JUDGMENT OF THE COURT (Sixth Chamber)

11 January 2001 *

In Case C-247/98,

Hellenic Republic, represented by D. Papageorgopoulos, and I. Chalkias, 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 the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28) in the part of that decision concerning the Hellenic Republic,

THE COURT (Sixth Chamber),

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

Advocate General: S. Alber,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 25 May 2000,

after hearing the Opinion of the Advocate General at the sitting on 6 July 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 July 1998, the Hellenic Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28) in the part of that decision concerning the Hellenic Republic.

2 The action by the Hellenic Republic seeks the annulment of Decision 98/358 in so far as it declared that the following amounts were not chargeable to the EAGGF:

— GRD 1 732 138 831 by way of compensatory aid in the arable crops sector, for unlawfully withholding part of the aid;

— GRD 145 393 041 by way of premiums for beef and veal, for unlawfully withholding part of the premiums;

— GRD 5 138 253 067 in relation to fruit and vegetables, for deficiencies in the monitoring and management system and poor functioning of the producers' organisations;

— GRD 629 212 616 in relation to wine, for deficiencies in the monitoring system and inadequate inspections in connection with the permanent abandonment of wine-growing areas, and for non-compliance with the obligations on the distillation of table wine.

3 The grounds for the corrections imposed are summarised in Summary Report No VI/7421/97 of 8 June 1998 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1994 ('the summary report').

The Belle Report guidelines and the respective duties of the Commission and the Member States concerning the clearance of EAGGF accounts

4 The Belle Report of the Commission (Document No VI/216/93 of 1 June 1993) lays down the guidelines to be followed when financial corrections must be applied against a Member State.

5 In addition to three main calculation techniques, the Belle Report lays down three categories of flat-rate correction 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.'

6 The report also states that it is possible to refuse the whole of the expenditure and that, therefore, a higher rate of correction may be held appropriate in exceptional circumstances.

7 As the Court has held, 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-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6). 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 C-281/89 *Italy* v *Commission* [1991] ECR I-347, paragraph 19; Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 13; and Case C-253/97, cited above, paragraph 6). 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).

8 However, the Commission is not required to demonstrate exhaustively that the inspections carried out by the national authorities are insufficient, or that the data

submitted by them are irregular, but to adduce evidence of serious and reasonable doubt on its part regarding those inspections or data (Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 35; Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 40).

9 The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of EAGGF accounts and, consequently, it is for that State to adduce the most detailed and comprehensive evidence that its inspections or figures are accurate and, if appropriate, that the Commission's statements are incorrect (Case C-54/95 *Germany* v *Commission*, paragraph 35; Case C-28/94 *Netherlands* v *Commission*, paragraph 41).

The expenses by way of compensatory aid in the arable crops sector and by way of premiums for beef and veal

10 The summary report shows that, in Greece, agricultural cooperative associations (ACAs) are required to be involved in the management and payment of compensatory aid in relation to arable crops since they are responsible for the computerised processing of applications and the making of payments to all beneficiaries, whether or not they are members of the ACAs. Pursuant to a national agreement, the ACAs retain by way of fees about 2% of the amount of the aid, which infringes Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181 p. 12) and Article 1(4) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218).

11 In relation to the beef and veal sector, the summary report notes that, as with the arable crops sector, the Greek cooperative sector levies at least 2% of the beef and

veal premiums by way of reimbursement of administrative costs, thereby infringing Article 30a of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition, 1968 (I), p. 187) in the version resulting from Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49; hereinafter 'Regulation No 805/68').

12 The Greek Government argues, first, that the Commission does not have the power, in connection with the clearance of EAGGF accounts, to apply a financial correction where the Member State concerned has not complied with Community provisions. In its submission, the clearance system is preventive and corrective in character, and does not allow penalties to be imposed on Member States. Where the Commission considers that there has been failure to comply with a Community provision, it may bring an action before the Court of Justice for failure to fulfil obligations, but it does not have authority to find that failure itself and apply financial penalties to Member States.

13 It should be noted in that respect that, although the procedure laid down by Article 169 of the EC Treaty (now Article 226 EC) and the procedure for clearing EAGGF accounts are both adversarial in character, ensuring compliance with the rights of the defence and can give rise to proceedings before the Court of Justice, the two procedures are nevertheless independent of each other because they pursue different aims and are governed by different rules. In the procedure for failure to fulfil obligations, for the purpose of obtaining a declaration that the conduct of a Member State infringes Community law and of terminating that conduct, the Commission remains at liberty, if the Member State concerned has in the meantime put an end to the alleged failure, to discontinue the procedure, whereas that is not the case with the procedure for clearing EAGGF accounts. The latter procedure serves to determine not only that the expenditure was actually and properly incurred but also that the financial burdens of the common

agricultural policy is correctly apportioned between the Member States and the Community, the Commission having in this respect no discretion to derogate from the rules regulating the allocation of those burdens (Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraphs 27 and 28).

14 It follows that the Commission is under an obligation to carry out a financial correction if the expenditure in respect of which financing has been requested has not been carried out in accordance with Community rules. Such a financial correction is designed to avoid the EAGGF being burdened with amounts that have not served to finance an objective pursued by the Community legislation in question and therefore, contrary to what the Greek Government maintains, does not constitute a penalty.

15 Since, in this case, it is undisputed that retentions from the aid to be paid to the beneficiaries were made, it must be held that at least part of the expenditure in respect of which financing is requested has been used for a purpose other than one of the objectives pursued which, under Article 15(3) of Regulation No 1765/92 and 30a of Regulation No 805/68, is to ensure that the amounts to be paid on the basis of those two regulations are paid to the beneficiaries in their entirety.

16 This first argument of the Greek Government must therefore be rejected.

17 Second, the Greek Government argues that the retentions described in paragraphs 10 and 11 of this judgment are free and voluntary retentions, which are not applied to all producers. Moreover, since 1993, the retentions referred to had no longer been based on Article 2 of Greek Law No 1409/83, which had been repealed in 1992 following the reform of the Common Agricultural Policy, but arose from agreements concluded between the ACAs and their members. The retentions were not designed to cover operational or other expenditure incurred in the payment of the premiums but covered more general services provided by the associations, which, contrary to the Commission's argument, were not

entrusted with tasks of a public-service nature. In those circumstances, the Greek Government maintains that the correction laid down by Decision 98/358 is based on an erroneous assessment of the nature of the retentions made.

18 In that respect, it should be noted, first, that the national legislation applicable in the 1994 financial year authorised the making of the retentions referred to. The documents produced to the Court by the Greek Government show that Article 2 of Law No 1409/83 was not repealed until 1 December 1997 by Law No 2538/97.

19 It should also be noted that the Greek Government acknowledged at the hearing that the retentions referred to were also made on payment of aid to producers who were not members of the ACAs. Since those producers were not parties to the agreements made between the ACAs and their members, the retentions made in respect of them cannot have arisen from those agreements.

20 In consequence, that second argument cannot be accepted either.

21 Third, and in the alternative, the Greek Government argues that Community law allows retentions from premiums, as practised in Greece. In its submission, the case-law of the Court shows that retentions from aid to be paid are authorised where they represent actual expenses, correspond to expenses or dues normally provided for in other cases by national legislation, are of such a modest amount that they do not dissuade candidate beneficiaries from participating in the aid programme and do not compromise the functioning of the common organisation of the markets (Case 31/78 *Bussone* v *Italian Ministry for Agriculture and Forestry* [1978] ECR 2429; Case 233/81 *Denkavit Futtermittel* v *Germany* [1982] ECR 2933).

22 The Greek Government states that neither Regulation No 805/68, nor Regulation No 1765/92, nor any other regulation governing the functioning of the EAGGF contain express provisions prohibiting retentions from aid. In its submission, the fact that, after the delivery of the *Denkavit Futtermittel* judgment, the Community legislature adopted regulations on the Common Agricultural Policy without introducing provisions prohibiting the retention of administrative costs from premiums to be paid to producers proves that it did not intend to prohibit such retentions. The Government further submits that differences in the wording of Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 also permit the conclusion that the Community legislature did not intend to lay down a general rule prohibiting retentions from aid to be paid, but merely to prevent beneficiaries having to bear expenses with no relation to the allocation of such aid. Those two provisions show, in its submission, that the aid must be paid to the beneficiary himself and not to a third party, that it must be paid without the imposition of parafiscal charges or levies bearing no relation to the allocation of the aid, and that the functioning of the common organisation of the markets must not be hindered.

23 The Greek Government also states that the Court has held that Article 15 of Regulation No 1765/92 does not preclude a Member State from making a set-off between the sum due to a beneficiary of Community aid and unpaid debts owed to that Member State, provided it avoids any undermining of the effectiveness of Community law and ensures equal treatment between economic operators (Case C-132/95 *Jensen and Korn- og Foderstofkompagniet* v *Landbrugsministeriet* [1998] ECR I-2975).

24 In relation to those arguments, it should be noted first that Article 15(3) of Regulation No 1765/92 provides:

'The payments referred to in this Regulation are to be paid over to the beneficiaries in their entirety.'

25 Article 30a of Regulation No 805/68 provides:

'The amounts to be paid pursuant to this Regulation shall be paid in full to the beneficiaries.'

26 It is thus clear from the wording of those two provisions that the payments referred to therein must be paid to the beneficiaries 'in their entirety'.

27 It should next be observed that, in Joined Cases C-36/97 and C-37/97 *Kellinghusen and Ketelsen* [1998] ECR I-6337, paragraph 21, the Court held that those provisions prohibit the authorities in the Member States from making a deduction from the payments made or from demanding the payment of administrative fees charged for processing applications and having the effect of reducing the amount of the aid.

28 In that judgment, the Court further held that, unlike the provisions of Regulations Nos 1765/92 and 805/68 which require the payment of aid in its entirety, Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (OJ 1979 L 199, p. 1), which was at issue in *Denkavit Futtermittel*, made no provision in relation to fees for inspections to be carried out by the Member States (*Kellinghusen and Ketelsen*, paragraph 23). The same finding must apply as regards the provisions contained in the regulations which formed the subject-matter of the questions referred for a preliminary ruling which were answered in the *Bussone* judgment, paragraphs 14, 15 and 21. It follows that the *Denkavit Futtermittel* and *Bussone* judgments cannot be cited as authority in this case.

29 As for the argument that the fact that the Community legislation adopted in 1992 in the sector of the common agricultural policy does not contain any provision similar to Article 15(3) of Regulation No 1765/92 and Article 30a of Regulation No 805/68 proves that the Community legislature did not intend to prohibit the retention of administrative costs from aid to be paid to producers, it is sufficient to note that those two articles cannot be interpreted in the light of regulations not containing a provision requiring the full payment of aid to beneficiaries (*Kellinghusen and Ketelsen*, paragraph 27).

30 Finally, as regards the argument derived from the judgment in *Jensen and Korn-og Foderstofkompagniet*, that case did not concern the financing of administrative costs linked to the allocation of aid, but concerned the possibility of Member States making a set-off between, on the one hand, debts owing to them for which such set-off would normally be available, in that case tax debts and, on the other hand, amounts paid under Community law (*Jensen*, paragraph 58). Moreover, the Court held in that judgment that a set-off between compensatory payments made under Community legislation and outstanding debts payable to a Member State is not contrary to Article 15(3) of Regulation No 1765/92, on the ground that such compensation does not have the effect of reducing the amount of the aid (*Jensen*, paragraph 61). In the present case, however, the retentions in question have precisely the effect of reducing the amount of the aid, so that the Greek Government cannot validly rely on that case-law in this case.

31 Fourth, and in the alternative, the Greek Government argues that the retentions made varied as between the ACAs from 0.5% and 2% of the aid to be paid. Since the Commission was unable to determine the exact rate of correction to be applied, it should have limited itself to applying a correction rate of 1.25%, namely the average between 0.5% and 2%.

32 In that respect, the minutes of the general meetings of the ACAs, annexed to the application, show that the rate of retention used by those ACAs was never lower

than 2%. In those circumstances, the Greek Government having failed to prove its allegation, that argument must also be rejected.

33 The Greek Government states, fifth, that Law No 2538/97, which entered into force on 1 December 1997, henceforth prohibits the application of such retentions to sums paid for the EAGGF's account.

34 In that respect, it is sufficient to observe that that law did not enter into force until December 1997, and cannot therefore be taken into consideration in examining the clearance of the accounts for the 1994 financial year.

35 As the Court has not been able to accept any of the arguments of the Greek Government, the plea in law concerning expenditure in relation to compensatory aid in the arable crops sector and beef and veal premiums must be rejected.

Expenditure in relation to financial compensation granted to organisations of fruit and vegetable producers

36 The summary report shows that, on several inspections carried out by the EAGGF in Greece, deficiencies were found in the system for controlling and administering financial compensation granted to organisations of fruit and vegetable producers.

37 In particular, as regards peaches and nectarines, inspections carried out in Macedonia in August 1994 and August 1995 revealed that recognition had been granted to organisations which did not have the necessary technical facilities to market the production of their members, that none of the organisations inspected had intervention funds, and that the coefficient used for determining the withdrawal price for those fruits was incorrect.

38 According to the summary report, a further inspection was carried out the following year in the nomoi (districts) of Pella and Imathia at the premises of a number of producers' organisations to which recognition had initially been refused. That inspection revealed that the re-examination procedure by the Greek authorities could generally be considered acceptable in relation to Imathia but that, in Pella, a considerable number of organisations should not have been recognised owing to inadequacies in their technical facilities.

39 As regards citrus fruit, the summary report concludes that the Greek system of administering and monitoring the procedures for recognition of the producers' organisations shows several shortcomings. An inspection of a large organisation in the nomos of Arta, of which the Court of Auditors of the European Communities had been critical, had also revealed a number of irregularities and there was no evidence that an inquiry in respect of the withdrawal of oranges in the nomos of Arta, requested by the Commission, had been satisfactorily undertaken.

40 On the basis of those findings, the Commission decided, first, to make a correction of 10% on the whole of the amounts declared for peaches, nectarines and citrus fruits, and, second, to make a correction of 20% of the amounts declared for peaches and nectarines in the nomos of Pella.

41 The Greek Government submits, first, that those corrections are based on an erroneous assessment of the facts by the Commission. It states that, in reply to a letter from the Commission of 12 October 1994, informing it of its intention to make a correction of 50% on the expenditure connected with withdrawals of peaches and nectarines for the financial year 1994 and to extend that correction to the 1992 and 1993 financial years if strict measures to sanitise the sector were not taken during the first half of 1995, it had communicated to the Commission on 1 November 1994 a series of measures taken in 1994 in order to sanitise the sector in question. It was in reaction to those measures that, by letter of 13 December 1995, the Commission lifted its reservations concerning the 1992 and 1993 financial years. Thus, given that those measures were all adopted during the 1994 marketing year and had produced tangible results during that period, the Government maintains that the Commission committed an error by maintaining the financial correction for the 1994 financial year.

42 The Commission does not deny that, following its letter of 12 October 1994, the Greek authorities adopted certain measures towards the sanitisation of the sector in question, but it considers that those measures were not sufficient to resolve the problem of the improper recognition of the producers' organisations. Further inquiries had led it to the conclusion that the irregularities concerning the recognition of the producers' organisations, the monitoring of their operation and the existence of intervention funds persisted. The Commission contends that, on the basis of those findings, it was authorised to make a correction of 10% of the expenditure declared for the marketing years 1992 to 1994. According to the Commission, the fact that, in reaction to the Greek authorities' efforts to remedy the irregularities found, it had lifted its reservations in respect of the 1992 to 1993 marketing years did not imply a right for the Greek Government to claim the same attitude in relation to the irregularities of the 1994 financial year (Case C-55/91 *Italy* v *Commission*, cited above, paragraph 67).

43 In that respect it should be noted, first, that Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organisation of the market in fruit and vegetables (OJ, English Special Edition 1972 (II), p. 437) as amended by Council Regulation (EEC) No 3284/83 of 14 November 1983 (OJ 1983 L 325, p. 1; 'Regulation No 1035/72'), provides in Article 13 for the creation, on the initiative of fruit and vegetable producers, of producers' organisations for the

purpose of promoting the concentration of supply and the regularisation of prices at the producer stage in respect of one or more of the products referred to by the regulation and of making suitable technical means available to producer members for presenting and marketing the relevant products.

44 Under Article 13(2) of Regulation No 1035/72, Member States may grant recognition to the organisations concerned only on condition that there is sufficient evidence as regards the duration and effectiveness of their activities, in particular the tasks for the purpose of which they were constituted, and that, from the date of recognition they keep specific accounts in respect of the activities for which recognition was sought. It follows that a Member State must refuse recognition to, or withdraw recognition from, any organisation of producers which, for example, does not have adequate technical facilities for presenting and marketing the products concerned.

45 Next, it should be noted that, for the reasons stated in paragraph 9 of this judgment, it is for the Member State to produce evidence of the inaccuracy of the Commission's statements. In this case, the Greek Government limits itself to claiming in a very general manner that the Commission committed an error in maintaining the correction for the financial year 1994, but does not adduce any concrete evidence capable of calling into question the veracity of the Commission's findings on the subject of the irregularities affecting the recognition of the producers' organisations.

46 It should be added, finally, that the lifting by the Commission of its reservations concerning the expenditure by the Hellenic Republic during the 1992 and 1993 financial years does not in any way signify that the maintenance of the correction for the 1994 financial year is unjustified. On the contrary, as the previous paragraph shows, the results of the Commission's inquiries into the producers' organisations, which have not otherwise been challenged by the Hellenic Republic, constitute sufficient justification in that respect.

47 In those circumstances, the Greek Government's argument on this point must be rejected.

48 The Greek Government submits, second, that the Commission exceeded the limits of its discretion under Article 5(2)(b) of Regulation No 729/70. In that regard, it claims, first, that, where the Commission applies flat-rate corrections on the basis of the Belle Report, it must do so with moderation, a correction of 10% being justified only where there is a high risk of extensive loss for the EAGGF. Second, it argues that the Commission is required, when making the correction of the declared expenditure, to take account of the nature and seriousness of the infringement and of the financial loss caused to the Community. Third, it claims that the Commission's inquiry in the oranges sector concerned only one nomos, whereas Greek territory has 52 nomoi in total. Fourth, it observes that the Commission's inquiry in the peaches and nectarines sector concerned only 2 of those 52 nomes and that, at the time of that inspection, the Commission examined only a small number of producers' organisations, in respect of which an inspection carried out previously by the Greek authorities had already revealed certain deficiencies in applying the regulation. Fifth, it contends that the financial correction of 20% for the nomos of Pella is unjustified, since the mission of inquiry carried out by the Commission in August 1995 concerned only eight producers' organisations, recognition of which had already been challenged by the Greek authorities.

49 The Greek Government further states that directions indispensable for correct and effective implementation of the controls concerning the administration of the citrus fruits market have been given to all senior officials responsible for carrying out those controls. Those directions concerned quality control, the correct functioning of the producers' organisations and the proper procedure for withdrawal and free distribution. According to the Government, the functioning of those organisations was therefore not open to criticism, and the fact that the Commission lifted its reservations concerning the expenditure made during the 1992 and 1993 financial years was the proof of that. In the peaches and nectarines sector, similar instructions were given concerning the recognition,

structure and functioning of certain producers' organisations. In addition, a computerised file of the members of the producers' organisations had been created in order to be able to monitor their productive and commercial activity more easily.

50 As regards the alleged absence of technical facilities and intervention funds, the Hellenic Republic maintains that Regulation No 1035/72 does not require producers' organisations to have their own technical facilities, so that recognition cannot be refused to producers' organisations which rent them. Nor does that regulation specify a precise ceiling for the receipts of the intervention fund, and the mere fact that certain funds do not have the necessary capital to cover the withdrawals made is thus not capable of affecting the lawfulness of the recognition of the organisations concerned.

51 As regards, first, the irregularities concerning the recognition of the producers' organisations found by the Commission, it should be noted that they were undeniably of a certain gravity. As the Commission has rightly observed, both in the peaches and nectarines sector and in the citrus fruits sector, a large number of the organisations inspected did not have either their own or rented facilities for presenting and marketing the production of their members and did not have intervention funds to finance the withdrawals of certain products. As stated in paragraph 45 of this judgment, the Greek Government has not produced any evidence capable of calling into question the veracity of those findings.

52 As regards, second, the question whether the inspections carried out by the Commission were sufficiently representative, it must be observed that, as the Commission has argued without being contradicted by the Greek Government, those inspections concerned, in relation to the peaches and nectarines sector, all the producers' organisations having their seat in the nomoi of Pella and Imathia, which account for 95% of production of peaches and nectarines on Greek territory and for 93.5% of the compensatory payments made in that respect. In

the citrus fruits sector, the inspections concerned the nomoi of Argolida, Arta and Lefkada, the production of which gave rise to 74% of the compensatory payments made in that sector on Greek territory for the financial year 1994. Having regard to those figures, the representative nature of the inspections made by the Commission and the extent of the irregularities cannot reasonably be cast in doubt.

53 That finding also applies to the inspections carried out in the nomos of Pella. The mere fact that, on a second inspection, the Commission inspected only organisations the recognition of which had already been challenged by the Greek authorities is in no way capable of invalidating the Commission's finding at the conclusion of that inspection, namely that 48% of the producers' organisations established in that nomos did not have technical facilities for the marketing of fruits.

54 Moreover, the adoption of directions addressed to officials responsible for the controls prior to the recognition of the producers' organisations and the creation of computerised files on the members of the producers' organisations do not guarantee that the organisations recognised will in fact fulfil, at the time when recognition is granted to them or subsequently, all the criteria required for that recognition. Those arguments cannot therefore be accepted.

55 It should also be noted, first, that the Commission did not limit itself to finding that a certain number of organisations did not have their own technical facilities but stated that a large number of producers' organisations did not have 'either their own or rented facilities' and that, moreover, it did not observe that the compulsory intervention funds had insufficient receipts but pointed out that those funds were often non-existent.

56 In the light of those considerations, it is apparent that the deficiencies found by the Commission concerned the execution of the essential controls designed to

ensure the lawfulness of the expenditure in the area concerned, so that the Commission might reasonably conclude that in this case there was a risk of widespread losses for the EAGGF. Therefore, the correction of 10% made by the Commission does not appear unjustified.

57 As regards the financial correction applied for the nomos of Pella, it should be noted, first, that, according to settled case-law, the Commission may refuse to allow all the expenses under a budgetary heading to be charged to the EAGGF where it finds that sufficient control mechanisms do not exist (Case C-45/97 *Spain* v *Commission* [2000] ECR I-5333, paragraph 24), and, moreover, that, in the Belle Report, the Commission expressly reserved for itself the possibility of applying a correction rate higher than 10% in exceptional circumstances. Having regard to the extent and the seriousness of the deficiencies in the essential controls found in the nomos of Pella, the correction of 20% made by the Commission does not appear to be unjustified.

58 The plea concerning expenses by way of financial compensation granted to fruit and vegetable producers' organisations must therefore be rejected.

The expenses in relation to the wine sector

Corrections in respect of the permanent abandonment of areas under vines

59 The summary report shows that, on a mission of inspection carried out in September 1995, the Commission's services found that the system established by

the Greek authorities for monitoring the permanent abandonment of areas under vines was not sufficient to offset the lack of a reliable system for identifying and measuring areas, such as a vineyard register or a land register.

60 The summary report states that measurement of several parcels by the Commission's services showed that the estimates of the national inspectors were, on average, 10% higher than the actual areas. In addition, those services were unable to obtain any information on the method adopted by the national authorities in order to determine the area of the parcels and it transpired that no measuring was carried out after grubbing up of the vines.

61 The report also indicates that the checks revealed discrepancies between production declarations and the recognised yields of the grubbed up parcels, the premiums for permanent abandonment of areas under vines having to be calculated on the basis of the yield of the vines of the parcel grubbed up and not on the basis of the average yield of a given variety in a nomos. The inspection also showed that the vines were not grubbed up in accordance with Community provisions.

62 As a result, the Commission disallowed 8.64% of the expenditure in relation to the permanent abandonment of areas under vines.

63 According to the Greek Government, that financial correction is unjustified, since the system of monitoring and cross-checking which it has set up in order to compensate for the lack of a vineyard register on its territory is perfectly effective and reliable.

64 The Greek Government states that on-the-spot checks, which cover 100% of the documents submitted, are entrusted to specialised agricultural experts and are carried out both before and after the grubbing up of the vines. Those checks concern the area, the productivity and the yield of the parcels concerned and their results are displayed in the premises of the local administration. That putting on display enables objections to be lodged. Objections are examined at first instance by a committee, composed of three members, which, before the grubbing up, carries out an on-the-spot check in the absence of the first investigating officer. Provision is also made for an action before an appeals committee, which then carries out an administrative investigation and an on-the-spot check. Grubbing up is followed by a fresh on-the-spot check and a new measuring of the area, together with a comparison of all the data. That last check is carried out by the agricultural expert who made the check before the grubbing up of the vines.

65 As regards the findings made on the subject of the identification of parcels and the measuring of the areas, the Greek Government claims that the draft Greek vineyard register requires the holder of a parcel to state whether he works it alone or in conjunction with another, or whether that parcel is let. In the latter case, a winegrower wishing to benefit from the system of permanent abandonment of areas under vines is required to attach to his application supporting documents concerning the ownership of the parcel. Thus, the competent authorities are always able to identify the owner of a given parcel. The Greek Government states that the problem of measuring parcels, referred to in the summary report, is due to the fact that, first, there are no clearly-defined title deeds in Greece and, second, the deeds which do exist are not accompanied by plans and indicate the area of the parcels only by an approximate number of 'stremmata' (unit of area corresponding to 10 ares).

66 As regards the discrepancy between the production declaration and the recognised yield of the parcels grubbed up, the Greek Government claims that the average yield of those parcels was calculated by reference, in particular, to the age of the vines, the fructification method of each variety, the strength of the vines and irrigation possibilities. The average yield for the nomos was not taken into

consideration when calculating the various premiums, and a production declaration was used to assess the maximum yield taken into consideration for calculating premiums only where all the parcels of an applicant were to be grubbed up.

67 As regards the Commission's arguments in relation to the inadequacy of the inspections made by the national authorities, the Greek Government claims that the inspections were strengthened during the financial year 1993/94. Following a recommendation of the EAGGF, additional inspections were instituted; they concerned a cross-section of 1% of the whole of the inspections carried out in relation to the application files for obtaining premiums for the permanent abandonment of areas under vines.

68 In the alternative, the Greek Government maintains that the financial correction of 8.64% is arbitrary and unjustified, since the areas in respect of which premiums for permanent abandonment were granted exceeded the vineyard areas actually grubbed up by only 3.38%.

69 It must be observed, first, that the system of inspection described by the Greek Government in this case does not differ in any way from the system of inspection which it referred to in Case C-46/97 *Greece* v *Commission* [2000] ECR I-5719. In paragraph 38 of the judgment in that case, the Court held that that system of controls lacked the objectivity required by Community legislation. As the Greek Government has not adduced any new evidence in that respect, its argument on that point must be rejected.

70 Next, it should be borne in mind that, under the Court's case-law, a Member State whose controls carried out in the context of the application of the rules for the functioning of the 'guarantee' section of the EAGGF have been considered by

the Commission to be non-existent or insufficient cannot rebut the Commission's findings without supporting its own allegations by evidence of a reliable and operational supervisory system (Case C-253/97 *Italy* v *Commission*, cited above, paragraph 7).

71 It is true that, in this case, the Greek Government challenges the Commission's findings on the subject of the identification of the parcels, but it does no more than state that the system of locating parcels applied in Greece allows the owners of parcels to be identified, and does not therefore provide any evidence capable of calling into question the truth of those findings.

72 Similarly, as regards, first, the discrepancy between the production declaration and the recognised yield of the parcels concerned, and, second, the inadequacy of its controls, the Greek Government merely alleges, respectively, that the average yield of the nomos is not taken into consideration when calculating the premiums for permanent abandonment, and that the rate of supplementary inspections carried out is rather high.

73 Moreover, the Greek Government has not rebutted the Commission's findings concerning the average over-assessment by 10% of the areas under vines, grubbing up not in conformity with Community legislation, and the lateness of the checks carried out after the grubbing up of the vines.

74 Finally, as regards the rate of the financial correction applied, it must be found that the Greek Government has not in any way demonstrated that the calculation made by the Commission was irregular.

75 In those circumstances, the financial correction of 8.64% of the expenses declared in relation to the permanent abandonment of areas under vines cannot be called into question.

Corrections in relation to the compulsory distillation of table wine

76 The summary report shows that the financial correction in relation to the compulsory distillation of table wine has its origin in the clearance of EAGGF accounts for the 1991 financial year. On the occasion of that clearance, the Commission found that certain Member States were not complying with their distillation obligation and were systematically underestimating stocks at the end of the year. Excess stocks at the end of the year disturbed the operation of the common organisation of the market in the wine sector and resulted in increased costs for private storage in the following year.

77 According to the summary report, the quantity actually distilled in Greece in 1994 was 135 569 hl less than the quantity required to be distilled. The Commission therefore made a financial correction calculated in the same way as in previous years, namely on the basis of storage costs for the wine not distilled. The correction applied amounted to GRD 172 443 768.

78 In that respect, the Greek Government argues, first, that there is no legal basis for applying the financial correction in question. In its submission, the legislation on compulsory distillation, which binds only producers, does not oblige Member States to obtain the total distillation of the quantity laid down. Moreover, Member States cannot be held financially responsible for faults committed by producers whom it would be impossible to compel to distil part of their

production, at the risk of infringing the fundamental principle of economic freedom.

79 The Greek Government argues, second, that financial corrections may be applied only in cases where the EAGGF has suffered financial loss. That was specifically not the case here, since, in the first place, the EAGGF had been absolved from paying the sums to which the producers would have been entitled if they had all complied with their obligations, and, second, no undue premium had been paid. Finally, the Commission overestimated the quantities to be submitted for compulsory distillation.

80 It should be noted, first, that, according to the 46th recital in the preamble to 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), it is incumbent upon each Member State to supervise and implement compulsory distillation.

81 Moreover, according to the case-law of the Court, Article 8(1) of Regulation No 729/70 imposes on Member States the general obligation to take the measures necessary to satisfy themselves that the 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 (Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 45). 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-8/88 *Germany* v *Commission*, cited above, paragraph 20).

82 It must therefore be held that, contrary to what the Greek Government has argued, the Commission may validly apply a financial correction in relation to the compulsory distillation of table wine.

83 Next, it should be emphasised that where, in the case of infringement of the rules on the common organisation of agricultural markets, the Commission applies such a financial correction, it is not required to prove the existence of loss suffered by the EAGGF, but to establish the probability that harm was caused to the Community budget (Case C-232/96 *France* v *Commission* [1998] ECR I-5699, paragraph 56).

84 As regards infringement of the rules on the common organisation of the markets, it should be noted, first, that there is no dispute that the quantity actually distilled on Greek territory in 1994 was 135 569 hl less than the quantity required, and, second, that the Greek authorities have not been able to supply a list of the producers inspected or of the producers who have not submitted the fixed quantity for compulsory distillation.

85 As regards the assessment of the potential risk to the EAGGF resulting from failure to distil the required quantity of wine, it should be borne in mind that, according to the case-law of the Court, the Commission is authorised to calculate that risk on the basis of the wine remaining in storage (Case C-253/97 *Italy* v *Commission*, cited above, paragraph 96). Moreover, the Greek Government has not adduced any evidence capable of calling into question the accuracy of the Commission's calculations.

86 Finally, as is clear from the case-law, the Commission cannot be accused of overestimating the quantities to be submitted for compulsory distillation where the harvest estimates on which the Commission relies when making its calculations fall within the sole competence of the producers and the Member State (Case C-253/97 *Italy* v *Commission*, cited above, paragraph 95).

87 In the light of the above considerations, the financial correction of GRD 172 443 768 in relation to the compulsory distillation of table wine appears to be justified.

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

Costs

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

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. **Dismisses the application;**

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

Gulmann Skouris Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 11 January 2001.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber