JUDGMENT OF THE COURT (Fifth Chamber)
28 October 1999 *

In Case C-253/97,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Service of the Ministry of Foreign Affairs, acting as Agent, assisted by G. De Bellis, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by P. Ziotti, of its Legal Service, acting as Agent, assisted by A. Dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of C. Gómez de La Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

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 of the Guarantee Section of the European

* Language of the case: Italian.

Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30) in so far as it concerns the Italian Republic,

THE COURT (Fifth Chamber),

composed of: J.C. Moitinho de Almeida, President of the Sixh Chamber, acting as President of the Fifth Chamber, L. Sevón, J.-P. Puissochet, P. Jann and M. Wathelet (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 18 March 1999, at which the Italian Government was represented by G. De Bellis, and the Commission by F. Ruggeri Laderchi, of its Legal Service, acting as Agent, assisted by A. Dal Ferro,

after hearing the Opinion of the Advocate General at the sitting on 6 May 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 July 1997, the Italian 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 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30, 'the contested decision') in so far as it concerns the Italian Republic.

2 The application seeks the annulment of the contested decision inasmuch as it declared that the following sums were not chargeable to the EAGGF:

— ITL 17 361 126 678 in respect of prefinancing of the export refund on beef;

— ITL 2 686 311 350 in respect of the removal of arable land from production on a multiannual basis;

— ITL 76 987 797 and ITL 911 895 729 in respect of the reimbursement of sugar storage costs;

— ITL 22 731 751 579 in respect of aid for the consumption of olive oil;

— ITL 2 165 691 000 and ITL 8 155 895 000 in respect of the compulsory distillation of table wine;

— ITL 3 382 118 277 in respect of the permanent abandonment of wine-growing areas;

— ITL 243 553 000 in respect of the early subtraction of losses of deboned beef;

— ITL 5 771 993 000 in respect of accounting adjustments relating to stocks of bone-in beef;

— ITL 778 000 000 in respect of late payments for intervention purchases of deboned beef;

— ITL 27 804 654 011 in respect of the inadequate management and monitoring of premiums for sheep and goats.

The guidelines contained in the Belle Group Report and the respective duties of the Commission and the Member States as regards clearance of the EAGGF accounts, and the nature of the dispute referred to the Court

3 First of all, it is appropriate to recall the guidelines to be followed when financial corrections must be applied to a Member State, which are laid down in the Belle Group Report, and the case-law of the Court relating to clearance of the EAGGF accounts, and to specify the nature of the dispute referred to the Court.

4 In addition to three principal calculation techniques, the Belle Group Report sets out three categories of flat-rate corrections for difficult cases:

'A. 2% of expenditure — where the deficiency is limited to parts of the control system of lesser importance, or to the operation of controls which are not essential to the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was minor;

B. 5% of expenditure — where the deficiency relates to important elements of the control system or to the operation of controls which play an important part in the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was significant;

C. 10% of expenditure — where the deficiency relates to the whole of or fundamental elements of the control system or to the operation of controls essential to assuring the regularity of the expenditure, such that it can reasonably be concluded that there was a high risk of widespread loss to the EAGGF.'

5 Where there is doubt as to the correction to be applied, the guidelines provide that the following points are to be taken into account as mitigating factors:

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

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

6 As the Court has already observed, only intervention undertaken in accordance with the Community rules within the framework of the common organisation of agricultural markets is to be financed by the EAGGF (see Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 14). In that context, it is for the Commission to prove an infringement of the rules on the common organisation of the agricultural markets (see Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 16; 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-48/91, cited above, paragraph 18). Accordingly, the 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 (Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 23).

7 The Member State, for its part, 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, to that effect, Case C-8/88 *Germany* v *Commission*, cited above, paragraph 28).

8 Finally, it should be observed that, since the proceedings brought before it relate to an application for annulment under Article 173 of the Treaty, the Court's only task is to consider whether the pleas in law raised in support of the application are well founded. It is not required, in the context of such proceedings, to increase any corrections which may prove to be inadequate in the light, in particular, of the criteria laid down in the Belle Group Report.

The correction with regard to prefinancing of the export refund on beef

9 Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5) and Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) organise the system of prefinancing export refunds on agricultural products, in particular beef. That system consists essentially of an arrangement whereby export refunds are paid in advance as soon as the processed products or goods are placed under customs control, thus ensuring that they will be exported within a set time-limit.

10 Under Articles 3(6) and 26(1) of Regulation No 3665/87, products or goods are to be placed under customs control upon acceptance by the customs authority of the export declaration in which it is stated that a refund will be applied for, and are to remain so until they leave the customs territory of the Community or until they have reached a stipulated destination.

11 Article 2 of Commission Regulation (EEC) No 2388/84 of 14 August 1984 on special detailed rules for the application of export refunds in the case of certain preserved beef and veal products (OJ 1984 L 221, p. 28) provides that preserved beef and veal products must be manufactured from beef and veal of Community origin, and that the name of the Member State in which the product was manufactured is to be stamped on each tin.

12 It also follows from Commission Regulations (EEC) No 2388/84, No 2911/91 of 2 October 1991 on the sale by the procedure laid down in Regulation (EEC) No 2539/84 of beef held by certain intervention agencies and intended for export after processing to the Soviet Union, amending Regulation (EEC) No 569/88 and repealing Regulation (EEC) No 673/91 (OJ 1991 L 276, p. 28), and No 2919/92 of 7 October 1992 on the sale by the procedure laid down in Regulation (EEC) No 2539/84 of bone-in beef held by intervention agencies and intended for export after processing and amending Regulation (EEC) No 569/88 (OJ 1992 L 292, p. 11), that meat cannot be cooked before it enters the prefinancing scheme.

