OPINION OF ADVOCATE GENERAL LA PERGOLA
delivered on 17 April 1997 *

Introduction

1. The Hellenic Republic (hereinafter the 'applicant') has brought an action under Article 173 of the Treaty seeking the partial annulment of Commission Decision 94/871/EC of 21 December 1994 (hereinafter 'the decision') on the clearance of the accounts presented by the Member States in respect of the expenditure for 1991 of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section (hereinafter 'the EAGGF' or 'the Fund'). [1] The Hellenic Republic is challenging that part of the decision that disallows expenditure it incurred as a result of financing intervention measures in the olive oil, cotton and tobacco sectors.

2. The summary report [2] explains that the decision is based on the fact that some of the expenditure declared by the Hellenic Republic failed to meet the requirements laid down by Community legislation and could not therefore be charged to the Fund. The complaints against the applicant relate to a number of shortcomings in the system set up by the Greek authorities to monitor compatibility with the criteria laid down by the Community rules on financial intervention within the ambit of agricultural policy and are summarised below, indicating the sums involved: [3]

A) Aid for olive oil production (paragraph 4.7.2.1).

— Shortcomings in the checking of expenditure.

Correction — DR 2 465 573 475.

B) Aid for cotton production (paragraph 4.7.5.1).

Inadequacy of the checks on the measure.

Correction — DR 16 735 309 160.

* Original language: Italian.

1 — OJ 1994 L 352, p. 82.

2 — Summary report concerning the clearance of the EAGGF Guarantee Section accounts for 1991, Commission Document of 21 December 1994, Doc. VI/320/94, fin.

3 — Originally the application also concerned that part of the decision which disallowed expenditure incurred in the milk sector. In its reply, the Hellenic Republic confirmed that it had informed the Court of its decision to withdraw part of its claim; subsequently, it announced officially at the hearing that it was withdrawing the remainder of that part of the application.

C) Tobacco

C.1) Irregularities in premium payment (4.9.2.1).

Correction — DR 3 531 558 038.

C.2) Securities for premiums for leaf tobacco (paragraph 4.9.2.2).

Correction — DR 2 705 095.

C.3) Reduction of premiums and intervention prices where the maximum guaranteed quantities are exceeded (paragraph 4.9.2.3).

Correction — DR 4 922 442 527.

C.4) Calculation of the final correspondence (paragraph 4.9.2.4).

Correction — DR 1 993 586 687.

3. The Hellenic Republic considers the decision to be invalid for reasons concerning both the establishment of the facts and the Commission's assessment. The Court of Justice is therefore being asked to annul that part of the decision relating to the sectors challenged in this action and the corresponding amounts and, in addition, to order the Commission to pay the costs of the proceedings.

The Commission, meanwhile, contends that the Court should dismiss the application and order the Hellenic Republic to pay the costs.

4. Now that I have described the items of expenditure in dispute and the claims of the parties, some general points relevant to consideration of the case have to be made. I shall begin by setting out the main elements of the general legislative framework and go on to explain the criteria that have been laid down for quantifying the expenditure that has been disallowed. Finally, I shall consider the principles laid down by the Court of Justice in relation to the burden of proof in this area. [4]

General legislative framework

5. Article 3(1) of Regulation (EEC) No 729/70 [5] provides that the Fund is to finance

4 — In order to make it easier to understand the reasoning behind the individual grounds of challenge, I have, however, decided to structure my Opinion according to the sectors of activity in issue. I have therefore set out, at the head of each section: the legislative provisions specific to each of the relevant agricultural sectors; the arguments put by the parties — or rather, by the applicant, given that, pursuing what appears, regrettably, to be increasingly becoming its established practice in this area, the Commission has failed to deal in its observations with many of the points at issue — and, finally, their assessment in law. See, on that point, what Advocate General Fennelly had to say in his Opinion in Case C-50/94 *Greece* v *Commission* [1996] ECR I-3334, paragraph 12.

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

intervention undertaken, according to Community rules, within the framework of the common organisation of the agricultural markets. Before the end of the year following the year in question and after consulting the Fund Committee, the Commission is to clear the annual accounts presented by the national bodies authorised to make payments in respect of such activities (Article 5). [6] That decision is based on information that the Commission obtains either directly or through the Member States. Consequently, a time-limit is set annually for the Member States to provide the additional information required for the final decision. For the year in question, the deadline was set at 31 January 1994. [7]

6. The financial consequences of any irregularities are borne by the Community, *with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States*, while the sums recovered are to be paid over to the paying authorities or bodies and deducted by them from the expenditure financed by the Fund. [8]

7. Those legislative requirements are set out in detail in Regulation (EEC) No 595/91, [9] which defines the obligations and powers of the Member States and governs relations between them bearing in mind that 'in order to prevent irregularities, cooperation between the Member States and the Commission should be reinforced'. [10] In that context (Article 6(1)), where the Commission considers that irregularities have taken place, it is to inform the Member State concerned thereof and the latter is to hold, at the earliest opportunity, an inquiry in which officials of the Commission may take part.

The criteria for quantifying the expenditure to be disallowed

8. The act whereby, on completion of the clearance procedure, the Commission decides to disallow expenditure improperly incurred, ought not to be discretionary in terms of the actual amount disallowed. However, it often happens that the information that has been collected — directly or indirectly — does not make it possible to arrive at an exact figure, and so that amount is determined by reference to the gravity of

6 — Supervision is crucial in a system organised on two levels: at national level, where monies from the Fund are actually distributed, and at Community level, where decisions on the allocation of resources are made. The regulation takes this fully into account: see, in particular, the seventh and eighth recitals in the preamble.

7 — Commission Decision of 21 January 1994 setting a time-limit for the communication of additional data in connection with the clearance of EAGGF, Guarantee Section, accounts, for the 1991 financial year, Doc. VI/4480/93.

8 — Article 9(1) provides that: 'Member States shall make available to the Commission all information required for the proper working of the Fund and shall take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot. Member States shall communicate to the Commission provisions laid down by law, regulation or administrative action which they have adopted for the application of legal acts of the Community relating to the common agricultural policy in so far as those acts have financial consequences for the Fund.'

9 — Council Regulation of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11).

10 — See the tenth recital in the preamble. Under Article 2, Member States are to communicate to the Commission: the provisions laid down for the application of the measures provided for in Article 8(1) of Regulation (EEC) No 729/70; a list of the irregularities discovered when exercising supervision (Articles 3 and 4); and a list of the provisions adopted in response to the irregularities discovered.

the failure to respect the rules and the damage allegedly caused to the Community budget: consequently, it is a decision that involves a degree of discretion.

9. The exercise of that decision-making power has therefore been the subject of a Commission measure that was considered in detail by Advocate General Fennelly in his Opinion in Case C-50/94. [11]

It was pointed out that, once failure to comply with the Community rules has been ascertained, the decision concerning the rate of correction to be applied to the accounts that have to be cleared must flow directly from an estimation of the risk. The Commission described various pre-existing methods of risk assessment, including the method applicable to situations in which there is insufficient information available to justify extrapolation, [12] and proposed three rates of proportionate reduction in reimbursement, namely 2%, 5% and 10%, linked to the different degrees of failure to carry out the requisite supervision. The 10% rate was to apply where the failure concerned the whole, or the essential elements, of the system of supervision, or the application of essential checks designed to ensure that expenditure was lawful, so that a serious risk of overall losses for the EAGGF could reasonably be assumed to exist. [13]

The principles applicable to the burden of proof

10. In cases where a Member State is seeking the annulment of a Commission decision on the clearance of EAGGF accounts, the criterion that has been developed by the case-law of the Court of Justice in relation to the burden of proof is particularly exacting in respect of the applicant. [14]

As stated in the judgment in *Netherlands* v *Commission*, the Commission is not required to provide exhaustive proof of the inaccuracy of the information supplied by the Member States but to provide proof in support of the serious and reasonable doubts it has expressed in relation to the figures supplied by the national authorities. [15] The

11 — Case C-50/94 (cited in footnote 4 above), paragraph 4. The Advocate General pointed out on that occasion that, by decision of 31 July 1992 [COM(92) PV 1116], an internal inter-service group was set up within the Commission, charged with developing a methodological approach in respect of Member States that had incorrectly applied Community rules. The guidelines thus established were subsequently approved by the Commission and the representatives of the Member States on the EAGGF Committee.

12 — Clearly, in cases of that nature where the information is unreliable, a rate of reimbursement calculated on the basis of extrapolation by reference to the number of checks actually carried out would, (almost) inevitably, lead to an inaccurate assessment of probable losses to the Fund.

13 — Furthermore — and this, as we shall see, is an important point in this case — in exceptional circumstances, a rate of correction in excess of 10% may be considered appropriate.

14 — The requirement that a uniform test and uniform criteria should be applied derives from the objective of Regulation No 729/70. If the aim is to guarantee conditions of equality among traders from the different Member States, this can be achieved only if the competent authorities interpret the relevant provisions by reference to the same criteria. See Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, paragraph 9.

15 — Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 17.

Court went on to state that this was a solution dictated by the fact that it is the State which has the best opportunities of collecting and verifying the information needed for the clearance of EAGGF accounts, and it is therefore for the State to furnish exhaustive proof of the accuracy of its own information as well as, if necessary, of the inaccuracy of the Commission's calculation.

11. That approach is clear enough: in relation to the clearance of accounts, the Commission is entitled to draw reasonable inferences from the information it possesses, whether it has been provided by the Member States or obtained as a result of its own investigations. The Court will not annul a Commission decision withholding reimbursement of declared expenditure simply on the basis of the *contrary assertion* of a Member State, or even on the strength of serious doubts raised by the evidence adduced by a Member State. In short, as pointed out by Advocate General Fennelly in his abovementioned Opinion: 'The aggrieved Member State must, pursuant to the principle *actori incumbit probatio*, [16] prove with at least a reasonable degree of certainty that the Commission has erred.' [17]

12. That principle has been expressly set out in cases — similar, as we can see, to the instant case — in which the Commission had to deal not so much with specific and clearly-defined failures to comply with the rules as with the general lack of an effective system of supervision and control. In those circumstances, as the Court has ruled, the Commission is right to draw, from certain specific cases, inferences for the whole of the sector in question. [18]

Having made those three general points, I now turn to the substance of the applicant's complaints.

Aid for olive oil production

The relevant provisions

13. The basic rules governing the olive oil sector are contained in Regulation No 136/66/EEC, [19] which provides for a system of administrative intervention in the sector designed to achieve a constant balance between supply and demand and thus prevent irregularities in production.

16 — That principle had already been mentioned by Advocate General Mischo in his Opinion in Case C-281/89 *Italy* v *Commission* [1991] ECR I-354, point 18.

17 — See the abovementioned Opinion, point 16; see also the Opinion of Advocate General Gand in Case 8/65 *Acciaierie e Ferriere Pugliesi* v *High Authority* [1966] ECR 1.

18 — Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraphs 41 and 42. See also the Opinion of Advocate General Van Gerven in that case (point 30). For a thorough analysis of the rules in the agricultural sector, paying particular attention to those aspects of supervision linked to the organization of the market and the impact on the burden of proof, see the Opinion of Advocate General Van Gerven in Case C-55/91 *Italy* v *Commission* [1993] ECR I-4813, p. I-4834.

19 — Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1966, p. 221).

14. Regulation No 2261/84 lays down general rules on the granting of aid for the production of olive oil and to olive oil producer organisations. [20]

The priority attaching to the issue of supervision is not only apparent from the preamble [21] but is also made clear in the individual provisions of the regulation. Within the structure established by the regulation, the legality of transactions is verified at various stages.

In the case of producers belonging to an *organisation or association*, it is that body (which submits the aid applications to the State in question on behalf of its members) that is required to make on-the-spot checks [22] and establish that the file submitted is consistent with the provisions laid down by regulation. [23]

According to Article 10, the associations of producer organisations governed by Article 20c(2) of Regulation No 136/66 [24] are to coordinate the activities of the organisations of which they are composed, ensure that those activities accord with the provisions of the regulation and directly verify the manner in which the checks have been carried out. [25]

In the case of independent producers, who are not therefore members of a producer organisation, those checks must be carried out by the *Member State concerned*. [26]

Article 14(1) requires the Member States generally to apply 'a system of checks to ensure that the product in respect of which aid is granted is eligible for such aid' and Article 14(2) lays down what may be considered the cornerstone of the system by providing that: 'Producer Member States shall

20 — Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations (OJ 1984 L 208, p. 3).

21 — The thirteenth recital in the preamble, for example, reads: 'in order to guarantee that the aid is granted only in respect of oil which qualifies therefor, provision should be made for an appropriate system of administrative checks'; according to the fifteenth recital: 'detailed and effective checking and verification [is] difficult; it is necessary [to resolve those difficulties] by setting up in each Member State a computerised file containing all the information needed to facilitate checking and the prompt detection of irregularities'. But see also the fourth, sixth, seventh, eighth and fourteenth recitals.

22 — Articles 6(1), 8(1) and 10 of Regulation No 2261/84, as amended by Council Regulation (EEC) No 3500/90 of 27 November 1990 (OJ 1990 L 338, p. 3).

23 — Article 6(1) of Regulation No 2261/84, as further defined by Article 4(2) of Commission Regulation (EEC) No 3061/84 of 31 October 1984 laying down detailed rules for the application of the system of production aid for olive oil (OJ 1984 L 288, p. 52).

24 — As amended by Council Regulation (EEC) No 1413/82 of 18 May 1982 amending the abovementioned Regulation No 136/66 (OJ 1982 L 162, p. 6).

25 — Article 10 of Regulation No 2261/84, as amended by Regulation No 3500/90.

26 — Article 14(4) of Regulation No 2261/84, as further defined by Article 10(2) of Commission Regulation (EEC) No 3061/84, as amended by Article 1(5) of Commission Regulation (EEC) No 98/89 of 17 January 1989 (OJ 1989 L 14, p. 14).

verify the activities of each producer organisation and association and, in particular, that the checking operations have been carried out by these bodies.' [27]

15. The rules governing the exercise of supervision provide for a twofold mechanism: the Member States are to establish and regularly update a *register of olive cultivation* to provide the information needed to ascertain potential production and guarantee, more generally, the improved operation of the aid system; [28] they are then required to draw up and keep up-to-date permanent *computerised files of olive and olive-oil production data* to be used by the Member States *to guide* the checking operations *to be carried out.* [29]

The matters at issue

16. The disallowance of expenditure in the olive oil sector is based on a number of criticisms which the Commission has directed at the applicant: failure to set up the register of olive oil cultivation; failure fully to computerise the files of production data; failure by the national monitoring agency to carry out on-the-spot checks; and inadequacy of the checks carried out by the producer organisations.

The summary report goes on to describe further shortcomings: the Agricultural Bank of Greece is said to retain the aid allocated to olive growers who die during the marketing year; 2% of the total aid is withheld to finance the insurance system to protect farmers against risks.

As a result of the structural inadequacy of the system of supervision, the Commission disallowed 10% of the total expenditure incurred.

27 — The percentage checks which the Members States have to carry out in regard to producers who are not members of a producer organisation amount to 1% in the zones where the basic data contained in the register of olive cultivation are available, and 4% in the other zones. The checks carried out by the producer organisations referred to in the second indent of Article 6(1) are to cover 5% of the crop declarations submitted by each organisation. See Articles 10(2) and 4(2) of the abovementioned Regulation No 3061/84.

28 — Article 1 of Council Regulation (EEC) No 154/75 of 21 January 1975 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1975 L 19, p. 1). Commission Regulation (EEC) No 2276/79 of 16 October 1979 laid down detailed rules for the drawing-up of a register of olive cultivation in the Member States producing olive oil (OJ 1979 L 262, p. 11). The regulation was subsequently amended on a number of occasions. See Commission Regulation (EEC) No 1279/89 of 10 May 1989 (OJ 1989 L 127, p. 24).
As far as the time-limits for implementing the register of olive cultivation are concerned, specific rules for Greece were laid down in Council Regulation (EEC) No 3453/80 of 22 December 1980 (OJ 1980 L 360, p. 15). These provided that the time-limits of two and six years respectively, laid down for the implementation of the register of olive cultivation as from the date of entry into force of the abovementioned Regulation No 154/75, were to run from 1 November 1982 (Article 1). That set the time-limit for implementing the register of olive cultivation in Greece at 31 October 1988.
One further point: on closer scrutiny it would be more appropriate to consider it a land-use survey rather than a register. Aerial photographs of the olive-producing area, considered the most reliable method of obtaining the information, are used to draw up land-use maps showing the olives used for oil production. That information is then compared with the production declared by the olive producers.

29 — See Articles 16(1) and 14(5) of the abovementioned Regulation No 2261/84. The deadline for setting up the computerised files was set at 31 October 1990 (see Article 11(1) of Commission Regulation No 3061/84, as amended by Article 1(7) of Commission Regulation No 98/89, also cited above).

The position of the Hellenic Republic

17. The Hellenic Republic disputes each of the points contained in the summary report.

18. As regards the failure to set up the register, the applicant reiterates the arguments put forward in Case C-50/94, claiming that it was objectively impossible for it to do so. That omission was, it maintains, the result of a failure on the part of the Commission; consequently, responsibility cannot be imputed to the applicant. [30]

19. However, as regards the alleged failure to set up computerised files, the applicant claims that this complaint is based on a factual error. Such files have been in existence since 1985. Furthermore, according to the applicant, where checks prove to be inadequate, additional verification is carried out by the Ministry of Agriculture, the producer organisations and the national agency responsible for monitoring aid for olive oil production.

20. According to the applicant, the allegation that the checks carried out by the competent agency were inadequate is also inaccurate. That agency carries out checks on the basis of an annual work schedule that is periodically adjusted in the light of the reported risks of abuse or fraud. [31] The Hellenic Republic refers to a number of details concerning the checks carried out during the 1991/92 marketing year.

21. As regards the alleged inadequacy of the checks carried out by the producer organisations and the consequent granting of unjustified premiums, Greece contends that the Commission has failed to take into account the fact that those organisations possess comprehensive data on the number of trees used for olive-oil production and that such data is checked by local organisations. [32]

30 — The Hellenic Republic claims that on 28 December 1988, in compliance with the provisions of Commission Regulation (EEC) No 586/88 of 3 March 1988 (OJ 1988 L 57, p. 18), it transmitted to the Commission a programme of trials for the establishment of a register of olive cultivation. Subsequently, on 30 October 1989, the Ministry of Agriculture asked the Commission for information relating to the approval of the programme. On 21 June 1991, the Commission proposed to the Ministry of Agriculture that a 'pilot' scheme be carried out before undertaking the main project. A tendering procedure was thus set in motion; during that procedure, the Commission allegedly replied to a query from the Greek Government of 16 July 1992 concerning the state of progress that tendering procedures for the scheme took time. The Commission was therefore apprised of the problem at the outset.

31 — The programme is drawn up on the basis of Article 3 of Commission Regulation (EEC) No 27/85 of 4 January 1985 laying down detailed rules for the application of Regulation (EEC) No 2262/84 laying down special measures in respect of olive oil (OJ 1985 L 4, p. 5).

32 — The applicant also discusses two further aspects of the Greek system to which the summary report indirectly refers. It acknowledges the existence of the practice whereby the Agricultural Bank of Greece withholds the aid payable to olive growers who die during a marketing year, but claims that this is a legitimate practice. The aid is a financial advantage payable to those beneficially entitled to the estate of the farm owner. Since the process of establishing succession is not a rapid one, the Bank is obliged to withhold all of the aid in order to be ready to disburse it to the lawful heirs. Furthermore, the applicant claims that the 2% deduction allocated to the Agricultural Insurance Office is legal and compatible with Community rules since it meets the need to fund that body which is responsible for awarding compensation to producers affected by natural disasters. In any event, that deduction is made only once the purpose for which the aid was disbursed has been achieved.

The Commission's position

22. The Commission notes that the Court has already considered the olive oil sector in its judgment in Case C-50/94. Furthermore, the applicant disputes neither the absence of a register of olive cultivation nor the fact that the computer files have not been properly set up; nor does it deny that the conventional checks are inadequate. The Commission further points out that its own services have reviewed the entire procedure for managing and monitoring aid for olive oil production. According to the Commission, that review brought to light a series of shortcomings to which it drew the attention of the Greek authorities: viewed objectively, the number of staff responsible for monitoring the activity of the olive producers and producer organisations was inadequate, and the competent national bodies had failed to draw up reports on the checks carried out.

Substance

Register of olive cultivation and computerised data files

23. The Court has already given a ruling on the operation of the olive oil sector in Greece during 1990 in its judgment in *Greece* v *Commission*. [33] That is a factor which has to be taken into consideration in reaching a decision in this dispute. As stated in the summary report, the current shortcomings cannot be disassociated from those already established: 'the system audit undertaken last year and continued this year shows that no significant change has taken place in the organisation of checks on the aid: *the shortcomings publicised before still persist*' (paragraph 4.7.2.1; emphasis added).

24. That state of affairs is confirmed in relation to the obligation to set up both the register of olive cultivation and the computerised files.

25. Firstly, the argument that it was objectively impossible to set up the register of olive cultivation was specifically rejected by the Court in its abovementioned judgment. [34]

In that case, the Court also ruled in relation to the computerised files that 'no justification could be given for the delay in establishing the files' (paragraph 41). That conclusion

33 — Case C-50/94, cited in footnote 4 above.

34 — Paragraph 40 reads as follows: 'With respect to the register of olive cultivation, it was not until its letter of 28 December 1988, that is, after the expiry of the period laid down by Regulation No 3453/80, that the Greek Government submitted to the Commission a programme of trials for establishing the register. The representative of the Greek Government confirmed at the hearing that the difficulties in establishing the register were not notified to the Commission until after the expiry of the prescribed period. The fact that after that date the Commission assisted the Greek Government in its efforts to fulfil its obligations cannot, in those circumstances, prove that it was absolutely impossible to establish the register by the required date, since the Greek Government has not put forward any argument relating to the period before 31 October 1988.'

can and should apply to the present dispute. The applicant has simply claimed that the oil mills, producer organisations and crop declarations have been recorded on computer file and that the applications have 'to a large extent' been computerised but has not, as required by the abovementioned judgment of the Court, provided proof that effectively refutes the results of the checks carried out by the Commission or justifies the objective delay in meeting the statutory time-limit. [35]

26. That assessment is not altered by the applicant's claims concerning the additional checks carried out by the Ministry of Agriculture, the producer organisations and the competent agency. No evidence has been furnished in support of those claims. For the same reasons as those set out above, they cannot therefore invalidate the Commission's assessment which is based on an objective review of the supervision exercised.

27. In the light of those facts, I have no choice, in this case, but to endorse the finding of the Court in its abovementioned judgment: 'In those circumstances, the Greek Government has not shown that the delay in establishing the register of olive cultivation and the computerised files was due to absolute impossibility' (paragraph 42).

Failure of the competent agency, government officials and producer organisations to exercise proper supervision

28. As I have said, the Hellenic Republic rejects the conclusions reached in the summary report on the basis of certain data concerning the checks carried out by the agency during the 1991/92 marketing year. [36] According to the Greek Government, contrary to the impression given in the summary report, the number of checks carried out on the activities of the producer organisations

35 — I would point out here that the summary report (paragraph 4.7.2.1) states that the process of computerising data was interrupted for several months because of a shortage of trained staff and that the Greek authorities are not able to set the deadline for the completion of the project and for user access to the files.

36 — The requirement that the Member States are to establish a control agency was provided for in Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil (OJ 1984 L 208, p. 11). The rules, laid down in order to provide the national authorities with administrative structures able to ensure the timely and effective exercise of the controls required in the olive oil sector (second and third recitals in the preamble), accorded the agencies a variety of responsibilities in the sector. These include responsibility for establishing that the activities of the producer organisations and their associations are compatible with the Community rules, and responsibility for carrying out the checks referred to in Articles 14 and 15 of the abovementioned Regulation No 2261/84. Under Article 1(4), moreover, the Member State concerned is required to draw up, acting on a proposal from the agency, a work schedule designed to ensure that the production-aid scheme is correctly applied. The schedule, together with the provisional budget, is transmitted to the Commission which may request the Member State to make changes to the documents. In addition to setting the time-limit for the establishment of the agency at 31 March 1985, the implementing provisions, contained in the abovementioned Commission Regulation No 27/85, set out in detail the agency's work schedule.
Verification by the Ministry of Agriculture in fact consists in checking the declarations made by the producers in order to determine the accuracy of their applications for aid.

and each association, the oil mills and individual producers affiliated to an organisation was significantly higher than the percentages prescribed by the Community rules.

29. The national control agency draws up an annual work schedule which is submitted to the Commission for approval. The checks carried out by the Fund revealed that the supervision actually exercised fell substantially short of the level indicated by the Hellenic Republic in its work schedule. In dismissing that conclusion, the applicant has provided no evidence of the checks actually carried out and has simply relied on undocumented data to support its claim. In my opinion, an argument that relies on data of that nature is not capable of overturning the results of the EAGGF inspections and cannot be upheld.

30. A further point. The data put forward by the applicant in relation to the *number* of checks carried out by the agency are wholly irrelevant to the actual issue raised by the summary report, namely the *quality* of checks in Greece. The inspections carried out reveal that though monitoring by the staff of the Ministry of Agriculture does exist, it is only very superficial. In practice, there are just one or two individuals responsible for vetting thousands of individual files (summary report, paragraph 4.7.2.1), which would not seem consistent with the kind of effective monitoring required under the Community legislation. [37] Nor do I consider that the fact, cited by the applicant, that the producer organisations hold comprehensive data on the number of trees, has any bearing on the assessment made. That claim cannot rebut what is stated in the summary report in regard either to the exclusively 'documentary' nature of the checks carried out by the organisations, or to the checks carried out by the Commission for purposes of comparison using a homogenous zone or, finally, to the failure to establish, at the time when the application for a premium is accepted, that the trees declared by the producer organisations actually exist. The Commission's doubts concerning the scope and effectiveness of supervision exercised in this way are thus well founded.

31. Furthermore, there is serious circumstantial evidence which suggests that the Commission decision is correct. The register of olive cultivation and the computerised files are inadequate. Under the Community rules, the checks are to be carried out using that register and those files. The data they contain are used to *direct* supervision to those olive growers who record, from one marketing year to the next, either differences in production levels that cannot be easily

37 — The reference to effectiveness is a leitmotif in the vast array of rules on supervision. See, among others, the abovementioned Regulation No 2262/84 (second recital in the preamble).

explained or unusual production levels. [38] If that 'virtuous circle' between the various control mechanisms has not been established, that is, in part at least, a direct result of the fact that the system comprising a register and computerised files is neither complete nor effective. [39]

32. That said, it is my view that the Commission's assessment for 1991 must also be upheld. Advocate General Fennelly has described the attitude of the Greek authorities to supervision in this sector as 'lethargic': it is in any event inadequate. [40] Nor do the objections raised by the Hellenic Republic disprove the existence of the shortcomings identified by the Commission in the system of supervision adopted at national level. There is consequently no reason to consider that the Commission was unjustified in disallowing 10% of the expenditure incurred by the Greek authorities. [41]

Aid for cotton production

The relevant provisions

33. The general rules governing the system of aid for cotton production are laid down

38 — See, to that effect, the points made in the letter of 7 July 1995 sent to the Greek authorities by Director-General Legras and concerning the procedure for 1992: 'the files should be used to identify: producers declaring an unusual harvest; communes in which total production is in excess of normal yield; oil mills which have apparently processed a quantity that is unusual in terms of either the capacity of their plant and machinery or previous marketing years; and the yield for every production zone'. See, for an example of the use of the data in the files, Article 3(2) of the abovementioned Regulation No 27/85 which provides that: 'The work schedule shall include ... (a) a plan for the use of the data in the computerised files'. See also Article 4(2) of the abovementioned Regulation No 3061/84 which lays down an order of priority for the on-the-spot checks referred to in the second indent of Article 6(1) of Regulation No 2261/84, stating that they must, as a first priority, cover those crop declarations where the number of olive trees per hectare is higher than the average for the production zone in question. Finally, for a number of points concerning the interdependence of the different inspection methods provided for in another sector of agricultural policy, I would refer to my own Opinion of 7 December 1995 in Case C-41/94 *Commission* v *Germany* (points 20 and 21).

39 — A further point. Under Article 1 of the abovementioned Regulation No 2276/79, the register of olive cultivation is to be set up on the responsibility of the intervention agencies. On closer scrutiny, therefore, the failure to comply with the obligation to keep a register in itself implies that the action taken by the Greek agency is inadequate.

40 — See the Opinion in Case C-50/94, cited at footnote 4 above, point 49.

41 — I do not consider it necessary to look in detail at the issues raised in relation to the activity of the Agricultural Bank of Greece and the 2% levy in favour of the insurance fund. These arguments are not essential to the Commission's decision which is in fact more directly based on the inadequacy of the checks carried out in the sector. I would make two brief points here. It does not seem to me that the 2% levy on the amount of the subsidy falls within the concept of 'intervention intended to stabilise the agricultural markets', which constitutes, under Article 1(2)(b) of Regulation No 729/70, the clear practical justification for the grant of aid by the EAGGF Guarantee Section. I therefore consider that the practice adopted by the Greek authorities should be deemed incompatible with the Community rules. That is also the case because, in my view, the possibility of withholding part of the aid should always take effect within a Community framework. See, by way of example, Article 1 of Council Regulation (EEC) No 2159/92 of 23 July 1992 on the financing of expenditure for the establishment and updating of the register of olive cultivation (OJ 1992 L 217, p. 8) which permits a deduction in order to finance the establishment of the register. See also the abovementioned Regulation No 2261/84, as amended by Council Regulation (EEC) No 892/88 of 29 March 1988 (OJ 1988 L 89, p. 1) which permits the withholding of a percentage of the aid to cover the costs of the checks carried out by the producer organisations and associations (Article 11(1)) in accordance with Regulation No 136/66 (Articles 20c and 20d). However, I do not consider incompatible with the Community rules the practice whereby the Agricultural Bank of Greece withholds the amount of the aid granted to farmers who have died for as long as is necessary to establish succession. In fact, it seems to me that the effect is to simplify the disbursement procedure. I do, however, consider that if that practice is to be entirely lawful within the ambit of agricultural policy, it should be backed by the requirement that it should be adequately documented and that the Commission should be kept informed in accordance with the abovementioned Regulation No 595/91 (see, by analogy, Articles 3, 4 and 5 of that regulation).

by Regulation No 2169/81. [42] The preamble to that regulation is concerned with supervision. [43] Article 12 of the regulation refers, for the purposes relevant here, to the rules contained in Regulation No 729/70. [44]

The matters at issue

34. During the 1991/92 marketing year, the Hellenic Republic declared that it had recorded a cotton harvest significantly higher than originally estimated. On 10 July 1992, the Commission consequently asked the Greek authorities to hold an inquiry in accordance with Article 6 of Regulation No 595/91, and at the same time reserved the right to carry out the inspections provided for in Article 9 of Regulation No 729/70.

35. That inquiry — the first stage of which was conducted by the Commission, the competent Greek authority and a firm of auditors — revealed a series of irregularities later described in the summary report: Didagep — the authority responsible for disbursing the Community aid — had failed to carry out checks on the aid applications submitted by the Hellenic Cotton Board, responsible for the administrative management and supervision of the aid; numerous delivery certificates had been falsified; the authorities had failed to apply the necessary supervisory measures where there was a discrepancy between the quantities of cotton delivered for ginning and the surface area cultivated which might have suggested improbable productivity levels; practically no checks had been made on the declarations submitted by the parties concerned as to the surface area sown; and the methods used to calculate the aid were imprecise.

The summary report also disclosed that the Greek authorities had not conducted the inquiry with which they had been entrusted in accordance with the rules laid down: the documentation submitted by the Greek authorities following the first part of the inquiry did not provide an adequate response to either the requests for information made by the EAGGF as early as February 1993, or to the requirements of Regulation No 595/91. According to the Commission, the conduct of the Greek authorities did not comply in all respects with the duties of supervision imposed upon the Member States by Article 8 of Regulation No 729/70. [45]

42 — Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton (OJ 1981 L 211, p. 2).

43 — The preamble states that 'the producer Member States should be required to set up the control arrangements necessary to ensure that the aid system operates correctly' (eleventh recital); and that 'in order to facilitate implementation of the production aid system and its sound management, a procedure should be provided for establishing close cooperation between the Member States and the Commission within a Management Committee' (second recital).

44 — The twelfth recital in particular stipulates that 'in order that the Community expenditure relating to the measure in question may be subjected to appropriate financial and monetary rules and procedures, Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ... should be applied in this sector by analogy in view of the specifically agricultural nature of cotton'.

45 — That provision, it should be borne in mind, requires the Member States to adopt the measures necessary to satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly; to prevent and deal with irregularities; and to recover sums lost as a result of irregularities.

Since the shortcomings identified were exceptionally serious, the Commission decided, on completion of an intensive procedure, to disallow 25% of the expenditure.

The position of the Hellenic Republic

36. The application for annulment is based on a number of different grounds: infringement of the rights of the defence, the Commission's lack of competence and improper exercise of its discretion. In the alternative, the applicant alleges infringement of a fundamental provision of Community law, reference to a condition that does not exist in law and incorrect statement of reasons.

37. As regards the alleged *infringement of the rights of the defence*, the Hellenic Republic claims that there was no mention of the cotton sector during the bilateral meeting between Greek Government and Commission representatives on clearance of the accounts, which took place on 6 October 1993. The Greek authorities therefore believed that activity in the cotton sector did not raise any problems. Furthermore, they remained in contact with the Commission to keep it informed of the measures adopted to curb irregularities and abuses committed in relation to aid for cotton. The representatives of the Greek authorities did not discover that the Fund proposed to disallow 10% of the expenditure until the meeting of the EAGGF Committee in September 1994. That percentage was increased to 50% by the Director-General for Agriculture. The Commission subsequently reduced it to 25%. According to the applicant, the decisions adopted and relevant procedures were arbitrary and infringed the rights of the defence.

38. Turning to the alleged lack of *competence*, the Greek Government claims that the Commission does not have the authority, under either Article 155 of the Treaty or Regulation No 729/70, to adopt the decision approved on 1 June 1993 laying down the criteria for determining the percentages of expenditure not to be recognised as chargeable to the Community.

39. The Hellenic Republic also reproaches the Commission for stating incorrect reasons: Didagep ought to be regarded as a division, as it were, of the paying agency; according to the applicant, there is no ban on distributing the product through intermediaries; nor is it true that the checks were not carried out, as claimed in the summary report. In addition to the usual checks, very detailed individual checks were carried out with the participation of Community officials, and the reports on the checks were forwarded to the EAGGF by ministerial notes of 6 July and 14 September 1994. The Greek authorities had also informed the Commis-

sion of the irregularities established during the first quarter of 1993, in accordance with Article 3 of Regulation No 595/91. [46]

40. That brings us to the plea alleging *infringement of a fundamental provision of Community law* and *reference to a condition that does not exist in law*. Here the applicant submits that the ninth recital in the preamble to the decision constitutes a provision unknown in international law. That recital states that '... the special circumstances of these cases justify re-examination by the Commission of the disallowance during the present clearance in the light of the findings and verifications currently under way; ... this decision is nevertheless immediately applicable'.

The Commission's position

41. The Commission first points out that the flat-rate correction of 25% may be reduced to 10% if it is established that the checks carried out by the authorities in the sector have been tightened.

42. The Commission's reconstruction of the facts differs from that of the Hellenic Republic. It submits that, before the decision in issue was drawn up, it drew the attention of the Greek authorities on several occasions to the inadequacy of supervision in the cotton sector and, therefore, to the ensuing financial consequences. It also stated its intention of imposing a flat-rate correction of 25%. Furthermore, both the outcome of the four Commission inspections of 1992 — the reports of which were forwarded to the Greek authorities on 28 January 1993 — and the inquiry set in motion, pursuant to Article 6 of Regulation No 595/91 and Article 9 of Regulation No 729/70, show that the defendant was aware of the problems that had arisen in the sector. On the basis of the first part of the inquiry, held between 26 October and 4 December 1992, Greece had in fact acknowledged its obligation to inform the Commission of any irregularities detected. However, despite repeated requests by the EAGGF to set it in motion, the second part of the inquiry — as the Greek authorities have themselves acknowledged — has yet to begin.

Substance

The plea alleging infringement of the rights of the defence

43. In view of the abovementioned facts and, in particular, the inquiries set in motion and conducted in the sector during 1992 and 1993, I consider to be unfounded the applicant's claim that the rights of the defence were infringed because the existence of prob-

46 — That provision, it should be remembered, requires that during the two months following the end of each quarter, Member States are to communicate to the Commission a list of irregularities which have been the subject of the primary administrative or judicial findings of fact. It goes on to stipulate in great detail: (a) the information that such communications should contain; (b) the obligations to supply missing information; and (c) the procedures for communication if the information is confidential.

lems in the sector was not brought to its attention until the EAGGF meeting of September 1994. It seems to me that the inspections carried out — either by the Commission itself or, at its request, by the national authorities — are a sufficient indication that the procedures for managing the system of Community aid for cotton production in Greece had, for some time, been the source of considerable concern at Community level. A number of factors lend weight to that conclusion.

In the first place, the special inquiry into the sector was instigated specifically because of a production *surplus* which had fuelled suspicions of fraud. [47] Secondly, the inquiry itself was seriously flawed. Not only did the applicant fail to provide comprehensive replies to repeated requests for information from the EAGGF or to respond to requests for a copy of the investigation plan, but it also failed to provide, in accordance with Article 6(2) of Regulation No 595/91, a precise evaluation of the financial impact of the irregularities established; [48] finally, it did not hold the second part of the inquiry as specifically requested by the Commission — a fact acknowledged by the Ministry of Agriculture itself in a letter of 14 June 1994. [49]

In the light of those circumstances, the applicant is calling for a bilateral committee to be set up. That request does not seem to me to be justified. To acquiesce in it would mean further complicating the procedure, and that is not justified because the procedure laid down already makes provision for lengthy periods of dialogue. As I have already explained, the exchange of letters between the Commission and the Hellenic Republic — and we have only to bear in mind the request to proceed with the inquiry and repeated requests to transmit its conclusions — highlighted well before September 1994 the problems in the sector and also the financial consequences that would be drawn therefrom in regard to clearance of the accounts. Despite that, the applicant failed to make use of the procedural means that would have enabled it to respond to the Commission's criticisms and demonstrate the effectiveness of the system of supervision adopted in Greece.

The applicant's argument fails to take into consideration the procedures governing clearance of the accounts and I cannot endorse it.

47 — I would point out that under Article 6(1) of Regulation No 595/91, the Commission has to consider 'that irregularities have taken place in one or more Member States' before it can call for an inquiry.

48 — Article 6(2) provides that: 'The Member State shall, as soon as possible, communicate to the Commission the inquiry findings. Where an inquiry shows that there has been an irregularity, the Member State shall inform the Commission thereof in accordance with Articles 3, 4 and 5 ...' I would point out that those provisions lay down specific requirements as to communication which must be both 'sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8(2) of Regulation (EEC) No 729/70' (Article 5(2)), immediately executed (Article 4) or, if appropriate, carried out during the two months following the end of each quarter (Article 3).

49 — In addition, on 18 August 1994, the competent Member of the Commission, Mr Steichen, sent a letter to the Greek Minister for Agriculture deploring the Greek authorities' failure to cooperate fully with the Commission in the sector in question. Following that letter, or so it would seem, a joint Greece-Commission working party was set up and met for the first time in Athens on 21 November 1994.

The plea alleging the Commission's lack of competence

44. Does the Commission have the authority to adopt a measure setting out the criteria that will guide it in its decision to disallow expenditure incurred in financing agricultural policy? That, basically, is the issue raised by the applicant.

45. In my view, the decision in question may be classified in the 'category' of communications: this, as we know, is a 'broad' category encompassing acts of differing form and content. There are three kinds of communication: interpretative communications, information communications and communications of decisions. [50] It is the latter that I shall be looking at in greater detail here. As recently explained by Advocate General Tesauro, 'decisional' communications concern 'sectors in which the Commission has a discretion'. [51] In those sectors the Commission is able to adopt acts by which it informs those subject to its administration of the criteria by which it is guided in the exercise of its discretion. [52] This applies to agricultural policy as well.

46. The act at issue in this case sets out the criteria which the Commission applies when deciding not to allow expenditure. There seems to me to be no doubt that the Commission had the authority to adopt it. In a different case, Advocate General Fennelly has already aptly made the point that: 'There is no objection *in principle* to the Commission seeking, with greater or lesser exactitude, to quantify [the actual or likely loss to the Fund caused by a breach of Community rules].' [53]

47. I would myself add that the reasons that justify the Commission's competence are firmly established in the case-law of the Court of Justice. In the final analysis, this is a situation in which, given the difficulty of quantifying precisely the amount of expenditure to be disallowed, the Commission is endeavouring to draw up rules that differentiate according to the degree of risk posed to the EAGGF by different levels of defective

50 — I am aware that a communication may be considered 'unusual' in various respects, particularly when compared with the communications generally taken into consideration by academic lawyers when reviewing this category of act. It seems to me, however, that we can identify a number of basic elements: an administration with a decision-making power that includes a margin of discretion; an act directed at the person to whom it is addressed; an indication of the criteria that should guide the exercise of that discretion. In this case, the fact that the document is 'opaque' is not, in my view, significant. Since this is an area in which only the Member States and the Commission are involved, it seems to me that the approval of the decision by the representatives of the Member States in the EAGGF Committee gives that body the kind of publicity warranted by its function.

51 — See the Opinion of Advocate General Tesauro in Case C-57/95 *France* v *Commission* [1997] ECR I-1627, footnote 17.

52 — See, on that point, although it postdates the facts of the case, Council Regulation (EEC) No 1287/95 of 22 May 1995, amending Regulation No 729/70 on the financing of the common agricultural policy, which amends the text of Article 5 of the latter regulation, providing in the fourth indent of Article 5(2)(c) that: 'The Commission shall evaluate the amounts (of expenditure disallowed) 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' (OJ 1995 L 125, p. 1).

53 — Opinion cited above, point 41.

supervision. [54] In short, this constitutes a guarantee for the Member States. Had the Commission not drawn up the criteria laid down here and transmitted them to the Member States in a decisional communication, it would have to disallow the expenditure in its entirety. [55] The measure in question limits and in any event governs the exercise by the Commission of its discretion, on the basis of rules that are communicated to interested parties and therefore have the effect of creating a framework of legal certainty. Finally, as far as the present case is concerned, we have to bear in mind the significant factor that, within the EAGGF Committee, the communication was well received by all of the Member States, including Greece.

48. Nor does the second argument put forward by the applicant seem to me to be any more convincing. In an attempt to clarify its own reasoning in the reply, it criticised the criteria adopted in the communication for being too general. In fact it is the criticism made by the applicant that is too general and insufficiently substantiated. It merely assumes that the criteria contained in the document are insufficiently precise but fails to demonstrate that they are either arbitrary or inequitable. In my view, they are neither. The Commission has adopted criteria that establish, as far as possible, a correlation between the percentage of expenditure disallowed and the degree of risk posed to Community funds because of the shortcomings of the Member States. [56] The objection raised by Greece must therefore be deemed to be unfounded.

The plea alleging that there are limits on the Commission's discretion

49. According to the applicant, the decision should be annulled because the manner of its adoption was, basically, arbitrary. This is apparent from the procedure by which the amount of expenditure disallowed was determined: an initial EAGGF proposal equivalent to 10% of the expenditure was actually increased to 50% by the Director-General for Agriculture and then, finally, set by the Commission at 25%. [57]

50. In my view, the argument of the Hellenic Republic cannot be endorsed. The measure

54 — See, on that point, the judgment in Case C-50/94 (cited in footnote 4 above) which confirms that the Commission is acting lawfully when 'instead of refusing the entire expenditure, [it] endeavours to draw up rules to differentiate according to the degree of risk posed to the EAGGF by different levels of defective supervision' (paragraph 28).

55 — Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 60.

56 — See, to that effect, the conclusion reached by Advocate General Fennelly when considering that same act in Case C-50/94.

57 — We should bear in mind here a number of procedural aspects: under Article 5(2)(b) of Regulation No 729/70, the Commission clears the accounts after consulting the Fund Committee. The procedure to which that provision expressly refers provides that the Commission representative is to submit a draft of the measures to be adopted and that the Committee reaches its own opinion on them. That act is not, however, binding; the Commission may adopt measures that are not in accordance with the opinion of the Committee (Article 13 of the regulation).

at issue can and must be exclusively the Commission decision disallowing 25% of the expenditure incurred. The decision by the Director-General for Agriculture to increase to 50% the proportion of expenditure to be disallowed that was proposed by his services is not of itself material. It is part of the Commission's internal decision-making process with regard to clearance of the accounts; it is not a final decision, and it cannot bind the administration or be taken into account in connection with the challenge against the main decision.

The plea alleging that the reasons stated are incorrect

51. The applicant's complaints alleging that the grounds for the decision were incorrect are likewise unfounded.

Nor, in my opinion, is the other argument well founded, according to which the Greek authorities had already communicated, in accordance with Regulation No 595/91, the information concerning the irregularities identified by the Commission. The summary report does not criticise the failure to communicate the information but the fact that it was neither satisfactory nor adequate (paragraph 4.7.5.1). As I have pointed out, the rules contained in Regulation No 595/91 provide that the Member State concerned is to supply clear and detailed information on the basis of which the decision whether or not to clear the accounts can be taken. That is a mandatory requirement, and the Greek authorities do not appear to have complied with it in this case: the information which they supplied was unclear and inconsistent, and that was why the Commission decided not to allow the expenditure. Checks were provided for at national level, but they certainly did not meet the standards set by the Commission.

The plea alleging infringement of a fundamental provision or reference to a condition that does not exist in law

52. The objections raised by the Hellenic Republic do not have the effect of refuting the conclusions reached by the Commission and recorded in the summary report. The Hellenic Republic provides no evidence of the failure of Didagep to perform checks on the applications for aid submitted by the Hellenic Cotton Board. It simply refers to the legal nature of Didagep, its responsibilities and its organisation.

53. If the Commission declares a decision disallowing expenditure to be immediately applicable, can it reserve the right to review that decision in the light of the results of inspections under way?

The applicant seeks a declaration to the effect that a reservation of that kind, which the Commission has entered in this case, describing it as a 'negative reservation' in response to the Court's questions, is unlawful. [58]

54. The decision on the annual clearance of accounts forms part of a procedure between the Member States and the Commission that allows ample time for dialogue at both the verification and the decision-making stage. As is clear from Regulation No 1287/95, [59] that feature of the decision informs the procedure for clearance of the accounts in a number of ways. [60]

55. The substance of the decision is by its very nature 'not immutable'. It does not prejudge other measures which the Commission may adopt, depending on the outcome of the investigations under way, when it undertakes clearance of the accounts for subsequent years. The procedure requires the Member States concerned to supply information and carry out checks and accords the Commission the discretion to assess and monitor their action. [61] The Commission takes a decision on the basis of the information in its possession but may reserve the right to review that decision should further information come to light; a decision containing a reservation of that nature is fully justified by the special requirements of the procedure. A negative reservation acts as an incentive to the administrative machinery of the State which is being monitored, in this case Greece, [62] and is, furthermore, standard practice, as is borne out by the annual summary reports which the Commission produces in this field.

56. On the basis of the foregoing, I consider that the applicant has failed to demonstrate that the findings on which the Commission based its decision to disallow expenditure are inaccurate or that the procedures applied are unlawful. I therefore propose that the Court reject the pleas concerning the cotton sector.

58 — It should be pointed out here that, by his letter of 17 April 1996, the Commission's Director-General for Agriculture, Mr G. Legras, informed the Greek Government that his services had submitted to the Commission a proposal that the rate of correction for the expenditure under consideration here should be reduced to 10% for 1991 and 1992. Were the proposal to be accepted, the result would be a positive financial correction of DR 10 041 185 496.

59 — See the new Article 5(2)(c) of Regulation No 729/70, as amended by the abovementioned regulation. I would point out that it provides for a genuine dialogue between the Member State and the Commission on the decision to disallow expenditure.

60 — A number of examples of this: the annual time-limit provided for in Article 5 of Regulation No 729/70 has been interpreted as a merely formal time-limit. The Court of Justice has, for example, authorised a clearance of accounts which, being designed to guarantee that the expenditure was charged by the national authorities in compliance with the Community rules, actually took place after expiry of the time-limit (Case 349/85 *Denmark* v *Commission* [1988] ECR 169, paragraph 19). Similarly, the requirement to state reasons has been specifically defined in relation to the different types of procedure. The Court has thus ruled that there does not have to be a detailed statement of reasons if the Member State has been involved in the verification procedure (Case 347/85 *United Kingdom* v *Commission*, cited in footnote 55 above).

61 — Furthermore, that characteristic of the decision was expressly recognised in the abovementioned Regulation No 1287/95, which made a distinction that has the effect of clarifying the position in many respects: '... it is accordingly necessary to separate the procedure into two types of decision, one concerning the clearance of the accounts of the Guarantee Section of the Fund, the other determining the consequences, including financial corrections, to be drawn from the results of the checks on conformity' (fourth recital in the preamble).

62 — That objective is clear from the content of the abovementioned letter from the Commission's Director-General for Agriculture of 17 April 1996. It refers to improvements in supervision in the sector concerned and increased cooperation among the national authorities, including them among the conditions that made possible a change of view to the advantage of Greece.

The tobacco sector

The relevant provisions

57. The rules governing the tobacco sector are set out in Regulation (EEC) No 727/70. [63]

The regulation provides for two kinds of measure: a system of norm and intervention prices, involving the obligation to buy in on the part of the national authorities, and the granting of a premium to users who purchase leaf tobacco directly from Community producers.

58. Under the regulation (Article 2), each year the Council is to fix, for the whole of the Community, norm prices and intervention prices for the crop of the following calendar year, along with a purchase premium (Article 3(1)). [64] The premium is specifically designed to enable purchasers to pay the norm price and, consequently, to facilitate the disposal of tobacco produced in the Community. If, despite the grant of the premium, the tobacco is not purchased directly from the producers, the agencies designated by each of the Member States take over from the producers and purchase at the intervention price — subject to further conditions — the Community-grown leaf tobacco offered to them (Article 5).

The regulation then provides that derived intervention prices may be fixed for baled leaf tobacco, that is to say leaf tobacco that has undergone first processing and market preparation (Article 6). The intervention agencies are required to purchase the tobacco thus processed at the price determined by reference to the Community rules.

Commission Regulation (EEC) No 1726/70 lays down the procedure for granting the premium for leaf tobacco; it establishes a system of supervision that is designed to determine the quantities of tobacco subject to checks and meet certain requirements to ensure that it is uniformly applied in the Member States. [65]

63 — Council Regulation of 21 April 1970 on the common organisation of the market in raw tobacco (OJ, English Special Edition 1970(I), p. 206) as amended by Council Regulation (EEC) No 1329/90 of 14 May 1990 (OJ 1990 L 132, p. 25). In his Opinion of 19 May 1994 in Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* v *Fattoria Autonoma Tabacchi and Donatab* [1994] ECR I-4867, Advocate General Jacobs considers in detail the legislation in force in the sector, as amended over time. In addition to the general aim of supporting producer incomes, the legislation also seeks to encourage improvements in quality and crop adjustments, in particular conversion to varieties which are in greater demand or are more competitive (sixth recital in the preamble).

64 — The norm price is fixed at a level that takes account of the need to encourage the kind of specialisation that is suited to the economic structures and natural conditions of Community production and requires that undertakings be rationally managed and economically viable, in terms of both quality of production and an adequate return for producers. The intervention price is equivalent to 90% of the norm price.

65 — Regulation of 25 August 1970 (OJ, English Special Edition 1970(II), p. 587).

59. In 1988, a system of supervision was also set up for the purpose of controlling the volume of Community production. [66] According to the rules (Article 4(5) of Regulation No 727/70), the Council is to fix a maximum guaranteed quantity and, before 31 July of the year following the year in question, the Commission is required to establish whether or not production has exceeded that threshold. If it has, provision is made for a proportional reduction in intervention prices and premiums amounting to 1% for each percentage point by which the permitted quantity is exceeded. [67]

Regulation (EEC) No 2824/88 lays down certain detailed rules for the application of the system of maximum guaranteed quantities in the tobacco sector. [68] Article 3 provides that until actual production has been determined by the Commission, not more than 95% of the amounts fixed for the intervention prices and premiums for the 1988 harvest may be paid, and not more than 85% of the corresponding amounts for the 1989 and 1990 harvests. Article 3(2) provides that any balance is to be paid 'after actual production is determined'.

Commission Regulations (EEC) Nos 2046/90, [69] 2267/91, [70] 2178/92 [71] and 2065/93 [72] determine the quantities actually produced and the prices and premiums payable for the 1989, 1990, 1991 and 1992 harvests respectively. Article 2 of each of those annual regulations provides that it is to enter into force on the third day following its publication.

The matters at issue

60. The criticisms raised in the summary report relate to four different issues: the establishment of irregularities in the payment of premiums; irregularities in the lodging of securities in relation to premiums for leaf tobacco; the failure immediately to reduce premiums and intervention prices where the maximum guaranteed quantities were

66 — Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organisation of the market in raw tobacco (OJ 1988 L 110, p. 35). The question of the validity of the regulation was considered in *Crispoltoni*, cited in footnote 63 above. The legislation has been further amended: Council Regulation (EEC) No 1251/89 of 3 May 1989 (OJ 1989 L 129, p. 16) provided that the Council was to lay down every year a maximum guaranteed quantity for the following year's harvest and Council Regulation (EEC) No 1329/90 of 14 May 1990 (OJ 1990 L 132, p. 25) set the overall maximum guaranteed quantity at 385 000 tonnes for each of the 1988 to 1993 harvests.

67 — It is further provided (Article 13) that where the quantities taken over by the intervention agencies exceed a stated percentage of production and in any case a stated quantity, the Council may, after examining the report submitted by the Commission, adopt those measures, to be applied to the crop of the following calendar year, by which a better balance may be established between production and demand and stocks may be reduced. The measures provided for that purpose include lowering the intervention price level (Article 13(5)). Similarly, if Community production for which it has been decided to grant a premium exceeds a stated percentage of the average production during the three previous crop years, the Council may, again on the basis of a report from the Commission, reduce the norm prices involving a corresponding reduction in the premiums (Article 13(6)).

68 — Commission Regulation of 13 September 1988 (OJ 1988 L 254, p. 9).

69 — Regulation of 18 July 1990 (OJ 1990 L 187, p. 23).

70 — Regulation of 29 July 1991 (OJ 1991 L 208, p. 26).

71 — Regulation of 30 July 1992 (OJ 1992 L 217, p. 75).

72 — Regulation of 27 July 1993 (OJ 1993 L 187, p. 26).

exceeded; and the use of incorrect methods to calculate the final correspondence. [73]

Irregular payment of premiums. The position of the parties

61. The applicant claims that the decision should be annulled because *the rights of the defence have been infringed.* According to the applicant, on 21 November 1994, the Commission decided — by addendum No 2 to the summary report — to disallow expenditure on the premiums for tobacco because of the outcome of the inspection into tobacco exported by Greek producers to Albania and Bulgaria, carried out in accordance with Article 9 of Regulation No 729/70. The final report of that inspection, dated 28 September 1994, was not transmitted to the Greek authorities until 22 December 1994 and, therefore, not until the day after the decision was adopted. The applicant was not therefore given an opportunity to put its case.

62. The defendant objects that the decision, published some three months after the report of the 'fraud inspection mission' had been drawn up, is not based on data unfamiliar to the applicant at the time of its adoption. Furthermore, the decision forms part of a procedure that includes lengthy negotiations, in the course of which, despite being apprised of the Commission's concerns about the tobacco market, the applicant failed to take the measures which the Commission had requested to no avail.

Substance

63. On 4 December 1992, the Commission informed the Greek authorities that, on the basis of information in its possession, it suspected possible fraud in the sector. Subsequently, by letter of 20 April 1993, it asked the Greek authorities to hold an inquiry in accordance with Article 6 of Regulation No 595/91.

An inquiry was held at national level and found that, essentially, the expenditure had been properly incurred. The Commission did not take part in the inquiry and was not informed of its findings. Consequently, by letter of 14 January 1994, the EAGGF informed the Greek authorities that it wished to take part in their inquiries. A meeting therefore took place on 20 January 1994. After listening to what the representatives of the Hellenic Republic had to say, the

73 — On that last point, the summary report revealed an error in the conversion rate applied by the applicant to determine the premiums. The calculations made by the Greek authorities are alleged to have inaccurately converted leaf tobacco into baled tobacco, with the result that premiums were granted for fictitious quantities. In the light of that mistake, the Commission's officials asked the Greek authorities to reconstruct the tables of calculations for verifying the final adjustment; that information was not, however, forthcoming.

Commission listed a number of complaints: it had not been involved in the inquiry, which it deemed inadequate; there had been no coordination between the various departments responsible during the inquiry; and the inquiry itself had lacked a proper programme.

At the Commission's request, Community officials then took part in missions of inspection to Greece, in which, according to the defendant, the Greek authorities took no active part.

64. It is therefore quite clear that the report in issue, dated 28 September 1994, is simply the last chapter in a turbulent affair.

As the Commission has pointed out and as is more generally apparent from the legislative background and case-law, supervision in the field of agricultural policy is the result of a dialogue between the Commission and the Member State concerned. Let us bear in mind the critical point in that dialogue in this particular case. The Greek authorities could not have been unaware of the suspicion concerning the existence of irregularities in the tobacco sector [74] but they did nothing to allay that suspicion despite repeated requests from the Commission. It seems to me that, in so doing, the Greek authorities were acting in a manner incompatible with both the specific guidelines laid down in Article 8 of Regulation No 729/70 and the requirement inherent in that provision that there should be cooperation between the national authorities and the Commission.

65. Furthermore, it is worth emphasising that the inspection mission's report did not establish the existence of further deficiencies in the tobacco sector but simply *confirmed* the conclusions reached by the EAGGF in respect of 1990. The Greek system had already been found to be generally inadequate. [75] In other words, the Hellenic Republic knew that the sector was being monitored; it was aware of the Commission's suspicions concerning possible fraud and its concerns about the effective and comprehensive nature of the inquiry carried out at national level and it knew that the request to provide a work schedule had met with no response.

66. One last point. The applicant maintains that the mission's report reached its Permanent Representation on 22 December 1994; the Commission, however, contends that the report was available to Greece as soon as it was published, on 28 September 1994. I do

74 — As I have already pointed out, the prerequisite for a joint inquiry within the meaning of Article 6 of Regulation No 595/91 is that the Commission 'considers that irregularities have taken place'.

75 — The Commission had made the following complaints at the time (and entered a negative reservation): the tobacco had not been subject to first processing and market preparation; the checks had not been carried out; refunds had been paid on tobacco that had been exported but was not baled; see the Summary Report concerning the clearance of the EAGGF Guarantee Section accounts for 1990, Brussels, 1 January 1993, Doc. VI/119/93 fin. (paragraph 4.9.2.1.1).

not know which is correct. However, certain factors induce me to accept the Commission's argument. As I have already said, the procedure provides not only for provisional summary reports but also for the opinion of the EAGGF Committee. It therefore seems odd to me that during that stage — in which representatives of the Greek authorities were also involved, if only as members of the Committee — no reference should have been made to the mission's report which was already available and on the basis of which it was decided to confirm the assessment for the preceding years.

Taken together, those facts constitute sufficient proof that the Commission suspected the existence of serious irregularities in the Greek tobacco sector; all of that was well known to the Hellenic Republic which could not have failed to realise that deficiencies in the system of supervision would result in the expenditure being disallowed. Faced with those clear warnings, Greece ought to have taken action to state its own case and rebut the findings of the EAGGF which were, moreover, subject to a negative reservation. It did not do so.

On those grounds, the plea alleging infringement of the rights of the defence cannot be upheld

Clear error and improper exercise of discretion

67. The second ground for annulment cited by the applicant concerns the Commission's erroneous assessment of the facts and improper exercise of its discretion in relation to the outcome of the inspection.

68. According to the applicant, the inspection mission's report contains a number of errors. The findings of the inquiry in relation to the producers' cooperative SEKE are unfounded. Checks carried out by the tax authorities have established that SEKE's activity is legal and that it operates lawfully under Greek law.

Even if we leave out of account the actual inquiry carried out under Greek law, there are a number of reasons for considering that the Commission acted correctly.

SEKE was mentioned as one of the companies to be inspected during the mission. When the representatives of the Commission arrived, they were unable to locate the accounts needed for the audit, which had been destroyed — legally, according to Greece — once the checks carried out by the tax authorities had resulted in approval. I do not wish to enter into the question of whether or not the destruction of the documents is permitted under national law. The

fact is that for the purposes of these proceedings, their destruction is incompatible with the requirements of supervision underlying the Community rules and the spirit of cooperation that should govern the process of verification by the national authorities and the Commission. Even if they could lawfully be destroyed under tax law, the accounts ought to have been preserved in order to make it possible to ascertain whether the subsidies had been properly granted — particularly since SEKE had already been identified as one of the companies to be inspected; and the national authorities ought to have kept a particularly close eye on both the company and its files. In other words, it is of little relevance that Greek law permitted the destruction of the documents in question. [76] The provisions of Regulation No 595/91 and, more generally, the whole of the legislation in this field impose on the national authorities a duty of active cooperation with the Fund; by permitting the documents to be destroyed, Greece has clearly failed to fulfil that duty.

69. Secondly, the applicant objects to the checks carried out to ascertain actual capacity to prepare baled tobacco. On that point, the comments made in the mission's report regarding heavy bale production capacity seem to me to be justified. The Commission's services carried out on-the-spot checks on the possibility of converting the tobacco into 59 kg bales and established: (a) that this was a difficult operation; (b) that the workforce was clearly unfamiliar with it; (c) that — and this was confirmed by experts — the machines used could not cope with that workload as they were set up to produce bales weighing between 20 kg and 30 kg.

Calculations based on those production figures may not reflect the true state of affairs, and the Commission's suspicions concerning the alleged irregularities do not appear to me to be unjustified.

70. As regards the claims made by the applicant concerning the quality of AGREX tobacco, SEKE's production capacities, the sales of unprocessed tobacco to Italy, the inexplicable differences in price between the tobacco supplied to Didagep and that supplied to Bulgaria, and the methods of payment and market preparation applied to the latter, I do not consider that it has provided the proof needed to overturn the findings of the inspection mission's report.

71. The Hellenic Republic has failed to establish whether the tobacco purchased by AGREX was already processed, as it maintains, or unprocessed, as the Commission claims; it has not established that the information supplied by SEKE's director-general concerning labour costs in the Soluveko processing facility, which led the Commission to consider the company's accounts to be

76 — Observations of the applicant, p. 27.

improbable, was incorrect; nor has it established that the Commission's reconstruction of the commercial relationships between SEKE and the Italian companies STP and Boselli Calto was inaccurate and that those two companies purchased unprocessed tobacco from SEKE; again, as regards the differences in price between the various consignments, although explanations were given, they were not backed by documentary evidence. Nor has the applicant been able to justify the differences ascertained in the weight of the baled tobacco intended for domestic consumption and that bound for export. Finally, the Hellenic Republic has not even demonstrated the inaccuracy of the allegations in the report concerning both the muddled and unreliable nature of the documents confirming payments and the failure of SEKE to cooperate during the inquiry.

72. The same applies to the data furnished by the applicant concerning the Michailidis and Gleoudis Kavex companies. Once again, the Commission's findings are cogent and clearly expressed: the competent authorities failed to carry out checks; the registers had been falsified; the sales invoices were inconsistent; no data was provided to make it possible to verify product processing rates; and the accounts had not been properly kept.

73. The applicant counters these points with arguments that are irrelevant and, in any event, unconvincing. It claims that the registers were properly kept and tallied with the stock books, whereas the Commission notes that the registers had been drawn up 'to order' and that the remaining documentation was muddled or had been tampered with. Furthermore, in regard to the complaint concerning false customs declarations, the applicant simply cites legislation *in abstracto* but provides no tangible evidence of whether and how it was applied in this case, and does not specifically rule out the existence of disparities, attributable to fraud, between the value of the goods declared and the value of the goods actually exported.

In other respects, the applicant's defence even sounds like a tacit admission that the system of supervision was inefficient. The reference to the books and records of the Gleoudis Kavex company are one example of this: the applicant states that certain documents were seized by the authorities on 11 November 1992 but have yet to be inspected.

74. The inspection mission's report brought clearly to light the national authorities' general lack of interest in the problem of supervision. The inspectors called on the companies 'to be able to say that they had been in' but knew nothing about what actually went on inside those companies. According to the mission's report (paragraph 7.2.1.3), this was in fact acknowledged by the Greek authorities.

The Fund's decision clearly takes into account the general pattern of ineffective and inadequate checks of which the individual instances criticised by the Commission form part.

This seems to me to be the critical factor justifying the conclusion that the action taken by the Greek authorities was inadequate. Given the widespread lack of diligence complained of by the Commission, it is understandable that the latter should have applied criteria based on circumstantial evidence in deciding to disallow expenditure specifically in the light of Communication No 216/93: it seems to me, therefore, that the conclusions reached by the Commission can be endorsed.

75. Furthermore, the applicant goes through the pretence of rebutting the comments of the EAGGF in detail, on the basis of very specific data, but without providing any evidence. This leads me to make two points. Firstly, these objections, the detailed explanations of how the Greek legislation operates and the 'willingness' to accept supervision that appears to be conveyed by the statement of defence ought to have permeated the whole of the procedure. That, as we know, was not the case. The Commission repeatedly asked for investigation plans, information, checks and cooperation, without obtaining any response. Moreover, during the inspections, that had long been in preparation and took place, as I have said, against a background of overt concern about the proper functioning of the sector, the Commission's services found that the — basically passive — attitude of the Greek officials was certainly not consonant with the principles of sound management that should inform the activity of the national authorities in their relations with the Commission.

Hence, and this is my second point, I do not see how that perception of supervision at national level can overturn the results of the objective checks carried out by the Commission. The Commission's decisions are based on inspections, the information received from the national authorities, an overall assessment of their organisation and activities and, indeed, the practices they actually apply.

Bearing in mind the lack of cooperation from the Greek authorities, the review thus carried out led to the conclusions set out in the inspection mission's report and recorded in the summary report, which the applicant has not successfully rebutted.

The plea alleging unjust enrichment on the part of the Commission

76. The applicant seeks the annulment of the decision, alleging unjust enrichment on the part of the Commission in three respects.

77. In the first place, by letter of 12 December 1994, the Greek authorities claim to have informed the EAGGF that they had withheld the sum in issue, by way of set-off, at the expense of the processors, and to have, at the same time, informed the Court of Auditors of this. Despite that, according to the applicant, the equivalent amount was disallowed, which resulted in the Commission's unjust enrichment; on the one hand, sums were credited to the Commission as a result of the set-off, but on the other, the Commission disallowed an equivalent amount of the expenditure incurred. Basically, the Commission has doubled its receipts on one and the same transaction.

The Commission refrains from commenting on that point.

78. Secondly, the applicant asks, in regard also to the reductions in premiums and intervention prices where the maximum guaranteed quantity has been exceeded, that the decision should be annulled on the ground that the principle of unjust enrichment has been infringed. It claims that the Fund was informed, through the abovementioned letter, of the fact that all the sums relating to the overrun of the maximum guaranteed quantities for the 1989 and 1990 harvests had been recovered by the Greek authorities, either directly or by set-off. Consequently, the Commission's refusal to allow the expenditure was unjustified.

79. The applicant complains that the principle of unjust enrichment has been infringed because of an error in the conversion rate used to calculate the final adjustment. In September 1994, the Greek authorities assured the Fund that they had calculated the final adjustment in accordance with the guidelines laid down by the EAGGF itself, which, as is clear from the abovementioned letter of 12 December 1994, was indeed the case. That calculation produced a correction (DR 80 379 053) substantially lower than the figure given by the Commission in its decision because the EAGGF had already been credited with the remainder.

Substance

80. In my view, these three arguments have to be appraised together. As we have seen, all three refer to the letter of 12 December 1994 which, it is alleged, provided the Commission with all the information it had requested or at least the information deemed necessary for proper clearance of the accounts.

81. As I said in my general introduction, the procedure for clearance of the accounts provides for a time-limit with which the Member States must comply when submitting the information required for the adoption of the decision. For the 1991 marketing year, that time-limit was set at 31 January 1994. It seems to me that, in accordance with the

case-law of the Court of Justice, the information provided by the Hellenic Republic cannot therefore be taken into consideration for clearance of the accounts for the current year. In the proceedings before the Court, the applicant did not adduce the existence of exceptional circumstances justifying the delay recorded. [77] The information submitted should in fact be assessed during the subsequent clearance of accounts and, if appropriate, result in a correction in the accounts for 1992.

82. That of itself is sufficient reason to conclude that all three arguments, based on the information provided in December 1994, should be rejected. I propose, however, to consider each of the applicant's submissions in greater detail below.

The securities

83. To deal with the question of securities, we must take a step back in time. The 1988 summary report (paragraph 4.9.2.8) explained the reasons underlying the decision to disallow the expenditure at issue here. Article 7(2) of Regulation No 1726/70 provided that as soon as the tobacco came under supervision, the total amount of the premium could be advanced on condition that a deposit equal to 20% of the amount was lodged or that an amount equal to 80% of the total could be advanced. [78] However, the file referred to in Article 3(1) of Regulation No 727/70 was not to be closed until proof had been provided that the tobacco covered by the premium had been incorporated into manufactured products or exported to third countries.

84. In the course of the inquiry relating to that year, the Commission established that the Greek authorities were holding in abeyance a number of securities relating to harvests for the period 1981 to 1989 and had not produced the documents that proved the premium had been lawfully granted, by certifying that the tobacco had been 'incorporated' into the products concerned. The Commission therefore asked the Greek authorities to provide those missing documents in respect of the advances paid between 1981 and 1985, reserving the right to take a decision on the financial consequences once it had considered them. As stated in the 1989 summary report (paragraph 5.10), the Commission received the documents in question on 27 June 1991. The deficiencies they revealed were such as to cause the Commission to take a decision — that was not challenged — to disallow expenditure in the amount of DR 370 057 029. It was further stipulated that a final use should be found for the tobacco

77 — Case C-54/91 *Germany* v *Commission* [1993] ECR I-3399, paragraphs 13 and 15; Case C-41/94 *Germany* v *Commission* [1996] ECR I-4733, paragraph 23.

78 — The reason for that provision was the need to alleviate the economic effects of the time required for first processing and market preparation (see the ninth recital in the preamble). Because of the particular situation prevailing on the Greek market, the Commission introduced a derogation for Greece. While, generally speaking, a purchaser may ask for advance payment of the amount of the premium only if he meets the conditions of having concluded a cultivation contract or signed a crop declaration, those requirements do not have to be met in Greece. See Commission Regulation (EEC) No 1186/83 of 18 May 1983 (OJ 1983 L 129, p. 23) and Commission Regulation (EEC) No 1791/86 of 10 June 1986 (OJ 1986 L 156, p. 16).

from the 1981 and 1986 harvests, which had remained in storage after processing, as soon as possible, and in any event by 31 December 1992 at the latest — the date on which all the files on the lodging of securities were to be closed. The correction in issue, concerning the above documentation, therefore marks the conclusion of an inquiry into the securities for the period from 1981 to 1985 which, as I have said, resulted in a substantially greater amount of expenditure being disallowed for 1989.

85. The Commission has established that, with reference to paragraph 5.10 of the 1989 summary report, a given quantity of tobacco had not been exported by the 31 December 1992 deadline. Consequently, the premiums granted could not be deemed lawful. The Hellenic Republic did not respond to that finding until its abovementioned letter of 12 December 1994 in which it asked the Commission to reduce overall by DR 372 762 124 the expenditure disallowed for both 1989 and 1991, citing the set-off that had been effected.

86. I do not consider that the content of the letter of 12 December 1994 can constitute a lawful ground for annulling the decision, not just because the letter came too late but also because of its substance. The letter does not comment on the merits of the Commission's complaints; it merely refers to a set-off but does not provide evidence of this, supplying only general information on the point. It seems quite clear to me that this defence is not sufficient, even in terms of its substance, to refute the conclusions reached by the Commission on the basis of checks carried out over a period of three years which featured a constant exchange of information with the applicant and revealed deficiencies in the management of the system of securities and advances provided for in Regulation No 1726/70.

Overrun of the maximum guaranteed quantities

87. The question of the overrun of the maximum guaranteed quantities also requires a look at the earlier summary reports.

88. The Greek authorities take the view that it is possible to recover premiums granted in excess of the amounts provided for after the correction procedure, at the point at which the individual files are closed.

According to the Commission, however, the refund must be immediate. It contends that the rules governing the system, which entered into force as of the 1989 harvest, clearly require the immediate recovery of premiums unduly paid. The Greek authorities failed to meet that requirement since they did not begin the procedure for recovery until two or three years after the abovementioned rules had entered into force. The

Commission took up that point in response to the question put by the Court in its letter of 22 October 1996. In particular, citing the aim of the regulation, it reiterated the interpretation according to which 'if the maximum guaranteed quantities are exceeded, the penalty on producers should be imposed immediately'. [79] The Commission also stated that 'the delay in recovery, after two or three years, does not make it possible to pursue the objective of the regulation, particularly since the Greek authorities collected the fine on the basis of the set-off effected between the two harvests, without taking account of the benefit obtained as a result of the devaluation of the drachma against the ecu'.

89. In my opinion, the system established by the regulation is more consistent with the interpretation put forward by the Commission than with that advanced by the applicant. It is more in keeping with the provisions of the regulation to consider that the national authorities' duty of recovery is triggered as soon as it is established that the permitted quantity has been exceeded.

90. That follows, firstly, from the provisions of Regulation No 2824/88 under which the intervention prices and premium are paid at the rate of 95% of the relevant amount for the 1988 harvest and 85% for the 1989 and 1990 harvests. That limitation shows that the Community legislature sought from the outset to avoid the need for refunds and instead deemed it preferable to anticipate at once the probable results of the verification for the years in question. Furthermore, Article 3(2) of that regulation provides, in regard to the 1989 and 1990 harvests, that any balance in respect of the percentage of the premium granted is to be paid 'after actual production is determined'. That provision is inspired, as I see it, by the need to stabilise the situation of farmers immediately. [80] In other words, the Community, and the very system of securities as a whole attests to this, has a specific interest in ensuring not only that the premium is granted in the amount actually due to the person concerned but also that it is granted rapidly.

Moreover, the refund has to be immediate because of the other principles underlying the legislation as well. Immediate action is a response to the problem of fraud. If sums unduly paid are left in the hands of recipients, the risk of irregularities is actually greater. Furthermore, if the Member States are allowed to keep funds long after the amount actually payable has been deter-

79 — See the Commission's letter of 4 November 1996 [JUR (96)09545] in response to the letter from the Court of Justice of 22 October 1996 containing questions of interpretation.

80 — See also the third recital in the preamble which states: 'however, the norm and intervention prices may be adjusted by the application of the provisions on the maximum guaranteed quantities; in that case, the purchasing price must be adjusted'. Consequently, it does not seem possible to identify in the legislation a clear link, even relating to the timescale, between the Commission decision and regularisation of the premiums (but also of the securities that are released or forfeited depending on the outcome of the verification carried out *by the Commission*).

mined, the effect may be to distort the conditions of competition among economic operators.

Aside from that, the provision under consideration has to be construed in the light of the criterion of sound management, in the sense that it should help to simplify the administrative process. [81]

In conclusion, where Article 3(2) of Regulation No 2824/88 provides that 'any balance shall be paid ... *after* actual production is determined', this has to be construed as meaning that any balance must be paid *as soon as the Commission has taken its annual decision.*

The approach I am suggesting is, in my view, warranted by the intention clearly evinced by the Community legislature to ensure that effective action is taken forthwith in keeping with 'economic legitimacy', that is to say in keeping with the effectiveness of the legislation rather than the objective pursued when it comes to the recovery of premiums paid for surplus quantities. I therefore endorse the Commission's findings.

81 — See, to that effect, the clear guidance contained in the abovementioned Regulation No 1287/95 (fourth and fifth recitals in the preamble).

Calculation of the final correspondence

91. I also concur with the Commission's argument in regard to the calculation of the final adjustment. According to the Commission, the amount that appears in its decision was correctly determined. To make matters quite clear, it should be noted that the Commission informed Greece of the system it ought to have adopted with reference to the final adjustment. Although the Commission repeatedly raised the problem of bringing the tables of expenditure into line with Community standards in a number of letters, the Greek authorities simply failed to take the necessary measures. They persisted in using their own method and did not calculate the final adjustment in accordance with the criteria required by the Commission. In point of fact, it was not until its letters of 12 December 1994 that Greece declared it had complied with those criteria — too late therefore for this to be taken into account for the 1991 financial year.

Hence not only was the applicant out of time in stating its position but, given the repeated requests of the Commission, it demonstrated an unwillingness to cooperate which, here again, is incompatible with the principles underlying the legislation: the decision on clearance of the accounts for 1991 is therefore justified in terms of the above considerations as well.

Conclusion

On the basis of the foregoing, I propose that the Court of Justice reject the application by the Hellenic Republic for the annulment of the decision at issue. I therefore conclude that Commission Decision 94/871/EC of 21 December 1994 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1991 of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section should be upheld in so far as it applies to the Hellenic Republic and that costs should be awarded against the applicant.