;

— aid paid to the beneficiaries by means of a cheque;

— the 'Dalamanares' producer organisation failed to pay aid to all its members during 1997/98;

— inadequate checks on the delivery of certain citrus fruits;

— the documents concerning the quantity of goods delivered — the so-called 'weight tickets' — were not retained.

6. By letter of 24 October 2001, the Commission services officially notified the Greek authorities that they intended to apply a financial correction:

(a) of 3% of the aid for processing oranges for 1997 to 2000 on account of the deduction of 3% of the aid payable to the beneficiaries; and

(b) of 2% of the applications by the Hellenic Republic for 1997 to 1999 on account of inadequate checks by the Hellenic Republic.

7. By letter of 18 December 2001, the Greek authorities referred the matter to the Conciliation Body.

8. In its final report of 17 April 2002, the Conciliation Body finds that it is not possible to reconcile the points of view of the two parties within the time laid down in that respect.

Deduction of 3%

9. The Greek Government seeks the annulment of Decision 2002/881 in so far as it excludes from financing under the Fund an amount of EUR 1 815 511.16. This amount corresponds to a correction of 3% of the aid applied for in respect of the processing of oranges from 1 September 1997 to 31 December 2000. The summary report shows the Commission imposed this correction because until 1 January 2001 the Greek Government failed to put an end to the deduction by the producer organisations of 3% of aid by way of insurance contributions.

10. The Greek Government primarily puts forward the following arguments. Firstly, it contends that the deduction of 3% by way of members' contributions concerns an isolated case attributable to certain local tax authorities which misinterpreted the directive. Secondly, it has taken various measures to inform the parties concerned that deductions are prohibited.

11. In the alternative, the Greek Government goes on to contend that the period over which the correction extends must be limited to the period up to March 1999 since the Commission has failed to furnish any evidence in respect of the period thereafter.

B — *Analysis*

12. In my view, these arguments advanced by the Greek Government are unfounded.

13. The Greek Government has not disputed that certain producer organisations deducted 3% of the aid for insurance contributions. That constituted an infringement of Article 15(2) of Regulation (EC) No 1169/97.[4] It disputes the extent of this practice, but, as the Commission has correctly pointed out, the general decisions taken by the Greek Government in relation to deductions indicate that this practice is widespread. If there had been only an isolated case, the Greek Government could simply have taken targeted action against the local tax authorities concerned. Furthermore, the Greek Government has cited no facts to prove the contrary. The general decisions cited do not show that the practice of making deductions has been ended or that the amounts deducted have been repaid.

4 — Commission regulation of 26 June 1997 laying down detailed rules for the application of Council Regulation (EC) No 2202/96 introducing a Community aid scheme for producers of certain citrus fruits (OJ 1997 L 169, p. 15).

14. As regards the Greek Government's argument that the practice of making deductions ceased at the end of March 1999, it must be noted that the summary report shows that the inspection carried out by the Court of Auditors in 2000 points to the contrary.

15. Consequently, I consider that the applicant has failed to show that the Commission has misapplied the law in applying a correction of 3% to aid granted in the fruit and vegetables sector.

Deduction of 2%

16. The Greek Government seeks the annulment of Decision 2002/881 in so far as it excludes from financing under the Fund an amount of EUR 623 385.75. This amount corresponds to a flat-rate correction of 2% of the amount of aid paid in 1997/98 and 1998/99.

17. The Greek Government primarily puts forward the following arguments. Firstly, it contends that the payment of aid by cheque poses no direct or indirect risk to the

EAGGF in terms of financial losses. It invokes the annex to Regulation (EC) No 1663/95 [5] which allows for the possibility of payment by cheque. Secondly, the failure to pay the aid was of minor importance since it concerned only four producers. Thirdly, the Greek Government is surprised at the fact that the Commission's decision to make a correction is based inter alia on its suspicion that there were irregularities concerning the acknowledgement of consignments. Finally, the Greek Government notes that Community law does not require that weight tickets be retained.

C — *Analysis*

18. I consider that the first two objections raised by the Greek Government are unfounded.

19. The applicant essentially does not dispute the Commission's findings regarding the payments made by cheque or the finding that aid for 1997/98 was not paid to all the members of the Dalamanares producer organisation.

20. As the Commission notes, the aim of Article 15(2) of Regulation No 1169/97 is to ensure that the amount of aid payable to the beneficiary is actually paid to it. The letter of this provision must be complied with as it is intended to combat fraud and misuse. Therefore, failure to comply therewith cannot be justified by the possible extent of the failure concerned. Consequently, these objections cannot be accepted.

21. On the other hand, I consider that the third and fourth objections raised by the Greek Government have greater foundation.

22. By its third objection, the Greek Government essentially raises the question whether the Commission is able to reach the sweeping conclusion that there is no reliable and operational supervisory system on the basis of certain chance circumstances.

23. The Court has consistently held that, where the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of breaches of Community rules for which a Member State can be held responsible, it is for the Commission to prove the infringements in question. [6] In other words, the

5 — Commission regulation of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

6 — See, inter alia, Case C-281/89 *Italy* v *Commission* [1991] ECR I-347, paragraph 19; Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 13; and Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6.

Commission is obliged to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question. [7]

24. However, the Commission is required not to show exhaustively that the checks carried out by the national authorities were inadequate or that the figures they have transmitted are irregular, but to produce evidence of its serious and reasonable doubt regarding such checks or figures. [8]

25. It is then, subsequently, for that State to show that the conditions for obtaining the financing refused are fulfilled. [9] In other words, the Member State concerned 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 the Commission's findings are inaccurate, those findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures. [10]

26. The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of EAGGF accounts, and, consequently, it is for that Member State to adduce the most detailed and comprehensive evidence that the necessary checks have actually been made, that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect. [11]

27. As follows from the case-law cited above, the Commission does not have to demonstrate exhaustively that irregularities exist. However, it does have to present a set of coherent facts as evidence in support of its serious and reasonable doubt as to the checks carried out. These facts must be

7 — See, inter alia, Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 23; Case C-278/98 *Netherlands* v *Commission* [2001] ECR I-1501, paragraph 39; and Case C-349/97 *Spain* v *Commission* [2003] ECR I-3851, paragraph 46.

8 — See, inter alia, Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 17; Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 35; Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 40; *Netherlands* v *Commission* (cited in footnote 7 above), paragraph 40; Case C-263/98 *Belgium* v *Commission* [2001] ECR I-6063, paragraph 36; and *Spain* v *Commission* (cited in footnote 7 above), paragraph 47.

9 — See, inter alia, Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 14; Case C-48/91 *Netherlands* v *Commission* (cited in footnote 8 above), paragraph 16; and *Belgium* v *Commission* (cited in footnote 8 above), paragraph 36.

10 — See Case 253/97 *Italy* v *Commission* (cited in footnote 6 above), paragraph 7, and *Spain* v *Commission* (cited in footnote 7 above), paragraph 48.

11 — See, inter alia, Case C-48/91 *Netherlands* v *Commission* (cited in footnote 8 above), paragraph 17; *Germany* v *Commission* (cited in footnote 8 above), paragraph 35; Case C-59/97 *Italy* v *Commission* [1999] ECR I-1683, paragraph 55; *Netherlands* v *Commission* (cited in footnote 7 above), paragraph 41; *Belgium* v *Commission* (cited in footnote 8 above), paragraph 37; Case C-118/99 *France* v *Commission* [2002] ECR I-747, paragraph 37; and *Spain* v *Commission* (cited in footnote 7 above), paragraph 49.

interlinked to such an extent that they demonstrate the existence of irregularities.

28. Thus, where the Commission is able to present facts indicating systematic negligence during the checks carried out on the transactions financed by the EAGGF, the Member State must furnish evidence that the Commission's findings are incorrect.

29. In the present case, the Commission based the evidence of its serious and reasonable doubt as to the checks carried out on the following facts. Firstly, there were only two consignments of fruit presented during the relevant season which were rejected and the second consignment was rejected at precisely the time that the Commission's auditors were present. Secondly, during the on-the-spot check the representatives of the Greek authorities informed the Commission's auditors that a tolerance rate of 5% and 1% was allowed in respect of bruised and rotten fruit respectively.

30. It does not follow from these facts that the checks carried out by the Member State concerned were not detailed and exhaustive. There is no evidence of any irregularity. In other words, adequate evidence cannot be deduced from isolated facts which, even when considered separately, do not demonstrate the systematic deficiency of the checks carried out on the transactions financed by the EAGGF. In such an event, the Member State, in this case [Greece], does not have to adduce evidence that the Commission's findings are incorrect.

31. Furthermore, the Commission stated no reasons why it considers that it is highly unlikely that only two consignments were rejected. Nor has it put forward any other arguments concerning its suspicion of irregularity.

32. Therefore, the Commission has breached its duty to provide evidence of its serious and reasonable doubt regarding the checks carried out and thereby failed to apply the rules of evidence applicable to the clearance of EAGGF accounts.

33. By its fourth objection, the Greek Government contests the requirement that weight tickets be retained.

34. The summary report and the written pleadings of the Commission show that the vast majority of the processing undertakings did not retain weight tickets in the 1997/98 season. In the view of the Commission

services, this document improves the checks on the quantity delivered. The Commission contends that, in the light of the doubts which exist in this respect, the weight tickets could have been a useful tool in verifying the reliability of the checks carried out.

35. However, the mere fact that a particular action could have simplified the assessment of the controls carried out does not render it obligatory. No obligation to retain weight tickets is expressly laid down in any Community or national provision. Furthermore, the Commission has cited no Community provisions from which such an obligation could implicitly arise. Therefore, the Commission cannot claim that the weight tickets should have been retained. Nor can any conclusion concerning the adequacy of the checks carried out be drawn from the failure to fulfil the supposed obligation to do so.

36. Furthermore, the Commission has failed to show that the retention of the weight tickets is necessary in order to verify the quantities of fruit delivered. It does not explain what, in its view, the added value of these weight tickets is in relation to the certificates of delivery which must be drawn up under Article 10(2) of Regulation (EC) No 1169/97, in conjunction with Article 18(3)(a) thereof, and specify inter alia the gross and net weights of the consignments delivered.

37. Therefore, I consider that this objection raised by the Greek Government is also well founded.

38. According to the summary report, 2% of the applications for Community financing were excluded because the Greek Government had failed to fulfil its obligations as regards the checks to be carried out. Since there was no such failure in two respects, Decision 2002/881 must be annulled in so far as it excluded from Community financing 2% of applications for 1997 to 1999 since the statement of reasons is inadequate.

V — System of premiums for bovine animals

A — *Facts and pre-litigation procedure*

39. During a mission carried out in Greece from 10 to 14 April 2000, the Commission observed the following serious irregularities in the management and monitoring of the system of premiums for bovine animals:

— departmental authorities were inadequately informed about amendments

made to the provisions implementing the integrated administration and control system (IACS);

— the database had not been completed and was not operational; [12]

— the registers of bovine animal herds were inadequate;

— large numbers of young animals had not been tagged and births had not been entered in the registers;

— passports for bovine animals had not been issued.

40. During a second inspection carried out by the Commission services, the following irregularities were also observed:

12 — The identification numbers of the bovine animals had not been cross-checked electronically.

— the same official who carried out administrative checks on the aid applications selected applicants for an on-the-spot inspection and then carried out that inspection himself;

— inadequate cooperation between the various departments;

— no checks on cooperatives;

— no adequate risk analyses were carried out; and

— the statistical data on the checks and sanctions were not correct and differed from the figures provided in the prefectures visited.

41. The Greek Government seeks the annulment of Decision 2002/881 in so far as it excludes from financing under the Fund an amount of EUR 11 352 868. This amount corresponds to a flat-rate correction of 10% of the amounts applied for in respect of the suckler cow premium, the special premium for male bovine animals, and the extensification premium for 1998 and 1999. The summary report shows that the Commission imposed this correction because it had

observed a large number of irregularities in the management and monitoring of the system of premiums for bovine animals. The objections raised by the Greek Government in respect of the flat-rate correction of 10% can be divided into three parts.

Arguments in respect of the first part

42. The Greek Government primarily puts forward the following arguments. Firstly, the Greek Government lists the various measures which it has taken to inform the parties concerned of the implementing provisions. Secondly, although the database has not been used and therefore the identification numbers of the bovine animals have not been cross-checked electronically, the handwritten holding registers contain the data necessary to register a bovine animal in the database. These registers comply with Directive 92/102/EEC. [13] Thirdly, the number of young animals that had not been tagged was less than 5%. Finally, although the passports were handwritten, the official documents concerned contain all the information required by Regulation (EC) No 2629/97. [14]

43. To these arguments the Greek Government adds that, while it is true that Community legislation requires setting up the IACS and a system for the identification and registration of bovine animals before 1 January 1997, it is also the case that their actual implementation, full development and operation, immediately and at national level, are made more difficult by the specific characteristics of Greece, namely the predominance of mountainous areas and the distance of breeders from urban centres, lengthening the time required for the training and education of breeders with a view to implementing the procedures laid down in the IACS.

B — *Analysis*

44. The arguments put forward by the Greek Government have failed to convince me.

13 — Council directive of 27 November 1992 on the identification and registration of animals (OJ 1992 L 355 p. 32).

14 — Commission regulation of 29 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) No 820/97 as regards eartags, holding registers and passports in the framework of the system for the identification and registration of bovine animals (OJ 1997 L 354, p. 19).

45. As the Commission correctly observed in its written pleadings, the circulars containing detailed instructions on the changes made to the procedures to be followed in connection with the checks were sent to the inspectors only two and four months after the legislation entered into force. The Greek Government's observation that the inspectors were provided with the necessary information at a seminar before the date on which it entered into force appears to me to be implausible and does not constitute per se a guarantee that the checks were in fact carried out having regard to the new legislation.

46. The Greek Government has also failed to fulfil its obligations under Regulation (EC) No 820/97.[15] As the Commission has emphasised, the database was not used and the registration system of bovine animals did not comply with Regulation No 820/97. Moreover, the registers for bovine animals and the passports issued did not satisfy the requirements laid down. Nor did all the animals have an eartag within 20 days of the date on which they were born.

47. The provisions which stem inter alia from Regulation No 820/97 must be complied with. The provisions of Regulation No 820/97 must be interpreted and observed strictly. One of the aims of these provisions is to improve the traceability of animals so that human and animal health can be better protected when diseases break out. Therefore, the failure to comply therewith cannot be justified by any other measures which are adopted. In the light of these considerations, the arguments put forward by the Greek Government must be dismissed.

Arguments in respect of the second part

48. The Greek Government primarily puts forward the following arguments. Firstly, it contends that the administrative checks and the risk analyses are carried out by different inspectors than those who carry out the on-the-spot checks. Secondly, although the exchange of inspection reports between the directorates for rural development and the veterinary directorates was not possible until 1999, it has functioned better since the year 2000. Furthermore, the various departments have drawn up a circular together. Thirdly, there is no lack of supervision. The aid applications are entrusted to the associations of agricultural cooperatives, but always under the strict supervision and monitoring of the departments responsible for interventions and subsidies. Fourthly, the Greek Government acknowledges that the risk analysis was not computerised, but the

15 — Council regulation of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1).

analysis carried out by hand conforms with the criteria laid down in Regulation (EEC) No 3887/92 [16] and national legislation. At the hearing, the Greek Government stressed that although there had been technical problems regarding the statistical data, the figures as a whole were correct.

C — *Analysis*

49. I consider that the arguments put forward by the Greek Government cannot be accepted.

50. It is clear from the reports produced by the Commission services that, as a result of a lack of personnel in the prefectures of Thessaloniki and Larissa, a single individual was entrusted with various tasks relating to the conduct of the checks. The Greek Government has failed to prove the contrary or furnish evidence to the contrary.

51. Such evidence is also lacking as regards cooperation between the various departments. The fact that the departments have drawn up a circular does not constitute per se a guarantee that they will cooperate sufficiently, particularly since the Greek Government has itself acknowledged that the exchange of inspection reports between the departments was not possible until 1999. Furthermore, the Greek Government has not been able to furnish any evidence that the associations of agricultural cooperatives were actually supervised. As the Commission pointed out in its documents, the Greek body which is ultimately accountable to the EAGGF and which is to check and verify all the facts relating to applications is unable to submit any facts showing that the applications were checked.

52. The Greek authorities have confirmed that the risk analyses were not carried out properly. In its written pleadings, the Commission stated that this failure could have been remedied by performing on-the-spot checks in 100% of the aid applications. Since a percentage of only 65% was attained in 1998 and a percentage of 75% in 1999, it must be held that the Greek Government failed to remedy the failure.

53. I concur with the Commission's view that the Greek Government's assertion regarding the incorrect statistical data is difficult to comprehend. The Greek Government does not make it at all clear how it monitors, verifies and filters out errors in the statistical data. The lack of reliable figures on checks poses a serious risk of loss for the Community budget.

16 — Commission regulation 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).

54. In the light of the foregoing considerations, it is necessary to conclude that the arguments put forward by the Greek Government cannot be accepted.

Arguments in respect of the third part

55. The Greek Government primarily puts forward the following arguments. It complains that the Commission failed to take into account, in its assessment, the guidelines set out in document No VI/5330/97 of 23 December 1997. The Commission may apply a flat-rate correction only where there is a significant deficiency on the part of a Member State in the application of the Community rules and that deficiency exposes the EAGGF to a genuine risk of losses. That interpretation is borne out by the wording of Article 5(2)(c) of Regulation (EEC) No 729/70, [17] as amended by Regulation (EC) No 1287/95. [18]

56. In the alternative, the Greek Government contends that the percentage of the financial correction concerned is disproportionate to the seriousness of the deficiencies observed. It takes the view that the Commission's allegations relate only to the ancillary controls, as set out in document No VI/5330/97. Even if the key checks were not carried out in full, a correction of 10% or 5% is not justified because when the on-the-spot inspections were carried out by the Commission no findings were made which suggested a high risk of widespread loss to the Fund. Consequently, the proposed corrections must be annulled or reduced to 2%.

D — *Analysis*

57. The guidelines for flat-rate corrections are laid down in document No VI/5330/97. The level of correction applied depends on the seriousness of the deficiencies identified in the performance of the controls. The Commission distinguishes between two categories of controls:

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

17 — Council regulation of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218).

18 — Council regulation of 22 May 1995 amending Regulation (EEC) No 729/70 on the financing of the common agricultural policy (OJ 1995 L 125, p. 1).

— Ancillary controls are those administrative operations required to process claims correctly, such as verification of compliance with time-limits for their submission, identification of duplicate claims for the same subject-matter, risk analysis, application of sanctions and appropriate supervision of the procedures.

58. In accordance with document No VI/5330/97, the Commission applies the following levels of flat-rate corrections. When one or more key controls are not applied, or are applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of the claim or preventing irregularity, then a correction of 10% is justified, as it can reasonably be concluded that there is a high risk of widespread loss to the Fund. When all key controls are applied, but not in the number, frequency or depth required by the regulations, then a correction of 5% is justified, as it can reasonably be concluded that they do not provide a sufficient level of assurance of the regularity of claims, and that the risk to the Fund is significant. When a Member State has adequately performed the key controls, but completely failed to operate one or more ancillary controls, then a correction of 2% is justified in view of the lower risk of loss to the Fund, and in view of the lesser seriousness of the infringement.

59. It is clear from point 39 et seq. that, firstly, the Greek Government performed no, or inadequate, key and ancillary controls. Secondly, it has not succeeded in establishing that the Commission's findings are incorrect, or the existence of a suitable and efficient system of monitoring and control measures. Thirdly, the Greek Government has not demonstrated that the observed irregularities do not affect or only slightly affect the Community budget. Consequently, I take the view that the Commission did not misapply the law by applying a correction of 10% to aid granted in the bovine sector.

60. I therefore conclude that the Court should dismiss the application by the Greek Government.

VI — Correction in respect of the ewe or goat premiums

A — *Facts and pre-litigation procedure*

61. During a mission carried out in Greece from 10 to 14 April 2000, the Commission

observed the following serious irregularities in the system for ewes and goats:

— lack of a system for the permanent recording of changes in the number of ewes and/or goats;

— the statistics on the checks carried out were not correct and differed from the figures provided in the prefectures visited;

— delay in processing the data;

— no risk analysis was carried out;

— the place where the animals were held was frequently not notified in an appropriate manner; and

— the competent authority was not informed of the reduction in the animals concerned.

62. The Commission services had already observed deficiencies in the system for ewes and goats in 1997 and 1998. Inspectors were subsequently dispatched to Thessaloniki and Larissa in April 2000. In April 2001, inspections were held in Kozani and finally a mission was made to Rodopi and Drama in October 2001. During these on-the-spot checks, the inspectors noted no improvement in relation to the deficiencies found previously.

63. The Greek Government seeks the annulment of Decision 2002/881 in so far as it excludes from financing under the Fund an amount of EUR 22 969 271.00. This amount corresponds to a flat-rate correction of 5% of the amounts applied for in respect of premiums for ewes and goats (in less favoured and mountain areas) for 1998 and 1999. The summary report shows that the Commission imposed this correction because it had observed a large number of irregularities (see point 61 above) in the system for ewes and goats. [19]

Arguments in respect of the first plea in law

64. The Greek Government primarily puts forward the following arguments. Firstly, the

19 — Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ 2004 L 5, p. 8).

Greek Government disputes the Commission's allegation that no improvements were noted with regard to management and monitoring. It lists a number of measures which it has taken to improve the existing situation. [20] Secondly, the Greek Government notes that the Greek inspectors are very experienced and specialised and therefore it will accept no doubt as to the quality of the animal count. Thirdly, the Greek Government states that the supervision by the departments for rural development must be regarded as satisfactory.

B — *Analysis*

65. In my view, the arguments put forward by the applicant in respect of the rejection of certain expenditure in connection with ewe and goat premiums cannot be accepted.

66. As is clear from the Commission's defence — and was not contested in the applicant's reply — the system for the permanent recording of changes was not operational, at least not from 1995 to 1997. That constitutes an infringement of Article 4 (1) of Regulation (EEC) No 2700/93. [21] It also follows from the summary report that the animal count was carried out in an imprecise manner. I consider that the mere reference by the Greek Government to the Greek inspectors' sound qualifications does not constitute cogent proof that the animal count was carried out correctly.

67. Furthermore, there was a delay in processing the data, no adequate risk analysis was carried out, the place where the animals were held was frequently not notified in an appropriate manner, and the competent authority was not informed of the reduction in the animals concerned. The multitude of frequently contrived arguments or justifications and alleged improvements cited by the Greek Government in this respect do not strengthen the Greek Government's argument, quite the contrary. The improvements do not remedy the defects observed, nor does the Greek Government's argument that implementation is made more difficult by the specific characteristics of Greece, namely the predominance of mountainous areas and the distance of breeders from urban centres.

68. In the light of these considerations, I consider that the arguments put forward by the Greek Government must be dismissed.

20 — Firstly, it informed livestock holders of the fact that they have to maintain a holding register and of the conditions that such a register must satisfy. Secondly, it drew up a draft law to impose sanctions on ewe and sheep holders who do not eartag their animals. Furthermore, the Greek authorities have started to use a new type of holding register and a new type of eartag for ewes and sheep which will, in future, show the registration number of every animal that is born.

21 — Commission regulation of 30 September 1993 on detailed rules for the application of the premium in favour of sheepmeat and goatmeat producers (OJ 1993 L 245, p. 99).

VII — Conclusion

69. In this case I have concluded that the applicant has been successful on only one issue. Since the action must, in my view, be dismissed on the other issues, the applicant must be ordered to pay the costs.

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

(1) annul Commission Decision 2002/881/EC of 5 November 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as the Commission excluded from Community financing 2% of the sums applied for by the Hellenic Republic for 1997 to 1999;

(2) dismiss the remainder of the action;

(3) order the applicant to pay the costs.