13 The Commission contends that EAGGF staff made the following findings, which are reproduced in paragraph 4.2.19 of the 1993 Summary Report:

— the quality of customs controls on prefinanced beef was poor while their scope was limited due, amongst other things, to the weak control links between customs and the other competent services involved in the overall management and supervision of this scheme;

— the labels used in sealing boxes of high-refund beef were printed and held by the traders; the utilisation of these labels was not subject to any controls;

— pre-cooked quantities of beef were used under prefinanced processing operations;

— in certain cases, the beef entering pre-financed processing had already been processed, so that the competent customs authorities were unable to recognise and check the nature and quality of the basic product.

14 The Italian Government does not dispute the existence of inadequacies and omissions in the control procedures, but submits that these warrant a correction of 2% rather than the 5% adopted by the Commission.

15 It contends, first, that there is no firm evidence of an appreciable risk to the EAGGF, given that few inspections were carried out and few irregularities were found.

16 It maintains, secondly, that the fact that beef was cooked before being inspected by customs is insignificant, since the cooking was also carried out under the supervision of a public body, the Istituto Nazionale per le Conserve Alimentari ('INCA'). The irregularity is purely formal, and does not therefore involve any risk of damage to the EAGGF.

17 The Italian Government also points out that the relevant legislation is not clear, since Article 4(3) of Regulation No 565/80 merely states that 'as regards control procedures and the rate of yield, the basic products shall be subject to the same rules as apply in respect of inward processing to products of the same nature'.

18 The relevant control procedures, it submits, were none the less amended as required immediately after the Commission's comments. As regards earlier irregularities, however, the 5% correction seems disproportionate, having regard, in particular, to the difficulty of interpreting the Community legislation.

19 In that connection, it should be observed first of all that there were considerable gaps in the Italian control system. As the Commission has pointed out, without being contradicted, the unclear division of powers between the Italian authorities made it impossible to ensure compliance with the prefinancing rules during the storage and processing of beef and veal. The checks which INCA carried out in undertakings, for example, were concerned mainly with food hygiene. There were also many disparities between one customs district and another as regards the inspection of beef and veal stored under the prefinancing scheme. Furthermore, cooking meat before it enters the prefinancing scheme is not only contrary to the Community rules, it is absolutely unacceptable. After cooking, it is no longer possible to identify the basic product's characteristics. Significant gaps also existed in the arrangements for supervising the labelling of beef and veal, which created a considerable risk of packaged quantities being substituted for others and of quality fraud.

20 Secondly, the inspections carried out by the EAGGF covered nearly 60% of all the prefinancing earmarked for Italy, inasmuch as they were conducted in four large undertakings which had received 57.31% of the overall sum intended for the prefinancing of beef and veal in Italy.

21 Finally, with regard to the improvements in its control system to which the Italian Republic refers, it need only be observed that they did not take place until May 1995. They cannot therefore be taken into consideration in the context of clearance of the accounts for 1993.

22 In the light of the foregoing considerations, it appears that the deficiencies found by the Commission relate to important elements of the control system and to the operation of controls which play an important part in assuring the regularity of the expenditure, such that it could reasonably be concluded that the risk of loss to the EAGGF was significant. The 5% correction applied by the Commission does not therefore appear to be unjustified.

23 The first plea must accordingly be rejected.

The correction with regard to the removal of arable land from production on a multiannual basis

24 Article 1a of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1), inserted by Council Regulation (EEC) No 1094/88 of 25 April 1988 amending Regulations (EEC) No 797/85 and (EEC) No 1760/87 as regards the set-aside of arable land and the extensification and conversion of production (OJ 1988 L 106, p. 28) introduced an aid scheme to encourage the set-aside of arable land. Under that provision, the scheme covers all arable land, irrespective of the crops grown, provided that the land has in fact been cultivated for a reference period to be determined.

25 The detailed rules for the application of the aid scheme to encourage the set-aside of arable land are laid down in Commission Regulation (EEC) No 1272/88 of 29 April 1988 (OJ 1988 L 121, p. 36). Article 2(1) of that regulation states that 'arable land' should be taken to mean the types of land listed in section D of Annex I to Council Regulation (EEC) No 571/88 of 29 February 1988 on the organisation of Community surveys on the structure of agricultural holdings between 1988 and 1997 (OJ 1988 L 56, p. 1) with the exception, *inter alia*, of land intended to be laid fallow. In addition, under Article 3 of Regulation No 1272/88, the reference period during which arable land must in fact have been cropped in order to benefit from the aid to encourage the set-aside of arable land is to span not less than one marketing year between 1 July 1985 and 30 June 1988. For Italy, that period was the 1987/1988 marketing year.

26 In view of the many amendments made to it, Regulation No 797/85 was codified and replaced by Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1).

27 According to the Commission, it is apparent from the Summary Report that the inspections carried out by the EAGGF showed that, in Sicily, much of the land withdrawn from production under the multiannual set-aside scheme was in fact subject to traditional fallow practices, and was not therefore actually cropped during the reference marketing year. The audit, it submits, also showed that the Italian authorities had failed to take account of that requirement in checking whether land was eligible for the aid scheme in question. The aim of the scheme, to reduce production, was therefore only partly achieved.

28 In view of the multiannual nature of that aid, the Commission applied a financial correction of 5% in respect of the 1993 financial year, that is to say the rate already applied in respect of the 1992 financial year.

29 The Italian Republic challenges the lawfulness of that financial correction and, in the alternative, claims that it should be reduced appropriately. It explains that the traditional practice of laying land fallow was replaced, with effect from the reference marketing year, by the practice of 'green fallow'. That practice, whereby the land is sown with such autumn/spring early crops as leguminous plants grown as a forage, broad beans, chickpeas and potatoes, consists in keeping the land under cultivation for limited periods and then preparing the ground as usual by ploughing in the crops produced (fallowing combined with green manuring).

30 It should first of all be observed that the Italian Republic does not deny that the competent national authorities failed to check whether the land in receipt of set-aside aid had in fact previously been cultivated or, at least, whether it had been cultivated in the context of 'green' fallow.

31 Furthermore, it has not adduced any evidence that the traditional fallowing practice had been replaced by 'green fallow'.

32 On the contrary, the data collected through the network for the collection of farming accountancy data created at Community level by Regulation (EEC) No 79/65/EEC of the Council of 15 June 1965 setting up a network for the collection of accounting data on the incomes and business operation of agricultural holdings in the European Economic Community (OJ, English Special Edition 1965-66, p. 70) show that traditional fallow was still the practice in Italy in 1986 and 1987. Moreover, according to a letter from the EAGGF dated 2 August 1994, during farm inspections, the farmers directly concerned, at least in Sicily, contradicted the Italian authorities' assertions that traditional fallowing was no longer standard farming practice.

33 In the light of the foregoing considerations, it appears that the deficiencies found by the Commission relate to important elements of the control system and to the operation of controls which play an important part in assuring the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was significant. The 5% correction applied by the Commission does not therefore appear to be unjustified.

34 The second plea must accordingly be rejected.

The corrections with regard to the reimbursement of sugar storage costs

35 Article 8 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4) provides for a compensation system for storage costs in respect of certain types of

sugar products manufactured from beet or cane of Community origin. Those costs are to be reimbursed at a single, flat rate throughout the Community. The system is to be financed by means of a single-rate levy imposed, *inter alia*, on sugar producers in respect of the quantities produced by each of them.

36 The detailed rules for the application of that system are laid down in Council Regulation (EEC) No 1358/77 of 20 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (OJ 1977 L 156, p. 4). Article 2 of Regulation No 1358/77 provides that reimbursement is to be made to any sugar manufacturer to whom a basic quota has been allocated, any sugar refiner, any intervention agency, and any approved manufacturer of powdered, lump or candy sugar and specialised sugar trader, provided that they are the owners of the sugar or the syrups held in storage. Under Article 3 of Regulation No 1358/77, reimbursement is to be made by the Member State in whose territory the sugar is stored. Moreover, since reimbursement cannot be granted unless some measure of control is possible, Article 3 provides that the sugar is to be held in stores previously approved by the Member State in whose territory they are located.

37 Under Articles 4 and 5 of Regulation No 1358/77, which specify the manner in which the amount of the reimbursement is to be fixed, the calculation is to be carried out on the basis of monthly returns of quantities in store, established by calculating the arithmetic mean of the quantities held in store at the beginning and at the end of the month in question; the amount of the reimbursement is then fixed with reference to the financing costs, the insurance costs and the specific storage costs.

38 In accordance with the principle of financial neutrality which underlies the offsetting system (see the third recital in the preamble to Regulation No 1358/77), Article 6(1) of that regulation provides that the levy to be collected from each sugar manufacturer in respect of the quantities produced is to be so fixed that, for any sugar marketing year, the estimated total of the levies is equal to the estimated total of the reimbursement. Article 6(2) of Regulation

No 1358/77 provides that when, for any sugar marketing year, the total of levies collected is not equal to the total of the reimbursement made, the difference is to be carried forward to a subsequent sugar marketing year. Finally, according to Article 6(3) of Regulation No 1358/77, which specifies the method for calculating the amount of the levy, the total estimated reimbursement for the sugar marketing year in question is to be increased or decreased as the case may be by the amounts carried forward under Article 6(2); the result is to be divided by the estimated quantity of sugar which will be marketed during that marketing year and produced within the maximum quotas.

39 According to the Commission, the inspections conducted by the EAGGF in Italy in 1993 and 1994 showed that the competent national bodies did not carry out any checks on specialised traders or other approved independent stores until 31 December 1992. The EAGGF also found that the Azienda di Stato per gli Interventi nel Mercato Agricolo (State Body for Agricultural Market Interventions, 'AIMA') had not carried out any checks on those beneficiaries either.

40 The Commission explains that, in view of the high degree of risk for the Community budget, it applied a financial correction of 10% to the payments made to operators in those categories in respect of the period from 15 October 1992 to 31 December 1992, amounting to ITL 76 987 797.

41 In its submission, the EAGGF's inspections also showed that the complete failure to carry out checks lasted until 30 June 1993, AIMA having resumed as from July 1993 on-the-spot inspections with retroactive effect to January 1993. The quantity and quality of those inspections, however, were found to be inadequate, which is the reason for the flat-rate correction of 2% applied by the Commission to the amounts paid in respect of sugar storage between 1 January and 30 June 1993, that is to say a total of ITL 911 895 729.

42 The Italian Government claims first of all that the periods to which the Commission's financial corrections relate were special transitional stages. As from March 1991, AIMA took over all the administrative aspects of the system, which had hitherto been the responsibility of the Cassa Conguaglio Zucchero, and, as from 1 January 1993, the supervisory function which had previously been carried out by the Uffici Tecnici Imposta di Fabbricazione (UTIF).

43 The Italian Government submits that, in any event, an administrative monitoring system had been introduced in respect of specialised traders. Though not applied on the spot, it should have been regarded as highly intensive and relevant for the quantification of sugar stocks.

44 Secondly, on the basis of the overall operation of the common organisation of the market in the sugar sector, the Italian Government denies that the sugar sector in Italy represented a 'high risk' for Community finances. It relies, first, on the limits imposed on traders in the sector by the production quotas and, secondly, on the close link between the amounts of the levy paid by the sugar manufacturers and the reimbursements made in respect of storage costs, which, it contends, removes any interest sugar companies might have in declaring quantities greater than those produced. Proof of this, the Italian Government claims, lies in the fact that, during the period from 1 July 1992 to 30 June 1993, sugar undertakings paid the Community approximately ITL 214 thousand million, whereas reimbursements in respect of storage costs amounted only to approximately ITL 123 thousand million.

45 The Italian Government therefore claims that the corrections applied should be annulled, and in the alternative that they should be reduced to an appropriate rate.

46 It should be observed first of all that, by failing to carry out on-the-spot checks on specialised traders during the period scrutinised by the Commission, the

Italian Republic failed to fulfil its supervisory obligations under the Community rules.

47 Secondly, the argument which the Italian Government seeks to derive from the link between the amounts of the levy paid by the sugar manufacturers and the reimbursements made in respect of storage costs must be rejected.

48 Although the offsetting system is indeed based on the principle of financial neutrality inasmuch as the total of the levies collected must be equivalent to the total of the reimbursements paid, as is evident from Article 6(2) of Regulation No 1358/77 and from the case-law of the Court of Justice (see Case 121/83 *Zuckerfabrik Franken* v *Hauptzollamt Würzburg* [1984] ECR 2039, paragraph 26), that balance must be achieved at Community level and not at the level of the Member State or the undertaking concerned (see Case C-242/96 *Italy* v *Commission* [1998] ECR I-5863, paragraph 118).

49 Traders who pay the levy are not, moreover, necessarily the same as those who receive the reimbursement. The latter thus include specialised traders who are not liable for the levy. Moreover, even in the case of manufacturers, the two amounts, fixed according to the manufacturing quota allocated to them and the duration of storage respectively, do not automatically coincide (see Case C-242/96 *Italy* v *Commission*, cited above, paragraph 119).

50 That is why the Member States must introduce adequate inspection procedures in order to check whether the storage costs eligible for reimbursement have actually been incurred. The absence of such procedures, or any deficiencies therein, could allow certain traders to obtain reimbursement for fictitious costs, which would obviously lead to distortions of competition, to the detriment in particular of traders in other Member States where the control system does conform to the requirements of the Community rules (see Case C-242/96 *Italy* v *Commission*, cited above, paragraph 120).

51 In the light of the foregoing considerations, it appears that the deficiencies found by the Commission in the period from 15 October to 31 December 1992 relate to fundamental elements of the control system and to the operation of controls essential to assuring the regularity of the expenditure, such that the Commission could reasonably conclude that there was a high risk of widespread loss to the EAGGF. The 10% correction applied by the Commission does not therefore appear to be unjustified.

52 With regard to the 2% correction applied to the amounts paid by way of reimbursement for sugar storage costs between 1 January and 30 June 1993, it appears that the deficiencies found by the Commission relate to important elements of the control system and to the operation of controls which play an important part in assuring the regularity of the expenditure, such that it could reasonably have been concluded that the risk of loss to the EAGGF was significant. Since the Commission could have adopted a correction of 5%, the applicant cannot object to the fact that it applied a correction of 2%.

53 Those two pleas should therefore be rejected.

The correction with regard to aid for consumption of olive oil

54 Article 11 of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-66, p. 221), introduced a system of aid designed to encourage the consumption of olive oil produced and marketed in the Community.

55 That article, in the version contained in Council Regulation (EEC) No 1917/80 of 15 July 1980, amending Regulation No 136/66 and supplementing Regulation

(EEC) No 1360/78 on producer groups and associations thereof (OJ 1980 L 186, p. 1) and Council Regulation (EEC) No 2210/88 of 19 July 1988 amending Regulation No 136/66 (OJ 1988 L 197, p. 1), provides that, where the production target price minus the production aid is higher than the representative market price for olive oil, consumption aid is to be granted for olive oil produced and placed on the market in the Community. Such aid is to be equal to the difference between those two amounts.

56 The general rules in respect of aid for the consumption of olive oil were laid down by Council Regulation (EEC) No 3089/78 of 19 December 1978 (OJ 1978 L 369, p. 12), as amended by Council Regulation (EEC) No 3461/87 of 17 November 1987 (OJ 1987 L 329, p. 1).

57 Regulation No 3089/78 provides that aid is to be granted only to approved olive oil packaging plants (Article 1) and lays down the conditions for their approval (Article 2) and for withdrawal of that approval (Article 3). Entitlement to consumption aid is acquired the moment the olive oil leaves the packaging plant (Article 5), which must submit its applications for aid on a periodic basis (Article 6).

58 Articles 7 and 8 of Regulation No 3089/78 lay down the system of supervision ensuring that the product for which aid has been applied qualifies for such aid. The aid is to be paid only when the supervisory body designated by the Member State has checked that the conditions required by the regulation have been satisfied. The aid may, however, be advanced as soon as the aid application is submitted provided that sufficient security has been provided.

59 The implementing rules in respect of the system of consumption aid for olive oil, applicable to the marketing year 1991/1992, were laid down in Commission Regulation (EEC) No 2677/85 of 24 September 1985 (OJ 1985 L 254, p. 5), as amended by Commission Regulation (EEC) No 571/91 of 8 March 1991 (OJ 1991 L 63, p. 19).

60 Article 12(6) of Regulation No 2677/85, which sets out the conditions relating to withdrawal of approval, provides:

'Where it is found by the competent authority that an application for aid relates to a quantity greater than that for which the entitlement to aid was recognised, the Member State shall immediately withdraw approval for a period of from one to five years, depending on the seriousness of the infringement, without prejudice to any other penalties.'

61 According to the Commission, the Summary Report shows (paragraph 4.7.3.1) that, on the basis of its interpretation of Article 12(6) of Regulation No 2677/85, the Italian Ministry of Industry regarded withdrawal of approval as a penalty subsidiary to the financial and administrative penalties imposed by the Istituto Repressioni Frodi (Fraud Control Institute, 'the IRF'). It therefore withdrew approval only in cases where the IRF had previously imposed an administrative fine on the undertaking.

62 The Commission points out that, since 1990, only 24 out of a total of 688 cases of wrongly received aid notified by Agecontrol, the Italian agency responsible for supervising aid entitlement, have led to the making of 'orders for payment'. It submits that the Italian Ministry of Industry interpreted Article 12(6) of Regulation No 2677/85 as requiring it, in each case, to await the decision as to the financial penalty before being able to withdraw approval. At that rate, it contends, it will have taken more than ten years for aid to be withdrawn from undertakings which committed fraud but which have continued to receive aid in the interim.

63 The Commission submits that the deficiencies thus found concerned a basic aspect of the administration and control system for aid, such that there was a high risk of loss to the EAGGF. That is why it initially proposed a flat-rate financial correction equal to 10% of the aid paid by Italy.

64 Although recognising that the Commission's criticisms were well founded with respect to the management of the measure, the Conciliation Body established by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 1994 L 182, p. 45) formed the view that the more recent improvements in the management of securities, the good quality of the work carried out by Agecontrol, and the introduction of a fairly rigorous system of penalties should also be taken into consideration. It therefore proposed that the financial correction to be applied should be calculated on the basis of an assessment of the real risk posed by the undertakings concerned.

65 On the basis of the Conciliation Body's observations, the Commission agreed to review its position.

66 The Commission explains that, on the basis of a detailed calculation of the amounts wrongly paid to 22 packaging undertakings by four trade organisations, the clearance of accounts unit of the EAGGF's Guarantee Section proposed an analytical correction of (minus) ITL 10 610 940 125. They considered, furthermore, that the failure to apply the penalty of withdrawing approval had precluded any deterrent effect on packaging undertakings as a whole, and accordingly applied a flat-rate correction of 2% of the expenditure declared by Italy.

67 The Italian Government submits that the Commission made errors in calculating the analytical correction. It claims first that the Commission wrongly took as its basis all the amounts paid, without deducting those already recovered. Secondly, it included in the correction sums which had been granted before the payments were challenged. The Italian Government contends that there are therefore grounds for reducing the amount of the analytical correction (from ITL 10 610 940 125) to ITL 7 147 758 628.

68 At the hearing, the Italian Government further submitted that the Commission had twice included in the analytical correction amounts which related to quantities not exceeding the 20% margin below which it is the Commission's policy not to require withdrawal.

69 As regards the flat-rate correction, the Italian Government maintains, first, that the Commission could not apply a flat-rate correction in addition to an analytical correction.

70 It argues, secondly, that the Commission's complaints concerned only 55 undertakings in total (that is to say less than 10% of the overall number); recovery was effected in full from 33 of them, leaving claims against only 22 of them outstanding. Given that irregularities were found in respect of only 4% of beneficiaries as a whole, it submits that a flat-rate correction is no longer necessary since it is covered by the analytical correction. In the alternative, the Italian Government claims that the flat-rate correction of 2% is also wrong because not all the sums paid or recovered were taken into account.

71 It should be observed first of all that the applicant does not, in essence, dispute the existence of inadequacies and omissions in the control arrangements and the procedure for withdrawing approval.

72 As regards the concurrent application of an analytical correction and a flat-rate correction, it is settled case-law that additional expenditure resulting from national measures which are liable to compromise the equality of treatment of traders in the Community and thus to distort competitive conditions between the Member States cannot be financed by the EAGGF and must in any event be borne by the Member State concerned (see, in that connection, the judgment in *United Kingdom* v *Commission*, cited above, paragraph 12).

73 It is therefore apparent that the risk incurred by the EAGGF cannot be covered by analytical corrections alone; other flat-rate corrections must also be possible. It would be contrary to the system of EAGGF financing if, in the event of there being grounds to apply an analytical correction, other less clearly determinable damage or risk were chargeable to the EAGGF.

74 There is therefore no reason in principle why an analytical correction should not be applied concurrently with a flat-rate correction.

75 A flat-rate correction of 2% of expenditure also seems justified in the light of the inadequacies, not contested by the Italian Government, found in the administrative and control procedures. Inasmuch as it took ten years to resolve the jurisdictional dispute between the Italian authorities, and no effective monitoring was possible during that time, it is reasonable to presume that there were deficiencies entailing a risk of loss to the EAGGF.

76 Moreover, it should be noted that, altogether, the corrections decided upon by the Commission in this sphere — one analytical and the other at a flat rate of 2% — are still less than the flat-rate correction of 5% which would also have been justifiable in view of the gaps in the control procedures.

77 As for the applicant's argument that, in determining the analytical correction, the Commission wrongly took as its basis all the amounts already paid, including those paid during periods prior to the date on which approval could, if necessary, have been withdrawn, it need only be observed that the Commission may charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production, including any sums already recovered by the deadline for the year in question (see Case C-242/96 *Italy* v *Commission*, cited above, paragraph 122).

78 With regard to the Commission's failure to observe the 20% 'threshold' below which it is its policy not to require withdrawal in calculating the corrections on which it has decided, it should be observed that the Italian Government raised that argument for the first time at the hearing. Since the facts underlying it were already known at the stage of the written procedure, it must be rejected as out of time and therefore inadmissible (see Case C-55/91 *Italy* v *Commission*, cited above, paragraph 40; Case C-323/96 *Commission* v *Belgium* [1998] ECR I-5063, paragraph 38; and Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 28).

79 Accordingly, that plea must also be rejected.

The corrections with regard to the compulsory distillation of table wine

80 The compulsory distillation of table wine is governed by Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1). The 45th recital in the preamble to that regulation states that 'compulsory distillation appears to be the most effective measure to absorb surpluses of table wine on the market; provision must consequently be made for such distillation to be introduced once it is clear that the market is in a state of serious imbalance and ... precise criteria must be defined for the assessment of such imbalance'.

81 Article 39(1) of Regulation No 822/87 provides that where, in respect of a given wine year, the market in table wine is in a state of serious imbalance, compulsory distillation of table wine is to be decided on.

82 The Commission then fixes the quantities that are to be delivered for compulsory distillation to eliminate production surpluses (Article 39(2)). The total quantity to be distilled is shared between the various wine-growing regions of the

Community, grouped together by Member State (Article 39(3)), then between the various table wine producers in each wine-growing region (Article 39(4)).

83 Those various quantities are fixed on the basis of notifications as to the quantities of table wine produced in each region sent by the Member States to the Commission, which are themselves drawn up on the basis of the declarations of quantities produced from the last harvest made by producers of grapes for wine-making, and the declarations of quantities of must and wine held made by producers of must and wine (Articles 39(5) and 3(1) of Regulation No 822/87).

84 Before 10 December each year, the Commission and representatives from each Member State are to draw up a forward estimate for the current wine year (Article 31 of Regulation No 822/87).

85 The purpose of the forward estimate is to determine the surpluses of table wine which may accumulate during the wine year and which may therefore give rise to compulsory distillation. It assesses in particular the total production of table wine already harvested and the amount in storage at the outset. The total production of table wine added to the volume in storage gives an indication of the existing availability of table wine.

86 Each table wine producer has an obligation to arrange for the distillation of a certain percentage of his production, as indicated in his own production declaration. That percentage, which may vary between production regions according to the yields obtained in the past, is obtained from a progressive scale based on the yield per hectare (second and third subparagraphs of Article 39(4) of Regulation No 822/87).

87 The surpluses to be eliminated by means of compulsory distillation are obtained from the difference between the foreseeable stocks based on the forward estimate for the end of the wine-growing year and the physical stocks, that is to say the quantities of wine necessary in order to maintain the provision of supplies to the market until the following year, which is the equivalent of four or five months' normal utilisation.

88 The checks carried out by the Member States' agencies (of which there is one for each wine-growing region) must ensure, on the one hand, that the data relating to wine production is accurate, and, on the other hand, that compulsory distillation on the basis of the forward estimate is carried out.

89 Article 7 of Commission Regulation (EEC) No 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products (OJ 1987 L 369, p. 59) provides, in this respect, that:

'Member States shall draw up the model forms for the various declarations referred to in Title I and shall ensure that the said forms provide at least for the information specified in the tables in Annex I.

The abovementioned forms need not include an express reference to the yield per hectare where the Member State is able to determine this with certainty from the other information contained in the declaration, such as the area in production and the total harvest of the holding.

The declarations referred to in the first subparagraph shall be centralised at national level.

Member States shall adopt any control measures necessary to ensure the accuracy of the declarations.

They shall notify the Commission of such measures and shall send in the model forms drawn up pursuant to the first subparagraph'.

90 The Commission takes the view that, in the 1991/92, 1992/93 and 1993/94 marketing years, Italy failed to fulfil its obligations as regards both the setting of scales relating to the percentages to be distilled and the checks on wine-growers. It submits that, in those three marketing years, Italian wine-growers distilled considerably smaller quantities than had been laid down in the forward estimate.

91 The Commission therefore applied a correction of ITL 2 165 691 000 in respect of 1992 and a correction of ITL 8 155 895 000 in respect of 1993.

92 While it does not dispute that Italian wine-growers distilled 1 285 000 hl less than the volume laid down, the Italian Government claims that the system relies on forecasts for the forthcoming period which are based on annual production figures. A Member State cannot automatically be held responsible for a forecasting error, since what actually transpires is the result of many influences and unforeseeable circumstances. In addition, responsibility for drawing up the forward estimate of wine production lies not only with the Member States but also with the Commission.

93 In the alternative, the Italian Government challenges the calculation of the corrections, which, it says, is based on the storage costs for undistilled wine. However, there is not necessarily any connection between the wine-producer's decision to store and his decision to distil. Furthermore, account should be taken

not of the entire storage period (storage contracts are concluded, on average, for nine months), but only two months (from 1 July until distillation, which starts on 1 September, in accordance with Article 38(1) of Regulation No 822/87), since storage costs up to 1 July can, in any event, be charged to the EAGGF. In any case, charges to the EAGGF fell considerably by comparison with the previous year, which the Commission should have taken into account. Moreover, checks are now carried out properly and the corrections therefore seem largely unjustified.

94 It should be observed first of all that there are inadequacies in the Italian monitoring system, a fact which the applicant does not dispute. In the context of the conciliation procedure for 1993, for example, Italy should have produced evidence of the checks carried out on wine-growers to verify compliance by them with their obligation to disclose the exact quantities of wine to be subject to compulsory distillation. It was able to disclose only certain data regarding the checks allegedly carried out on producers in respect of that year. Moreover, that data does not provide any explanation for the considerable differences between the quantities which should have been distilled on the basis of the forward estimate (12 760 000 hl) and those which were actually distilled (11 475 000 hl, hence a difference of 1 285 000 hl, or more than 10%).

95 Next, responsibility for the harvest estimates lay exclusively with the producers and the Member State, since producers alone have the necessary figures and Member States have a duty, under the fourth paragraph of Article 7 of Regulation No 3929/87, to adopt any effective control measures necessary to ensure the accuracy of those declarations.

96 Finally, the Commission had no choice but to calculate any risk to the EAGGF on the basis of the wine remaining in storage. While it is conceivable that there may

not automatically be any connection between the quantities stored and the quantities of undistilled wine, it was difficult to make the calculation on any other basis. In any case, the Italian Government was unable to supply evidence of actual errors in the calculations.

97 In the light of the foregoing considerations, the two pleas must be rejected.

The correction with regard to the permanent abandonment of wine-growing areas

98 Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting for the 1988/89 to 1995/96 wine years of permanent abandonment premiums in respect of wine-growing areas (OJ 1988 L 132, p. 3), as amended by Council Regulation (EEC) No 1869/92 of 30 June 1992 (OJ 1992 L 189, p. 6) and Council Regulation (EEC) No 1990/93 of 19 July 1993 (OJ 1993 L 182, p. 7), provides for the grant of premiums during the years 1988/1989 to 1995/1996 in order to encourage the permanent abandonment of wine-growing areas.

99 The Commission states that it found the monitoring by the competent Italian regional authorities of wine-growing areas actually abandoned to be entirely inadequate in certain regions. It also found that the vineyard register was too imprecise inasmuch as it did not give any specific information on the areas under vines or the types of vine in existence.

100 In particular, the inspections carried out in Agrigento and Catanzaro revealed numerous errors which resulted in unjustified expenditure being charged to the EAGGF.

101 The Italian authorities acknowledged, moreover, that the areas selected for the grant of premiums in the province of Catanzaro had been over-estimated by 6.15%.

102 The Italian Government contends that the correction is wrong. On the one hand, an over-estimation percentage of 1.01, not 3.09, should have been used for the province of Agrigento. The Italian Government bases that contention on a Commission note of 17 November 1992 authorising a flat-rate increase in areas under vines in Italy on the basis of the vineyard register. On the other hand, the varieties of grape for which the premiums had been granted were indeed those grown in the abandoned areas, as the inspections by the competent authorities showed. The differences between the authorities' inspection reports and the wine-growers' vineyard registers, it submits, are attributable to the imprecision of the latter.

103 It need only be observed in this regard that the rate of 1.01% which the Italian Government claims should have been applied originates from a Commission note relating to the marketing years 1992/93 onwards, whereas the correction in question applies to expenditure in the 1991/92 marketing year. As to the disparity between the existing vines and those referred to in the vineyard register, it should be noted that the premium which the Community legislation makes available only for grapes intended for wine-making was granted by the Italian authorities to non-eligible table grapes and was not based on data contained in the vineyard register.

104 It should also be noted that the Italian Government has been unable to establish that there were errors in the Commission's calculations in determining that correction.

105 That plea should therefore be rejected.

The correction with regard to the early subtraction of losses of deboned beef

106 Article 1(1) and (2) of Commission Regulation (EEC) No 147/91 of 22 January 1991 defining and fixing the tolerances for quantity losses of agricultural products in public intervention storage (OJ 1991 L 17, p. 9) states:

'1. A tolerance limit for quantity losses resulting from normal storage operations carried out in accordance with the accepted rules is hereby fixed for each agricultural product which is the subject of a public storage measure.

2. The tolerance shall be fixed as a percentage of the actual weight, without packing, of the quantities entering storage and taken over during the financial year in question, plus the quantities in storage at the beginning of that year. It shall be calculated, for each product, on the basis of all the quantities stored by an intervention agency.

The actual weight at buying-in and removal are calculated by subtracting the standard packing weight, as laid down in the conditions of buying-in, from the recorded weight or, by absence, the average packing weight used by the agency'.

107 Under Article 3 of Regulation No 147/91, losses exceeding the tolerance are to be booked at the end of the EAGGF Guarantee Section financial year.

108 The Summary Report (paragraph 4.9.1.8) states that:

'As has already been explained in several earlier summary reports (see point 4.9.1.6(c) for 1992, for example), the EAGGF observed that the Italian authorities were systematically subtracting 0.1 kg per box of deboned beef in anticipation of freezing losses before the boxes were placed in the coldstore.

The EAGGF considers this practice irregular and unacceptable. Indeed, the generally accepted rules and the provisions of Regulation No 147/91 relating to the establishment of a weight loss tolerance limit require that actual weights are used on product movements in and out of store.

The ensuing correction has been calculated in the same way as that for 1991 and 1992. Correction: budget item 2113: - ITL 243 553 000'.

109 According to the Italian Government, the practice of deducting the anticipated weight losses of deboned beef after freezing, which the Italian authorities systematically carried out at a rate of 0.1 kg per box, is a mere procedural irregularity which has no impact on the EAGGF accounts. It submits that, since each box weighs between 25 and 30 kg, the deduction in question amounts to a loss of between 0.3 and 0.4%, that is to say below the 0.6% allowed under Regulation No 147/91. In those circumstances, the financial correction decided upon by the Commission should be annulled.

110 The contested practice by the Italian authorities is in breach of both the letter and the general scheme of Regulation No 147/91.

111 The first subparagraph of Article 1(2) of that regulation requires that the tolerance limit be calculated as a percentage of the actual weight of the quantities entering storage. Moreover, under the third subparagraph of Article 1(2) of the same regulation, the actual weight is to undergo a further check on removal, which the Italian authorities are failing to carry out.

112 Since the Italian authorities failed to implement the checks necessary to ensure the observance and effectiveness of the rules laid down, the corrections applied by the Commission do not appear to be unjustified.

113 That plea should therefore be rejected.

The correction with regard to the accounting adjustments in respect of stocks of bone-in beef

114 Council Regulation (EEC) No 3492/90 of 27 November 1990 (OJ 1990 L 337, p. 3) lays down the factors to be taken into consideration in the annual accounts for the financing of the intervention measures in the form of public storage by the EAGGF, Guarantee Section. Under Article 4 of that regulation, 'a tolerance limit may be fixed for losses attributable to the preservation of the products stored', and, under Article 5, 'all missing quantities and quantities which have deteriorated because of the physical conditions of storage, transport, processing or by reason of over-long preservation shall be recorded in the accounts as having left the intervention stock on the date when the loss or deterioration was established'. Article 2(1) of Regulation No 147/91 fixes the tolerance for beef at 0.6%.

115 The Commission states that the inspections carried out by its staff showed that end-of-year stocks of bone-in beef had been declared without taking into account

losses during storage, so as not to credit the EAGGF with the corresponding amount.

116 During the mission undertaken by EAGGF officials from 10 to 14 October 1994, the Italian authorities provided a breakdown table by coldstore which showed a net loss of 668.723 tonnes of beef, meaning that the 0.6% tolerance laid down in Article 2(1) of Regulation No 147/91 had been exceeded by 293.733 tonnes. The Commission staff applied the appropriate corrections in order to offset the failure to credit the EAGGF with the amounts corresponding to the unidentified losses.

117 The Commission states that when it informed the Italian authorities of those calculations by letter of 6 April 1995, the EAGGF asked for a correct version of the summary of inventory checks and their effects on the end-of-year stock position as at 30 September 1993, which was supplied by AIMA on 14 November 1995. Analysis of the stock position sent by AIMA revealed additional, previously undisclosed, losses totalling 1 204.707 tonnes of beef. The allowable tolerance was found to have been exceeded by 829.717 tonnes.

118 The Italian Government disputes the correction on the ground that the weight losses found by the Commission during the 1993 financial year should also have been attributed pro rata to the 1991 and 1992 financial years. The tolerance thresholds would not then have been exceeded. Taking into account the tolerance margin of 0.6% of each year's stock, the established losses of 1 204.707 tonnes should not in fact have been considered excessive.

119 The Italian Government therefore submits that the irregularities found by the Commission are purely technical and are not in any way such as to be prejudicial to the EAGGF.

120 In that connection, it need only be observed that if, because of the inadequacy of the checks which Member States are required to carry out, losses during storage dating back to previous years were taken into account in the 1993 financial year, the Member State concerned must assume responsibility for the financial consequences thereof. It is after all clear from Articles 1 and 3 of Regulation No 147/91 that a stock report must be drawn up at the end of each EAGGF accounting year. Moreover, the Italian Government has been unable to prove that those losses did indeed date back to previous years. It cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and efficient supervisory system (see, in that connection, *Germany* v *Commission*, cited above, paragraph 28).

121 In the light of the foregoing considerations, it is appropriate to reject the plea.

The correction with regard to late payments for intervention purchases of beef

122 Article 18(1) of Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef (OJ 1993 L 225, p. 4) requires that payments for beef admitted to intervention should be made during the period starting on the 45th day after completion of the take-over of the products and ending on the 65th day thereafter.

123 According to the Commission, having identified considerable delays in payments made in Italy in respect of the 1993 financial year, after having already made the same findings in respect of the previous two years, the EAGGF concluded that financing costs had been wrongly charged to it. It therefore applied a correction of 10% to those costs.

124 The Italian Government explains the failure to observe the time-limit of 65 days from the date of hand-over of the products by reference to the negligible delay caused by the need for AIMA to comply with the procedure laid down by Italian law, in particular the procedure for acquiring an 'anti-Mafia' certificate. This requires any undertaking capable of receiving public funds — irrespective of its legal form — to obtain from the administrative authority or chamber of commerce with which it is registered a certificate stating that it has no connections with the Mafia.

125 It should be observed first of all that, in the present case, the time-limit laid down in Regulation No 2456/93 was exceeded, a fact which the Italian Government has not disputed.

126 Secondly, the financing costs chargeable to the EAGGF must be calculated on the assumption that the time-limit has been observed. Accordingly, when Italy pays after expiry of the time-limit, it is charging non-eligible expenditure to the EAGGF.

127 However, neither the contested decision nor the Summary Report shows that the deficiencies found relate to the whole of or fundamental elements of the control system or to the operation of controls essential to assuring the regularity of the expenditure, from which it could have been concluded that there was a high risk of widespread loss to the EAGGF, as the Belle Group Report requires for a correction of 10%.

128 It is therefore appropriate to annul the correction applied by the Commission with regard to late payments for intervention purchases of beef on the ground that the statement of reasons for it is inadequate.

The correction with regard to the inadequate management and monitoring of premiums for sheep and goats

129 Article 5 of Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organisation of the market in sheepmeat and goatmeat (OJ 1989 L 289, p. 1) provides for the granting of a premium to sheepmeat and goatmeat producers to the extent necessary to offset an income loss during a marketing year.

130 Since 1988, the EAGGF has been carrying out on-the-spot inspections in Italy in order to ensure that the premiums paid are not greater than the number of animals eligible according to the statistics. Under Commission Decision No C/90/831 of 11 May 1990, Member States are required to carry out on-the-spot inspections of at least 10% of the number of applicants per marketing year. The Italian authorities were unable to carry out the necessary inspections. Following checks, the EAGGF notified the Italian authorities of all the deficiencies found in the management of the premiums in question. The correction for 1991 decided upon by the Commission was equivalent to 30% of national expenditure, and that for 1992 to 10%. As in 1992, the Commission decided to fix a correction amounting to 10% of national expenditure for the 1993 financial year. While it has taken note of the reform which the administrative monitoring system in Italy underwent in 1993, the Commission does not in fact consider that reform to meet the requirements in force or to be capable of ensuring adequate supervision, since the execution of on-the-spot inspections and the follow-up of anomalous findings are still seriously inadequate (see the Summary Report, paragraph 4.9.4.6).

131 It should be observed first of all that where the Commission, instead of rejecting all the expenditure in question, has endeavoured to establish the financial impact of the unlawful action by means of calculations based on an assessment of what the situation on the relevant market would have been if the infringement had not occurred, the burden of proving that those calculations are not correct rests on the Member State (see *United Kingdom* v *Commission*, cited above, paragraph 15).

132 The Member State, for its part, cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and efficient supervisory system (see *Germany* v *Commission*, cited above, paragraph 28), such as the introduction of reforms or the determination of the regional authorities to provide better preparation for inspectors.

133 In view of the seriousness, extent and persistence of the deficiencies in the system of checks and the carrying out of those checks which the Commission has identified within the context of the 1993 financial year, after making similar findings in respect of the previous years, it could reasonably conclude that there was a high risk of widespread loss to the EAGGF, such that the correction of 10% which it applied does not appear to be unjustified.

134 In the light of the foregoing considerations, it is appropriate to uphold the application brought by the Italian Republic in so far as it relates to the correction with regard to late payments for intervention purchases of beef and to dismiss it in respect of the remainder.

Costs

135 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the Commission sought an order for costs against the Italian Republic and the latter has been unsuccessful in all but one of its pleas, the Italian Republic must be ordered to pay four fifths of the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Annuls 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 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) inasmuch as it applied a correction of ITL 778 000 000 with regard to late payments for intervention purchases of beef;**

2. **Dismisses the remainder of the application;**

3. **Orders the Italian Republic to pay four fifths of the costs and the Commission of the European Communities to pay a fifth.**

Moitinho de Almeida Sevón Puissochet

Jann Wathelet

Delivered in open court in Luxembourg on 28 October 1999.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber