JUDGMENT OF THE COURT (Sixth Chamber)

9 January 2003 *

In Case C-157/00,

Hellenic Republic, represented by V. Kontolaimos, I.K. Chalkias and C. Tsiavou, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. Condou-Durande, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

APPLICATION for partial annulment of Commission Decision 2000/216/EC of 1 March 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 67, p. 37), in so far as it concerns the Hellenic Republic,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), C. Gulmann, F. Macken and N. Colneric, Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 28 February 2002,

after hearing the Opinion of the Advocate General at the sitting on 16 April 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 April 2000, the Hellenic Republic brought an action under the first paragraph of Article 230 EC for partial annulment of Commission Decision 2000/216/EC of 1 March 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 67, p. 37, 'the contested decision'), in so far as it concerns it.

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

— GRD 339 028 666 in respect of export refunds, for deficiencies in the checks of exported goods;

— GRD 659 967 504 in respect of fruit and vegetables, for deficiencies in the checks and for inadequacies in the management of the files relating to the grubbing-up of peach trees and nectarine trees;

— GRD 1 966 954 869 in respect of fruit and vegetables, for deficiencies in the control system and for non-compliance with the minimum price payable to producers in connection with the processing of peaches.

3 The reasons for the financial corrections imposed are summarised in Summary Report No VI/10529/99 of 27 October 1999 on the results of inspections in connection with the clearance of the EAGGF Guarantee Section accounts pursuant to Article 5(2)(c) of Regulation (EEC) No 729/70 in respect of export refunds, fruit and vegetables, livestock premiums, agri-environmental measures, financial auditing, arable crops, flax and hemp ('the summary report').

The financial correction in respect of export refunds

4 The summary report shows that, during inspections carried out in Greece by EAGGF inspectors, the latter found that the checks of products to be exported, although very frequent, did not pursue a qualitative objective. It was apparent that the customs offices, in particular those at Salonika and Skydra (Greece), did not have sufficient facilities to be able to carry out the checks under acceptable conditions, that those checks were carried out on laden vehicles and were only partial. Moreover, there was no monitoring of the quality of checks and of records held at regional or national level. No retrospective assessment of the quality of those checks could be carried out on the basis of the control reports since those reports were not standardised.

5 In those circumstances, the Commission decided to impose a financial correction of 5% of the expenditure declared by the Hellenic Republic in respect of the financing of export refunds.

The first plea

Arguments of the parties

6 By its first plea, the Greek Government claims that the Commission misinterpreted and misapplied Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts (OJ 1990 L 42, p. 6) and Commission Regulation (EC) No 2221/95 of 20 September 1995 laying down detailed rules for the application of Council Regulation (EEC) No 386/90 as regards physical checks carried out at the time of export of agricultural products qualifying for refunds (OJ 1995 L 224, p. 13) and made an incorrect assessment of the facts.

7 According to that government, Articles 2 and 3 of Regulation No 386/90 require the customs authorities of the Member States only to carry out physical checks on approximately 5% of export declarations of agricultural products qualifying for export refunds, but do not provide for any qualitative criteria to be satisfied by those checks. Moreover, Article 5(1) of Regulation No 2221/95 does not in any way define the qualitative characteristics of the physical checks to be carried out, but merely indicates the actions necessary in order to establish whether the export declaration and the goods to be exported correspond as regards quantity, nature and characteristics. With respect to Article 7 of the latter regulation, it requires only the adoption of measures to ensure that achievement of the check rate of 5% can be verified at any time and the production of a detailed examination account on the checks carried out. The qualitative criterion relied on by the Commission in order to impose the financial correction at issue is therefore without substance.

8 With regard to the assessment of the facts, the Greek Government claims that, contrary to what is maintained by the Commission, the physical checks on the exported goods were carried out in Greece in accordance with the relevant provisions of regulations and taking account of the Commission's requirements.

Thus, in particular, the checks carried out by officers were overseen by supervisors having the rank of director and gave rise to a note on the export declaration, the data establishing that the export declaration corresponded to the exported goods were required to be printed on the document detailing physical checks on exportation and the persons responsible for carrying out the checks on the particulars entered on the export declarations used the resources made available to them, such as weighing equipment, for example, during those checks. In addition, the monitoring equipment and structures which the Commission claims are inadequate are undergoing reorganisation as part of the implementation of the Community's Customs 2000 programme. Moreover, the offices concerned received, in 1996 and 1999, circulars giving clear and precise instructions with regard to the procedures to be followed during checks. The Skydra customs office thus applied the 1996 circular. Furthermore, it is apparent from the correspondence exchanged with the Commission that the latter considered that the checks carried out in Greece were satisfactory and that their frequency was particularly high.

9 The Commission states that the main reason for the financial correction at issue was the non-existence of facilities essential to the execution of reliable checks, satisfying the criteria set out sufficiently precisely in Regulations Nos 386/90 and 2221/95, and in particular in the Annex to the latter regulation. The investigations conducted by its staff led it to the conclusion that the organisation of the checks in Greece did not satisfy the requirements laid down by Regulation No 2221/95, and specifically the Annex thereto.

10 The Commission adds that, in order to ensure the quality of the checks, it is not sufficient to introduce mere hierarchical supervision, but it is necessary to establish an internal control system within customs offices as well as mechanisms capable of ensuring, at national level, a measure of uniformity in the quality of checks. Moreover, the circular sent by the Greek authorities to the customs offices in 1996 was not applied until after 1 January 1999, that is, after the period to which the financial correction at issue relates.

Findings of the Court

11 With regard, first, to the relevant legislative provisions and their interpretation, it must be observed that, according to the case-law of the Court, Article 8(1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1, hereinafter 'Regulation No 729/70'), imposes on Member States the general obligation to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence, even if the specific Community act does not expressly provide for the adoption of particular supervisory measures. It also follows from that provision, considered in the light of the duty of faithful cooperation with the Commission laid down by Article 5 of the EC Treaty (now Article 10 EC), with particular regard to the correct utilisation of Community resources, that Member States are required to set up comprehensive administrative checks and on-the-spot inspections, thus guaranteeing the proper observance of the substantive and formal conditions for the grant of the premiums in question (Case C-247/98 *Greece* v *Commission* [2001] ECR I-1, paragraph 81).

12 It follows that, even if, as the Greek Government maintains, Regulations Nos 386/90 and 2221/95 do not contain any particular requirement as to the quality of the checks to be carried out, Member States are nevertheless obliged to take all measures necessary to ensure that those checks do not allow any doubt to remain as to the regularity of the expenditure charged to the EAGGF. They must therefore take steps to ensure that the quality of the checks carried out is of such a standard that it cannot be the subject of criticism.

13 It should be added that, as the Advocate General pointed out in paragraphs 27 and 28 of his Opinion, the Annex to Regulation No 2221/95 and Article 3(3) of Regulation No 386/90 lay down the manner in which certain physical checks are to be carried out and therefore contain qualitative criteria which those checks must satisfy.

14 In those circumstances, the first part of the first plea must be rejected as unfounded.

15 Second, with regard to the Commission's assessment of the facts, it must be observed that only intervention undertaken in accordance with the Community rules in the framework of the common organisation of agricultural markets is to be financed by the EAGGF (see Case C-278/98 *Netherlands* v *Commission* [2001] ECR I-1501, paragraph 38). In that context, it is for the Commission to prove that an infringement of the rules on the common organisation of the agricultural markets has occurred. The Commission is therefore obliged to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question (*Netherlands* v *Commission*, cited above, paragraph 39).

16 However, the Commission is required, not to demonstrate exhaustively that the checks carried out by the national authorities are inadequate, or that there are irregularities in the figures submitted by them, but to adduce evidence of serious and reasonable doubt on its part regarding those checks or figures (*Netherlands* v *Commission*, cited above, paragraph 40).

17 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; consequently, it is for the State to adduce the most detailed and comprehensive evidence that it has made checks or that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect (*Netherlands* v *Commission*, cited above, paragraph 41).

18 The Member State concerned, 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 (Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 7).

19 In this case, it must be held that the Greek Government, although it indicates the measures adopted in response to the various criticisms made by the Commission in the summary report, has still failed to show in what way those measures had the effect of actually remedying the deficiencies found by the Commission.

20 The Greek Government does not demonstrate to what extent the appointment of a person responsible for supervising the checks carried out resulted in an improvement in the quality of those checks.

21 Similarly, the fact that, in 1996 and 1999, circulars giving instructions relating to the procedures to be followed during the checks were sent to the various customs offices cannot, by itself, constitute a guarantee that the checks were actually carried out in accordance with those instructions.

22 With regard to the Skydra customs office, the documents submitted by the Commission and not disputed by the Greek Government show that that office did not apply the 1996 circular until after the end of 1998 and therefore after the period to which the financial correction at issue relates. It follows that the Greek Government has not adduced proof that the Commission's finding is incorrect.

23 As regards the circular which the Greek authorities sent to the customs offices in 1999, it is sufficient to observe that, in view of its date of issue, that circular could have had no effect on the checks carried out from 1996 to 1998.

24 As regards the absence of adequate infrastuctures for carrying out the physical checks satisfying the quality requirements arising from the Community legislation, the Greek Government merely states that measures designed to improve the infrastructures in question are to be taken under the Customs 2000 programme. It does not dispute the Commission's assertion, made at the hearing, that various customs offices did not have the physical capacity, for example, to unload a vehicle in order to check the goods being transported.

25 Similarly, in response to the Commission's complaint regarding the absence of documents which could prove that checks were in fact carried out, the Greek Government has not adduced any evidence of the existence of such documents.

26 In the light of all the foregoing considerations, it must be held that the second part of the first plea is unfounded.

27 The first plea must therefore be rejected as unfounded.

The second plea

Arguments of the parties

28 In support of its second plea, alleging infringement of Article 5(2)(c) of Regulation No 729/70 and breach of the principle of proportionality, the Greek Government argues that, having regard to Annex 2 to Commission Document No

VI/5330/97 of 23 December 1997 relating to 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee [Section]' ('Document No VI/5330/97'), a distinction must be made between the key checks, which are physical and administrative checks relating to the fundamental aspects of applications for export refunds, and the secondary checks, consisting of administrative operations essential for the proper processing of applications. The Commission must not make a financial correction unless a check expressly provided for by the Community legislation or absolutely necessary to ensure the application thereof has not been properly carried out. The fact that a checking procedure is not perfect does not in itself justify the application of a financial correction since all checking systems are capable of improvement. In reality, the Commission must show that there is a significant deficiency in the application of the Community rules and that 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 No 729/70.

29 In this case, the Commission found no serious deficiency constituting an infringement of Community provisions and justifying the financial correction at issue. Moreover, the investigation carried out by the Commission disclosed nothing that would make it possible to determine the amount in respect of which it was claimed that the EAGGF ran a risk of losses. It is therefore impossible to verify whether the rate of correction chosen is commensurate with that risk.

30 The Greek Government further maintains that, although a flat-rate correction is justified where all the key checks were carried out but where their number, frequency or strictness do not conform to the requirements of the Community legislation, so that it can reasonably be concluded that those checks do not guarantee that payments are made correctly and that the risk of losses to the EAGGF is therefore real, such a correction is not justified where, as in this case, the Commission acknowledged that the number and frequency of the physical checks and the conditions under which they took place appeared satisfactory.

31 That being so, the financial correction at issue should be annulled or, at the very least, reduced to 2% of the export refunds on the products exported within the jurisdiction of the customs offices concerned.

32 According to the Commission, because of their poor quality, the physical checks carried out in Greece during the period in question did not provide sufficient guarantees with regard to the protection of EAGGF resources. By letter of 24 November 1998, it informed the Greek Government that, owing to the absence of verifiable and measurable parameters, it found it impossible to quantify directly the effects on the EAGGF of the deficiencies found. It therefore opted to propose a flat-rate correction in conformity with the guidelines contained in Document No VI/5330/97 and settled on a rate which, it claims, is justified in view of the existence of the high risk of losses due to the inadequate quality of the checks.

Findings of the Court

33 First, it should be recalled that Article 5(2)(c) of Regulation No 729/70 provides as follows:

'The Commission, after consulting the Fund Committee:

...

(c) shall decide on the expenditure to be excluded from the Community financing... where it finds that expenditure has not been effected in compliance with Community rules.

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

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

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

A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned. However, this provision shall not apply to the financial consequences:

— of irregularities as referred to in Article 8(2);

— concerning national aids, or infringements, for which the procedures referred to in Articles 93 and 169 of the Treaty have been initiated.'

34 Second, it should be noted that Document No VI/5330/97 distinguishes the key checks from the secondary checks and provides that a 5% correction may be applied where the various key checks have been carried out but their number, frequency or strictness do not conform to the requirements of the Community legislation.

35 Contrary to what is maintained by the Greek Government, the criterion relating to the strictness of the checks, which refers to the qualitative requirements contained in the Community legislation, is not, as may be seen from paragraphs 19 to 25 of this judgment, fulfilled in this case.

36 In so far as the quality of the physical checks constitutes a decisive aspect of the control system to be set up in order to ensure that EAGGF expenditure is properly effected, it must be held that the Commission could reasonably conclude that the risk of losses to the EAGGF was significant and was therefore entitled, without infringing Article 5(2)(c) of Regulation No 729/70 or the guidelines contained in Document No VI/5330/97, to impose the flat-rate correction at issue.

37 It must be added that it is settled case-law that the Commission may refuse to charge to the EAGGF the whole of the expenditure in question if it finds that there are no adequate control procedures (see, in particular, Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraph 122). It follows that by imposing, in this case, a flat-rate correction amounting to only 5% of the expenditure declared by the Hellenic Republic in respect of the financing of export refunds, even though the checks carried out by the Greek authorities did not conform to the requirements of the Community legislation, the Commission did not act, in this case, in breach of the principle of proportionality.

38 The second plea must therefore be rejected as unfounded.

The third plea

Arguments of the parties

39 In support of its third plea, alleging the absence of any legal basis authorising the Commission to make the financial correction at issue and breach of the principle of legal certainty, the Greek Government argues that the calculation made by the Commission to determine the period to which the financial correction was to relate is arbitrary and not based on any legislation. According to that government, the clear effect of Article 5(2)(c) of Regulation No 729/70 is that, in order to evaluate the amounts to be excluded from Community financing, the Commission must take account of the expenditure effected by the Member State concerned up to the date of the Commission's written communication of the results of the checks to ascertain the compatibility of that expenditure with Community rules, subject to the proviso that a financial correction may not involve expenditure effected more than 24 months prior to that written communication. A financial correction extending over a period commencing 24 months prior to that written communication and ending when the Member State concerned adopts the necessary measures to remedy the deficiencies found is therefore arbitrary and has no legal basis.

40 That interpretation is supported, on the one hand, by the wording of Article 8(1) of Commission Regulation (EC) No 1663/95 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), from which it is clear that the Commission's written communication of the results of the checks must include, in addition to the measures to be taken, an evaluation of the expenditure which may be excluded from financing and, on the other hand, by the fact that the Commission has had the power to impose financial corrections for a period extending up to the date of

entry into force of the corrective measures adopted by the Member State concerned only since the entry into force on 30 October 1999 of the amendment of that provision by Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5).

41 For its part, the Commission argues that neither Article 5 of Regulation No 729/70 nor Article 8(1) of Regulation No 1663/95 precludes the application of a financial correction relating to a period extending beyond the date on which the written communication took place, provided that, as in this case, that correction is based on findings made during the 24 months preceding that communication and that the Member State was warned, by that same communication, that expenditure effected before it adopted the appropriate corrective measures would not be chargeable to the EAGGF.

Findings of the Court

42 It should be recalled at the outset that Article 8(1) of Regulation No 1663/95 provides as follows:

'When, as a result of any enquiry, the Commission considers that expenditure was not effected according to Community rules, it shall communicate to the Member State concerned its findings, the corrective measures to be taken to ensure future compliance, and an evaluation of any expenditure which it may propose to exclude pursuant to Article 5(2)(c) of Regulation (EEC) No 729/70.'

43 Although it is true, as the Commission argues, that neither that provision nor Article 5(2)(c) of Regulation No 729/70 precludes the period to which a financial correction relates from extending beyond the date of the written communication of the results of the checks to the Member States, the fact nevertheless remains that, since those provisions do not explicitly authorise the Commission to take into account a period going beyond the date of that written communication, they do not provide a sufficient legal basis to justify the choice made in this case by the Commission.

44 However, that legal basis is provided by the combined provisions of Article 5(2)(c) of Regulation No 729/70 and Articles 2 and 3 of the same regulation, under the terms of which refunds granted and intervention undertaken 'in accordance with the Community rules' within the framework of the common organisation of agricultural markets are to be financed by the EAGGF. By allowing the Commission to charge to the EAGGF only intervention carried out in accordance with Community provisions, those articles oblige the Commission to refuse financing of expenditure when it finds, as in this case, that irregularities have occurred (see, to that effect, Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, paragraph 8).

45 It follows that, where irregularities justifying the application of a financial correction persist after the date of the written communication of the results of the checks, the Commission is entitled and even obliged to take account of that situation when it determines the period to which the financial correction in question is to relate.

46 In this case, it is not disputed that the deficiencies found by the Commission persisted beyond the date of the written communication of the results of the checks. The Commission could therefore legitimately apply the financial correction to a period extending beyond that date.

47 With regard to the alleged breach of the principle of legal certainty, it need merely be observed that the Greek authorities were duly informed, upon notification of the written communication of the results of the checks, that the Commission intended to apply the corrections until those authorities adopted the appropriate corrective measures. In those circumstances, the Greek Government cannot legitimately plead any uncertainty as to the period to which the Commission's findings related or as to that covered by the financial corrections applied by the Commission.

48 The third plea must therefore also be rejected as unfounded.

49 In the light of all those considerations, the application must be dismissed in so far as it seeks the annulment or reduction of the financial correction relating to export refunds.

The financial corrections in respect of the fruit and vegetable sector

Measures to improve the production of peaches and nectarines

50 It is apparent from the summary report that, during the checks carried out in 1997, deficiencies were found in the three prefectures visited, which represented 88% of the areas affected by grubbing-up of peach trees and nectarine trees in Greece.

51 The Commission staff found the following deficiencies:

— in two of the three prefectures visited, the applicant for the grubbing-up premium had not given, or had given incompletely, the undertaking not to replant prescribed in Article 3 of Commission Regulation (EC) No 2684/95 of 21 November 1995 laying down detailed rules for the application of Council Regulation (EC) No 2505/95 on improving the Community production of peaches and nectarines (OJ 1995 L 279, p. 3),

— in the prefecture of Imathia (Greece), there was no indication of the date on the inspection certificates, as prescribed by Article 4 of Regulation No 2684/95,

— the communication relating to the date on which the grubbing-up operations were to take place, required by Article 5 of Regulation No 2684/95, was absent or bore no date,

— the existence, in the prefectures of Imathia and Pellas (Greece), of a large number of short-term leases concluded just before the expiry of the time-limit set for the submission of applications for the grubbing-up premium and relating to parcels which, on account of their limited area, did not fulfil the conditions laid down for obtaining that premium had not given rise to additional checks on the part of the Greek authorities.

52 In so far as those deficiencies related, according to the Commission, to decisive aspects of key checks, the Commission imposed a flat-rate correction of 5% of

the expenditure declared by the Hellenic Republic under budget sub-items B01-1505-003 and B01-1505-004 in respect of measures to improve the production of peach trees and nectarine trees.

The first plea

Arguments of the parties

53 With regard to the complaint concerning absence of undertakings or incomplete undertakings not to replant, the Greek Government maintains that the Commission misinterpreted Article 2(1)(a) of Council Regulation (EC) No 2505/95 of 24 October 1995 on the improvement of the Community production of peaches and nectarines (OJ 1995 L 258, p. 1) and Articles 3 and 4(3) of Regulation No 2684/95. Those provisions do not state that the undertaking not to replant and to transfer that obligation to a new grower must be included in the actual text of the application for the grubbing-up premium. On the contrary, it is clear from the wording and scheme of those provisions that such an application need only be accompanied by the written acceptance of the undertaking by the applicant. Decisions Nos 417328 and 141517 of the Minister of Agriculture, adopted on 20 December 1995 and 9 January 1996 respectively, clearly provide for those obligations.

54 Moreover, the Greek authorities have always required, at the time of the submission of the application for the grubbing-up premium, the lodging of a solemn declaration by owners that they undertake to refrain from replanting and the drawing-up of a notarial act providing for the transfer of that obligation to the new grower. In so far as any drawing-up of an instrument for the transfer of a plot of agricultural land is subject to the production of a certificate from the competent authorities, the new grower is always informed that the land being transferred or leased is subject to the improvement measures in question, so that the obligation not to replant is transferred to him.

55 The Commission contends that the system applied by the Greek authorities does not satisfy the requirements of Article 3 of Regulation No 2684/95. It observes that, in two of the three prefectures visited, the Greek authorities did not require from the applicant for the grubbing-up premium a written declaration containing an undertaking to secure from any new grower, in the event of the sale, lease or transfer by any other method of parcels having formed the subject of an application, the undertaking not to replant. It contends that the system of transfer of ownership in force in Greece is not such as to compensate for that deficiency. It is therefore not certain that the applicant is properly conversant with all its obligations under the Community legislation.

Findings of the Court

56 It must first be recalled that Article 2(1) of Regulation No 2505/95 provides that the grubbing-up premium is to be granted subject to a written undertaking by the applicant to grub up and to agree not to replant any peach trees, nectarine trees or apple trees other than cider-apple trees. Under Article 3 of Regulation No 2684/95, the application for a grubbing-up premium must be 'accompanied' by, on the one hand, that undertaking and, on the other hand, by the written consent to the grubbing-up operation by the owner of the parcel, such consent involving an undertaking by the latter to secure from any new grower the undertaking not to replant.

57 Although, as the Advocate General pointed out in paragraph 67 of his Opinion, it is not clear from the actual wording of those two provisions that the undertakings of the applicant for the premium and of the owner of the parcel must appear on the application for the grubbing-up premium, the fact nevertheless remains that those provisions require them to have given those undertakings in writing.

58 It should also be recalled that, under Article 4(1) of Regulation No 2684/95, '[f]ollowing receipt of an application for a grubbing-up premium, the competent

body shall, by on-the-spot inspection, check the information contained in it, record the undertaking referred to in Article 3 and establish, where appropriate, that the application is admissible'.

59 It follows from that provision that the application for a grubbing-up premium must be accompanied by the written undertakings required by Article 3 of Regulation No 2684/95, since the competent authorities cannot record an undertaking which they have not received.

60 It must be observed, finally, that the Greek Government does not challenge the correctness of the findings made by the Commission staff during their checks. It must therefore be held to be established that the Greek authorities did not always require a written declaration on the part of the applicant for a grubbing-up premium with a view to ensuring that the applicant informed the new grower of the obligation not to replant the parcel covered by the application.

61 In so far as a system such as that applicable in Greece does not enable the competent authorities to be in possession, at the time when they carry out the checks provided for in Article 4(1) of Regulation No 2684/95, of the written undertakings required in Article 3 of that regulation, it does not satisfy the requirements of the Community legislation.

62 It follows that, in this case, the Commission did not err in the interpretation and application of Article 2(1) of Regulation No 2505/95 and Articles 3 and 4(1) of Regulation No 2684/95.

63 The first plea must therefore be rejected as unfounded.

The second plea

Arguments of the parties

64 With regard to the absence of a date on the inspection certificates, the Greek Government complains that the Commission misinterpreted Article 4 of Regulation No 2684/95 and wrongly interpreted the facts. That provision does not require the date on which a check was carried out to be mentioned on the inspection certificate itself and, failing such mention on the certificate, that date may be ascertained from other official documents. The absence of the inspection date on the certificates in the prefecture of Imathia is not a sufficient basis for concluding that the required checks were not carried out. Certain official documents do indeed prove that those checks took place.

65 The Commission contends that it is impossible to check compliance with the provisions of Article 4 of Regulation No 2684/95 during the period in question since the certificates establishing the on-the-spot inspection by the national inspectors and the admissibility of the applications bear no date. The inspectors were in fact unable to indicate the precise date of the parcel inspection. With regard to the argument that it would be possible to obtain a precise indication of the dates of the checks by means of other official documents, the Commission points out that no proof that those checks were carried out within the prescribed period has been produced. According to it, it is essential that those dates be indicated precisely since improvement programmes such as those at issue in this case are generally subject to temporal limits.

Findings of the Court

66 It should be observed that, pursuant to Article 3(1) of Regulation No 2684/95, applications for the grubbing-up premium were to be submitted to the competent authorities of the Member States before the commencement of the grubbing-up operations and not later than 31 January 1996.

67 Article 4 of Regulation No 2684/95 provides *inter alia* that, following receipt of an application for a grubbing-up premium, the competent body is to check, by on-the-spot inspection, the information contained in it and establish, where appropriate, that the application is admissible. Under that same provision, the acceptance of an application was to be notified to the applicant not later than two months following the submission of the application. The grubbing-up operation was to be carried out within two months of that notification and not later than 30 April 1996.

68 Article 5 of Regulation No 2684/95 provides:

'1. The person concerned shall notify the competent authority of the date on which the grubbing-up operations are to take place. The authority shall establish by an on-the-spot inspection of all parcels that grubbing-up has been carried out in accordance with this Regulation and shall certify the period in which it took place.

2. The grubbing-up premium shall be paid not later than three months following the establishment of the facts as referred to in paragraph 1.'

69 Although it is true, as the Greek Government maintains, that Article 4 of Regulation No 2684/95 does not expressly provide that the date of the inspection for which it provides must appear on the inspection certificate, the fact nevertheless remains that, having regard to the system established by that regulation, which is based on a very precise timetable and very precise time-limits, the competent authorities must be able to establish the exact date on which a given parcel was inspected.

70 In so far as, in this case, the Greek Government has not produced, either at the stage of the conciliation procedure or before the Court, documents capable of establishing the exact dates on which the checks provided for in Article 4 of Regulation No 2684/95 were carried out, it must be held that it has not proved that the relevant findings made by the Commission are incorrect.

71 The second plea must therefore also be rejected as unfounded.

The third plea

Arguments of the parties

72 With regard to the deficiencies relating to the prior notification of the date on which the grubbing-up operations were to take place, the Greek Government maintains that the Commission misinterpreted Article 5 of Regulation No 2684/95. That provision does not in any way require the date on which the grubbing-up operations are to take place to be notified in writing to the competent authority. It does not specify any particular method of communication, so that a verbal notification of the date in question would also be valid.

Moreover, in so far as the objective of that provision is to verify that the grubbing-up operations have actually been carried out, it is sufficient for the competent authority to be able to certify that the grubbing-up operations took place at a certain time. The fact that notification was effected in writing or verbally, before or after the grubbing-up operations, has no effect on the regularity of the expenditure incurred.

73 The Commission points out that, under Article 5 of Regulation No 2684/95, the person concerned is to notify the competent authority of the date on which the grubbing-up operations are to take place. The particulars relating to the date of the parcel inspection and the date on which the grubbing-up operations are to take place are of great importance given that, on the one hand, an on-the-spot inspection of all the data relating to the parcel and its planting should take place at the time of the application and, on the other hand, that the competent authorities are obliged to satisfy themselves that the grubbing-up operations have been carried out in conformity with the Community legislation. The verbal notification of the dates on which the grubbing-up operations were to take place is not recorded in any item of evidence contained in the files of the national authorities. It cannot therefore be taken into consideration.

Findings of the Court

74 It should be observed, as the Greek Government has done, that Article 5(1) of Regulation No 2684/95 does not specify how the date on which the grubbing-up operations are to take place is to be notified to the competent authorities and it is therefore for those authorities to establish the methods of communication which applicants can legitimately use to notify the date in question.

75 However, it is clear that, in the light of the case-law cited in paragraphs 11 and 17 of this judgment, the method(s) of communication so chosen must enable the competent authorities to prove that the Community legislation is being complied with and, therefore, that the date of grubbing-up has in fact been notified to them, as Article 5(1) of Regulation No 2684/95 provides.

76 It should be added that, according to the wording of Article 5(1) of Regulation No 2684/95, from which it is clear that it is the date on which the grubbing-up operations 'are to take place' which must be notified, the notification in question must, contrary to what is maintained by the Greek Government, take place before the applicant carries out that grubbing-up.

77 In so far as, in this case, the Greek Government has not challenged the correctness of the Commission's findings with regard to the absence of evidence that the date on which the grubbing-up operations were to take place was notified in due time to the competent authorities, it must be held that the Commission did not misinterpret Article 5 of Regulation No 2684/95.

78 The third plea must therefore also be rejected as unfounded.

The fourth plea

Arguments of the parties

79 With regard to the determination of the area of parcels qualifying for grubbing-up premiums, the Greek Government submits that the Commission misinterpreted and misapplied Articles 1 and 2 of Regulation No 2505/95 and Article 1(2) of Regulation No 2684/95. Those articles do not require either that the leases of the parcels for which applications for grubbing-up premiums have been submitted be long-term leases or that they have been concluded well before 31 January 1996. By nevertheless refusing to grant the grubbing-up premium in the case of leases not fulfilling those conditions, the Commission infringed those articles.

80 The Commission contends that, in the prefecture of Imathia and the district of the sub-prefecture of Edessa (Greece), applications for grubbing-up premiums in respect of parcels which had been leased during January 1996 for a period not exceeding, in most instances, one or two years were in general accepted. Without calling in question the right to conclude such leases, it nevertheless contends that they represented a high risk of non-compliance with Community legislation and that the Greek authorities should therefore have checked that they were genuine.

Findings of the Court

81 Under Article 1 of Regulation No 2505/95, during the 1995 marketing year, peach and nectarine producers in the Community qualify, on application and under the conditions laid down in that regulation, for a premium, to be paid only once, for the grubbing of peach and nectarine trees.

82 Under Article 2(1) of that same regulation, the grubbing-up premium is to be granted subject *inter alia* to a written undertaking by the recipient to grub up or have grubbed up, at one time, before 30 April 1996, all the peach and nectarine trees in his orchard of peach and nectarine trees if the orchard covers less than 1.5 hectare or all or part of his orchard of peach and nectarine trees if the orchard covers 1.5 hectare or more, provided that the area grubbed is at least 1.5 hectare.

83 Under Article 1(2) of Regulation No 2684/95, the grubbing-up premium is to be granted for the grubbing-up of orchards with an area of 0.5 hectare or more in one or more parcels. Under Article 1(3), the grubbing-up must relate to a complete parcel or, in certain cases, a continuous part of one parcel.

84 Although it is true that, as the Greek Government maintains and the Commission acknowledges, Articles 1 and 2 of Regulation No 2505/95 and Article 1(2) of Regulation No 2684/95 do not prohibit the conclusion of short-term leases during the period immediately preceding the date by which applications for the grubbing-up premium must be submitted, the fact nevertheless remains that, in so far as those provisions are not to be considered in isolation but must be read in the light of the obligations referred to in paragraph 11 of this judgment, it is for the national authorities, in order to ensure the proper application of those provisions, to take whatever measures and carry out whatever checks are necessary to guarantee that expenditure charged to the EAGGF is incurred in a regular manner.

85 It follows that those authorities must display particular vigilance when they find that an abnormally high number of short-term leases are being concluded in respect of parcels which, in the absence of those leases, would not satisfy the conditions laid down for the grant of the premiums at issue. In such cases they must carry out additional checks to satisfy themselves, on the one hand, that the leases actually exist and, on the other hand, that the same parcel is not the subject of several leases.

86 Since in this case it is not disputed, on the one hand, that the Greek authorities were aware of the conclusion of an abnormally high number of short-term leases in respect of parcels the small area of which precluded them from conferring entitlement to the payment of a grubbing-up premium, or, on the other hand, that they did not check those leases for the purposes described in the previous paragraph, it must be held that those authorities did not display the diligence necessary in order to comply with their obligations under the relevant Community legislation and that the Commission did not misinterpret and misapply Articles 1 and 2 of Regulation No 2505/95 and Article 1(2) of Regulation No 2684/95.

87 The fourth plea must therefore also be rejected as unfounded.

88 In the light of those considerations, the application must be dismissed in so far as it seeks the annulment of the financial correction in respect of measures to improve the production of peaches and nectarines under budget sub-items B01-1505-003 and B01-1505-004.

Processing of peaches

89 The investigations conducted by the Commission in Greece in 1997 led it to impose a financial correction of 10% of the expenditure declared by the Hellenic Republic in respect of budget sub-item B01-1512-001 for the processing of peaches. As may be seen from the summary report, the Commission based that decision on the following complaints:

— the unreliability of the delivery notes on which, as the Greek authorities had stated, the Greek control system was based;

— the serious deficiencies found in the control system, since the Greek authorities failed to prove that the checks supposedly carried out had actually been carried out;

— non-compliance with the minimum price payable by the processors to the producers.

90 With regard to the last-mentioned complaint, the summary report shows that the national provisions relating to the quantity of peaches delivered allow rejection of up to 5% of the weight of the products delivered. According to the report, the deductions relating thereto are to be regarded as a breach of the minimum price to be paid to producers. A batch of a product may be accepted or refused only in its entirety and the minimum price payable must be calculated on the basis of the whole quantity delivered.

The first plea

Arguments of the parties

91 The first plea raised by the Greek Government alleges, first, misinterpretation of Article 15 of Commission Regulation (EEC) No 1558/91 of 7 June 1991 laying down detailed rules for the application of the system of production aid for products processed from fruit and vegetables (OJ 1991 L 144, p. 31) and Article 14 of Commission Regulation (EC) No 504/97 of 19 March 1997 laying down detailed rules for the application of Council Regulation (EC) No 2201/96

as regards the system of production aid for products processed from fruit and vegetables (OJ 1997 L 78, p. 14) and, second, incorrect assessment of the facts.

92 In support of its plea, the Greek Government submits that Regulation No 1558/91, which was applicable during the period to which the financial correction relates, requires neither the drawing up of a delivery note nor the existence of a weighing record, since Article 15(1)(a) of that regulation mentions only the drawing up, on an optional basis, of a receipt. Article 14 of Regulation No 504/97, the French version of which, although it refers to receipts as 'bulletins de réception' rather than 'reçus', corresponds in essence to Article 15 of Regulation No 1558/91, likewise does not make the drawing up of those documents mandatory, but qualifies them with the adjective 'any'.

93 With regard to the assessment of the facts, the Greek Government maintains that, during the investigations conducted by the Commission, the investigators probably confused the delivery notes and the dispatch notes.

94 The Commission states that, during the investigations conducted in Greece, its staff were informed by the Greek authorities that the whole Greek monitoring system was based on delivery notes. However, in so far as those notes, which should normally be signed by the representatives of the producer, the carrier and the processor, did not contain all those signatures and were not, apart from a few exceptions, accompanied by any proof of weighing, they do not constitute reliable evidence as regards the exact net weight of the products delivered by the producers. In those circumstances, the control of the aid paid is compromised and there is a high risk of aid being granted which is incompatible with the Community regulations.

Findings of the Court

95 It should be recalled that Article 15 of Regulation No 1558/91 provides as follows:

'1. The processor shall keep records showing at least the following:

(a) the consignments of raw materials purchased and entering his premises each day, indicating which consignments are covered by processing contracts or endorsements and the number of any receipts which may be drawn up for these consignments;

(b) the weight of each consignment and the name and address of the other contracting party;

(c) the quantities of finished products obtained each day by processing the raw materials, quantities eligible for aid being shown separately;

(d) the quantities and prices for products leaving the processor's premises, consignment by consignment, indicating the consignee. The entries in the records may be made by reference to supporting documents when these contain the required particulars.

2. The processor shall retain proof of payment in respect of all raw materials purchased under processing contracts or endorsements.

3. The processor shall be subjected to any measures of inspection or supervision considered necessary and shall keep such additional records as are prescribed by the national authorities to enable them to carry out any checks that they consider necessary. If the envisaged inspection or check cannot be carried out, for reasons attributable to the processor, despite a formal notification to allow the inspections or checks to be carried out, no aid shall be paid for that marketing year.'

96 Article 16(1) and (2) of that regulation are worded as follows:

'1. Each marketing year the competent authorities shall examine the processors' records and carry out random on-the-spot checks on aid applications relating to at least 15% of the quantities of finished products in question, to verify, in particular:

(a) that the finished products for which production aid may be claimed comply with the applicable quality standards. If a discrepancy is found between the analysis of the officially taken samples and the details entered in the processors' records, showing that the minimum Community quality stan-

dards have not been complied with, no aid shall be paid for the processing operation in question;

(b) that the quantities of raw material used in the processing correspond to those indicated in the aid application;

(c) that the price paid for the raw materials used in processing the products under (a) is at least equal to the minimum price;

and

(d) that the raw material complies with the quality requirements.

2. Each marketing year the competent authorities shall also make random checks:

(a) at the processing plants, on the weight of the raw materials delivered;

(b) on the signatures on the invoices referred to in Article 14(2) and on the correctness of these invoices, for example by bringing together the interested parties.'

97 Article 14 of Regulation No 504/97 provides:

'1. Processors shall keep records showing at least the following:

(a) consignments of raw materials purchased and entering their premises each day, specifying those covered by processing contracts or amendments thereto, together with the numbers of any receipts in respect of such consignments;

(b) the weight of each consignment and the name and address of the other party to the contract;

(c) the quantities of finished products obtained each day from processing of the raw materials, broken down into quantities on which the aid is payable and others;

(d) in the case of processed tomato products, the quantities of finished products obtained each day from the processing of raw materials not covered by the quota, for which at least the minimum price was paid;

(e) the quantities and prices of products leaving the processor's premises, consignment by consignment, with details of the consignee. Such data may be recorded by reference to supporting documents, provided the latter contain the abovementioned particulars.

2. Processors shall retain proof of payment in respect of all raw materials purchased under processing contracts or amendments thereto.

3. Processors shall undergo any inspections or checks deemed necessary and shall keep such additional records as the national authorities require to conduct any checks they deem necessary. Where an inspection or checks laid down cannot be conducted for reasons attributable to the processor, despite the latter's having been formally notified thereof, no aid shall be paid in respect of the marketing year in question.'

98 It is clear from Articles 15 and 16(1) and (2) of Regulation No 1558/91 and from Article 14 of Regulation No 504/97 that national authorities are obliged to carry out checks that make it possible to ensure compliance with the Community legislation on production aid for products processed from fruit and vegetables.

99 In so far as, on the one hand, the Greek Government does not dispute that the control system established in Greece in order to satisfy that obligation is based on the use of delivery notes and, on the other hand, does not in any way challenge the genuineness of the findings made by the Commission staff with regard to the

evidential value of the delivery notes checked by them, the Commission cannot be accused of having incorrectly interpreted the provisions relied on by the Greek Government or of having incorrectly assessed the facts.

100 The first plea must therefore be rejected as unfounded.

The second plea

Arguments of the parties

101 In support of its second plea, alleging misinterpretation of Articles 15 and 16 of Regulation No 1558/91 and incorrect assessment of the facts, the Greek Government claims that the Commission refers in general terms to the absence of signatures on documents and the absence of checks without clarifying those complaints.

102 The Greek Government adds that, if the complaint of absence of checks, formulated in general terms by the Commission, actually relates to an absence of stock checks, it is not relevant, since such checks are not provided for by Regulations Nos 1558/91 and 504/97. In any event, the competent authorities nevertheless carried out such checks and the control reports relating to all the

factories situated in the prefectures visited by the Commission staff in August 1998 were forwarded to the Commission.

103 Moreover, according to that government, the rate of the checks carried out by the competent authorities was always greater than that prescribed in Article 16(1)(b) of Regulation No 1558/91 and therefore did not justify the application of a financial correction.

104 The Commission states that its staff found an absence either of control reports, or of descriptive data which would provide a means of verifying the manner in which the checks had been carried out. It states that, during the checks carried out at Giannitsa (Greece), the Greek authorities were unable to produce copies of those reports, whereas, during the checks carried out at Edessa, those same authorities submitted reports containing no information on the results of the checks and the manner in which they were carried out.

Findings of the Court

105 It is sufficient to observe that the arguments put forward by the Greek Government in support of the second plea do not respond to the complaints made by the Commission and are not such as to cast doubt on its findings that the control reports were either incomplete or could not be shown to the Commission's investigators.

106 It follows that the second plea must also be rejected as unfounded.

The third plea

Arguments of the parties

107 The third plea raised by the Greek Government alleges misinterpretation of Article 9 of Regulation No 504/97. The Greek Government contends that that provision, which regulates only relations between processors and producer organisations, shows that the minimum price must be paid by the former to the latter. In Greece, the payments referred to must always be made by bank transfer order, the proof of which is included in any aid application file. The Greek procedures are therefore fully in accordance with Article 9 of Regulation No 504/97.

108 With regard to the payments made by producer organisations to their members, the Greek Government argues that they are not governed by Regulation No 1558/91. In circumstances such as those in this case, the producer organisations receive all sums owed by the carriers and the deductions made by some of those organisations are intended to cover various debts owed by producers. Those deductions are compatible both with Regulation No 1558/91 and with Regulation No 504/97 and, moreover, do not affect the Community budget. They do not therefore justify the application of a financial correction. Isolated infringements of the Community legislation, such as those brought to light by the Commission staff, are not liable to jeopardise the proper functioning of the system or the proper management of Community resources to such an extent that a financial correction of 10% of the declared expenditure is justified.

109 The Commission, for its part, contends that the third plea does not relate to the complaint which gave rise to the financial correction at issue, namely the generalised reduction, by the application of a rejection rate, of the quantity of products delivered which is taken into account for the payment of the minimum

price. The Greek Government makes reference to deductions other than those found by the Commission. The deductions referred to by that government, which are made by producer organisations in respect of various dues, reduce still further the minimum price paid to the producers.

Findings of the Court

110 It is sufficient to observe that the arguments put forward by the Greek Government in support of its third plea are irrelevant in so far as they are intended to demonstrate the conformity with the Community legislation of the deductions made by the producer organisations, whereas it is clear from the summary report that the Commission did not take account of those deductions when it decided to impose the financial correction at issue.

111 It follows that the third plea must also be rejected as unfounded.

The fourth plea

Arguments of the parties

112 In the alternative, the Greek Government argues that the rate of the financial correction at issue is disproportionate in relation to the gravity of the deficiencies found, that the contested decision is vitiated by a defective statement of reasons,

since the Commission did not establish the degree of risk to which Community resources were exposed, and that the Commission overstepped the limits of the discretion which it enjoys when clearing the EAGGF accounts. That financial correction should therefore be annulled or, at the very least, reduced to 2% of the expenditure declared.

113 The Commission states that the deficiencies found during the investigations conducted by its staff led it to conclude that there was a high risk of losses to the EAGGF and that it was therefore reasonably entitled to impose the financial correction at issue.

Findings of the Court

114 It is to be remembered that Member States are obliged to take the measures and carry out the checks necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly and that the Commission is obliged to refuse financing of expenditure by the EAGGF when it finds that irregularities have occurred.

115 In so far as, in this case, as may be seen from paragraphs 99 and 105 of this judgment, the Greek Government did not comply with those obligations and the deficiencies in the Greek control system brought to light by the Commission relate to key aspects of that system, the Commission could reasonably consider that there was a high risk of generalised losses to the EAGGF and impose, in

accordance with the guidelines laid down in Document No VI/5330/97, a flat-rate correction of 10% of all the expenditure in question.

116 The fourth plea must therefore also be rejected as unfounded.

117 In those circumstances, the application must be dismissed in so far as it seeks the annulment of the financial correction in respect of budget sub-item B01-1512-001 for the processing of peaches.

118 In the light of all the foregoing considerations, the Hellenic Republic's application must be dismissed in its entirety.

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the application.**

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

Puissochet Schintgen Gulmann

Macken Colneric

Delivered in open court in Luxembourg on 9 January 2003.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber