OPINION OF ADVOCATE GENERAL ALBER

delivered on 16 April 2002 [1]

I — Introduction

1. This action for annulment concerns both how the national authorities were to perform certain checks in relation to the European Agricultural Guidance and Guarantee Fund and whether those checks were actually carried out in accordance with the relevant provisions, as well as whether the Commission may reduce refunds of expenditure for the period that runs from the time when the results of a European Agricultural Guidance and Guarantee Fund investigation have been communicated and until the deficiencies identified have been remedied. It further concerns compliance with the provisions on the improvement of peach and nectarine production and payment of the minimum price to producers.

1 — Original language: German.

II — Legislative framework

2. Given the extensive volume of legislation relevant to this case, I shall not cite individual provisions in detail. The material provisions will be cited in the points below, either under 'submissions of the parties' or under 'legal analysis'. To summarise, the main items of legislation involved are the following:

(1) *On financing the agricultural policy*

— Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy, [2] as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 amending Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (hereinafter: Regulation No 729/70); [3]

2 — OJ, English Special Edition 1970, p. 218.

3 — OJ 1995 L 125, p. 1.

— Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of accounts of the European Agricultural Guidance and Guarantee Fund Guarantee Section (hereinafter: Regulation No 1663/95). [4]

(2) *On the export refunds*

— Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts (hereinafter: Regulation No 386/90); [5]

— Commission Regulation (EC) No 2221/95 of 20 September 1995 laying down detailed rules for the application of Council Regulation (EEC) No 386/90 as regards physical checks carried out at the time of export of agricultural products qualifying for refunds (hereinafter: Regulation No 2221/95). [6]

(3) *On measures to improve peach and nectarine production*

— Council Regulation (EC) No 2505/95 of 24 October 1995 on the improvement of the Community production of peaches and nectarines (hereinafter: Regulation No 2505/95); [7]

— Commission Regulation (EC) No 2684/95 of 21 November 1995 laying down detailed rules for the application of Council Regulation (EC) No 2505/95 on the improvement of the Community production of peaches and nectarines (hereinafter: Regulation No 2684/95). [8]

(4) *On the processing of peaches*

— Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organisation of the market in products processed from fruit and vegetables (hereinafter: Regulation No 426/86); [9]

— Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products (hereinafter: Regulation No 2201/96); [10]

4 — OJ 1995 L 158, p. 6.
5 — OJ 1990 L 42, p. 6.
6 — OJ 1995 L 224, p. 13.
7 — OJ 1995 L 258, p. 1.
8 — OJ 1995 L 279, p. 3.
9 — OJ 1986 L 49, p. 1.
10 — OJ 1996 L 297, p. 29.

— Commission Regulation (EEC) No 1558/91 of 7 June 1991 laying down detailed rules for the application of the system of production aid for products processed from fruit and vegetables (hereinafter: Regulation No 1558/91); [11]

— Commission Regulation (EC) No 504/97 of 19 March 1997 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 on the common organisation of the markets in processed fruit and vegetable products (hereinafter: Regulation No 504/97). [12]

III — Facts

3. During the period 12 to 16 May 1997, the Commission carried out checks at the customs offices in Thessaloniki, Skydra, Piraeus and Patras. Those checks established various deficiencies in the implementation of the system for monitoring goods in connection with the grant of export refunds. Checks were also carried out as part of the process of monitoring implementation of the system for financing redevelopment measures in the peach and nectarine sectors in three administrative districts in which peach and nectarine trees were being grubbed up. In addition, the Commission carried out checks on the processing of peaches in Greece, in April and May 1997, with additional checks on 26 and 27 August 1998.

4. By letter of 18 September 1997 (VI/35924), the Commission informed Greece of the outcome of its inspections. By letter of 24 November 1998, the Commission informed Greece of the outcome of the further checks carried out in August 1998.

5. In the contested Decision 2000/216/EC of 1 March 2000, [13] the Commission — taking account of the earlier bilateral contacts and the outcome of the conciliation procedure — found that part of the expenditure declared by Greece had not been made in accordance with Community law. It therefore disallowed the following expenditure from financing by the EAGGF Guarantee Section:

— export refunds: GRD 339 028 666.00 for the financial year 1996-1998 because of inadequate physical controls;

11 — OJ 1991 L 144, p. 31.
12 — OJ 1997 L 78, p. 14.
13 — OJ 2000 L 67, p. 37.

— budget posts 1505-003 — fruit and vegetables: GRD 659 967 504.00 for the financial year 1996-1997 because the relevant provisions were not complied with;

— budget posts 1512-001 — fruit and vegetables: GRD 1 966 954 869.00 for the financial year 1996-1997 because of deficiencies in controls.

6. The infringements of Community law are set out in detail in the Summary Report of 27 October 1999. [14] Supplement No I to the Summary Report of 17 January 2000 gives further details regarding the monitoring of goods in relation to export refunds. [15]

14 — Commission Directorate General for Agriculture document D(99) Doc. VI/10529/99 of 27 October 1999. The findings relating to physical checks are on pp. 22 and 23 in paragraph 2.4; on improving production in the peach sector, on pp. 87 to 89 in paragraph 3.4; and on the processing of peaches, on pp. 89 to 91 in paragraph 3.5.

15 — Commission Directorate General for Agriculture document D(99) Doc. VI/10529/99 of 17 January 2000, pp. 2 and 3 in paragraph 2.4.

IV — Pleas in law

7. The Hellenic Republic brought an action against the decision on 27 April 2000 and is claiming that the Court should:

(1) declare the action admissible;

(2) annul or, in the alternative, amend Commission Decision C (2000) 488 final of 1 March 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), which has been published in the *Official Journal of the European Communities* as Decision No 2000/216/EC (OJ 2000 L 67, p. 37), so far as concerns the chapters thereof specifically contested, relating to financial corrections to the detriment of the Hellenic Republic.

8. The Commission contends that the Court should:

(1) dismiss the application;

(2) order the Hellenic Republic to pay the costs.

V — Submissions of the parties and legal analysis

A — *Export refunds*

(1) *National monitoring*

(a) Submissions of the parties

(i) The Hellenic Republic

9. The *Greek Government* contends that the disallowance of financing for the export refunds is based on an incorrect interpretation of Regulations Nos 386/90 and 2221/95 and an incorrect assessment of the facts. All that follows from Articles 2 and 3 of Regulation No 386/90 is that a minimum of 5% of the goods for which export refunds have been claimed must be subject to physical checks. Articles 5 and 7 of Regulation No 2221/95 do not specify a standard which the checks must meet. Article 5 simply provides that the export declaration and goods must correspond as regards quantity, nature and characteristics. Under Article 7, it must be ensured that achievement of the check rate of 5% can be verified at any time and a detailed examination account must be produced. That legislation therefore provides no basis for the qualitative requirements the Commission lays down.

10. The Greek Government also considers that it has secured a sufficiently high standard of national checks. In accordance with the abovementioned provisions, it was ensured that the export declaration tallied with the goods. Employees with the rank of director were employed in every customs office. Furthermore, the checks were soon to be supplemented by the creation of a special department within the customs administration. In the context of the 'Customs 2000' programme, the measures to transpose the rules contained in Regulations Nos 386/90 and 2221/95 were being implemented according to a special timetable. The Hellenic Republic therefore considers that the presence of the requisite infrastructure should not constitute grounds for imposing a reduction.

11. As regards the nature of the checks, the Greek Government maintains that its inspectors used the resources available to them, such as scales, to verify the information recorded on the export documents. In response to the criticism of the lack of a

uniform and detailed examination account, the Greek Government points out that the inspectors were required to note the checks on the export declaration. By circular No T.998/84/A0019 of 15 February 1999, all customs offices were instructed to prepare a special examination account. Furthermore, clear and unambiguous instructions were issued to the various offices and, where necessary, these were supplemented by instructions issued locally. That applied also to the advance notice of loading exporters had to submit to the customs authorities. Moreover, in its letter VI/35924 of 18 September 1997, the Commission confirmed that the checks carried out in Greece were satisfactory and that an above average number of checks were carried out.

12. With particular reference to the customs administration in Skydra, the Greek Government submits that this office used the circular of 18 December 1996 concerning the information exporters were required to provide under paragraph No 31 of the Single Administrative Document (SAD). The office checked the accuracy of the information provided by the exporter under paragraph No 31 of the SAD, where necessary by carrying out spot checks and laboratory analyses. Since the time of the EAGGF inspections, that customs office was also accepting separate declarations from exporters.

13. The Greek Government further contends that the Commission Decision involves a misuse of powers. The Commission has misused its powers under Article 5(2)(c) of Regulation No 729/70 in that a flat-rate reduction of 5% for the individual unsatisfactory checks alleged to have been identified is too high.

(ii) The Commission

14. The *Commission*, however, contends that the qualitative requirements the national checks have to meet are sufficiently clear from Article 3 of Regulation No 386/90 and Articles 5, 6 and 7 and the Annex to Regulation No 2221/95.

15. The main criticism, on which the 5% reduction is based, is the absence of the essential infrastructure without which the checks cannot be reliably performed. If, for instance, the appropriate facilities for emptying a container are not available, and the spot checks are therefore always carried out on the last items loaded, it cannot be guaranteed that the checks are representative and reliable.

16. The Commission also considers the organisational measures set in place to be inadequate. Appointing directors does not of itself guarantee the quality of the checks. There were no internal, unannounced inspections. There was similarly a failure to guarantee that the checks were carried out uniformly across-the-board. The Commission further complains that the operational instructions the Greek Government cites were not described in greater detail.

17. In addition, in the absence of examination accounts, it is not possible to ascertain whether the checks have fulfilled the requirements. Not until the directive of 15 February 1999 was issued were the customs offices required to prepare examination accounts.

18. Furthermore, the proposed changes did not invalidate the finding of deficiencies in the national checks carried out in the budget years 1996-1998. In relation to the Skydra customs office, the Commission points out that, according to the Greek authorities' letter No 166593 of 2 April 1999, the 1996 decree was not put into effect until late 1998.

19. As regards the level of the flat-rate reduction imposed, the Commission takes the view that the mediocre quality of the checks, as established, fully justifies a flat-rate reduction of 5%. The deficiencies identified resulted in an increased risk to the EAGGF.

(b) Analysis

20. The questions to be discussed in the context of this action can be divided into two categories. The first covers matters of fact, such as the hierarchical supervision of the checks by a director; the existence of the appropriate infrastructure and the preparation of inspection reports. The second covers the basic issues: the extent to which Regulations Nos 386/90 and 2221/95 stipulate the nature or quality of the checks to be made. Since the answer to the first question depends on the answer to the second, it is necessary to begin by determining the requirements the checks must meet, in accordance with Regulations Nos 386/90 and 2221/95.

(i) Basic requirements

21. I should first point out that it is settled case-law that Article 8(1) of Regulation No 729/70, which embodies the obligations incumbent on the Member States under Article 10 EC in this particular area, imposes on the Member States the general obligation to take the measures necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly, even if the specific Community act does not expressly provide for the adoption of a particular supervisory measure. [16] Viewed simply in the light of that case-law, the arguments the Greek Government has advanced do not carry conviction. Even assuming them to be correct, that is to say even if Regulations Nos 386/90 and 2221/95 did not prescribe the standard of the checks to be carried out, the Greek Government would be under an obligation, on the basis of Article 8 of Regulation No 729/70, to take all measures to ensure that Community financing of EAGGF expenditure was carried out properly, by performing effective physical checks.

22. I shall therefore analyse merely in the alternative below, in the event that the Court does not apply that case-law in these proceedings, the question of the extent to which Regulations Nos 386/90 and 2221/95 determine which checks are to be carried out.

23. According to the abovementioned Summary Report of the Directorate General for Agriculture of 27 October 1999, the Commission's Clearance of Accounts Unit set out its conclusions concerning the checks carried out in all the Member States during 1992 and 1993 in a special report published in OJ 1993 C 218 of 12 August 1993. On 18 January 1994, it sent a letter to all of them requesting them to introduce the requisite corrective measures by 1 July 1994. In the letter, the Member States were asked, among other things, to ensure that: Regulations Nos 386/90 and 2030/90 — the latter was replaced by Regulation No 2221/95 as of 1 January 1996 — were applied uniformly in all customs offices; the central customs authorities played a coordinating, developmental and supervisory role by evaluating the data from the local offices; and customs offices in which the checks on goods were carried out had the necessary infrastructure (scales, fork-lift trucks, facilities for thawing out meat and

16 — See Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraph 66; Case C-2/93 *Exportslachterijen van Oordegem* [1994] ECR I-2283, paragraph 17 et seq; Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 45.

refrigerators to store unloaded goods etc.).[17] According to that report, those rules became an integral part of Regulation No 2221/95, which entered into force on 1 January 1996.[18]

24. According to Article 1(1) of Regulation No 386/90, the checks are necessary to monitor whether operations conferring entitlement to the payment of refunds have actually been carried out and have been executed correctly. Article 3(1) provides that checks on goods must take place frequently in the form of spot checks and without prior warning and must relate to a representative selection of at least 5% of the export declarations in respect of which export refunds are being applied for. Under Article 3, a visual inspection must be carried out to establish that the goods correspond to the description given in the refunds nomenclature. Should that not prove possible and the classification or quality of the goods requires very precise information about their ingredients, verification is to take place by using all the senses or by applying physical measures which may go so far as submitting the goods for analysis by laboratories specially equipped for the purpose.

25. Article 5(1) of Regulation No 2221/95 defines the concept of physical checks under Article 3 of Regulation No 386/90 as 'verification that the export declaration... and the goods correspond as regards quantity, nature and characteristics'. In addition, Article 5(1) refers to the Annex to the regulation and Article 13 of Regulation (EEC) No 3665/87. The Annex to Regulation No 2221/95 makes a distinction between bulk and packaged goods and non-Annex II goods. The quantity of exports of bulk goods is to be determined by calibrated automatic weighing and the nature and characteristics by random representative checks. Where necessary, the data entered in the weighing records is to be checked against the data contained in the loading documents. In the case of exports of goods which have been automatically bagged, canned or bottled etc., the number of bags, cans or bottles must be counted in total, and the nature and characteristics of the goods checked on the basis of a representative selection. If pallets loaded with boxes, cans etc. are being exported, representative pallets are to be selected and the number of boxes etc. on them checked. A number of representative boxes etc. are to be selected and the number of individual items checked.

26. In the light of those provisions, the Greek Government's submission that Regulations Nos 386/90 and 2221/95 do not provide greater detail as to the quality of

17 — Summary Report, p. 13 et seq.
18 — Summary Report, p. 15.

the checks to be carried out lacks conviction. In particular, the checking procedures and objectives to be achieved set out in the Annex to Regulation No 2221/95 indicate how the checks are to be carried out. A distinction is actually made according to the goods to be checked, depending on whether they are bulk or packaged goods or Annex II goods. The first two categories of goods are relevant to these proceedings.

27. In relation to checks on the quantities exported, the Annex to Regulation No 2221/95 stipulates that quantities are to be checked by weight and number. That applies not only to the total quantity but, where necessary, also to the pallets and boxes etc. to be selected. As provided for in paragraph 1(b), in exceptional cases, any other means of checking, which is satisfactory from the commercial point of view, is to be used.

28. As regards checks on the nature and characteristics of the goods, Article 3(3) of Regulation No 386/90 itself provides for random checks or, if necessary, checks using all the senses or even laboratory analysis. Article 13 of Regulation No 3665/87, to which Article 5 of Regulation No 2221/95 refers, further requires that the goods must be of sound and fair marketable quality and it must, if necessary, be guaranteed that they are safe for human consumption.

29. As the Commission submits, therefore, the checks are to be carried out *inter alia* using scales and by checking the weighing records. Random sampling may mean that it is necessary to unload at least part of the packaged goods or check them before they are loaded, and that presupposes the existence of the necessary infrastructure — for example fork-lift trucks, storerooms and means of transport in order to reach the loading site and containers to which the bulk goods can be transferred.

30. In the light of the above observations, the Greek Government's objection that Regulations Nos 386/90 and 2221/95 do not specify the standard of the checks to be carried out must be rejected.

(ii) The checks carried out

31. Having thus established that the checks to be carried out must be of a certain standard, it is now necessary to consider whether the physical checks for monitoring

export refunds carried out by the Greek authorities in the period at issue in this case, between 1996 and 1998, meet the requirements of Regulations Nos 386/90 and 2221/95. At issue here are the alleged shortcomings identified in the customs offices in Thessaloniki and Skydra in particular.

32. In response to the Commission's criticism of a lack of internal measures to ensure the proper standard of checks, the Greek Government refers to the appointment of a director who is supposed to monitor the standard of the checks. It has to be noted here that while this organisational measure may perhaps be a necessary step towards ensuring the quality of checks in the individual offices, it cannot be deemed to be sufficient in itself. What matters is how these officials perform their duties. The Greek Government, however, provides no evidence to show that as a result of the appointment of these officials, the standard of checks carried out by the offices actually changed during the material period.

33. In that connection, it has fundamentally to be pointed out that in the context of the charging of expenditure to the EAGGF, the Commission benefits from a mitigation of the burden of proof. It is settled case-law that Articles 2 and 3 of Regulation No 729/70 permit the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production, leaving the Member States to bear the burden of any other sums paid, in particular any amount which the national authorities wrongly believed themselves authorised to pay in the context of the common organisation of the markets. [19] Consequently, though it is for the Commission to produce evidence of an infringement of Community law, in order for it to do so, it is sufficient that the Commission has serious and reasonable doubts in view of the absence or inadequacy of checks implemented by the Member State concerned. It is for the Member State to demonstrate, if appropriate, that the Commission has erred in its doubts concerning that Member State's system of checks and the financial consequences consequently drawn. [20] This mitigation of the burden of proof on the Commission lies in the division of powers between the Community and the Member States concerning the common agricultural policy. The management of EAGGF finances is principally in the hands of the national administrative authorities responsible for ensuring that the Community rules are strictly observed. That system, based on trust between national and Community authorities, does not involve any systematic supervision by the Commission, which, moreover, would in practice be quite unable to carry it out. Only the Member State is in a position to know and determine precisely the information necessary for drawing up EAGGF

19 — Case C-147/99 *Italy* v *Commission* [2001] ECR I-8999, paragraph 54; Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 50 et seq.

20 — Case C-28/1994 (cited in footnote 19 above) paragraph 75; Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6 et seq.; Case C-46/97 *Greece* v *Commission* [2000] ECR I-5719, paragraph 58.

accounts since the Commission is not close enough to obtain the information it needs from the economic operators.[21] The burden of proof is thus reversed.

34. On the basis of that case-law, it can be established in this case that, in the Summary Report in particular, the Commission listed in detail the deficiencies it had identified,[22] and to that extent presented specific facts which give rise to justifiable doubts as to the proper implementation of the physical checks required by Regulations Nos 386/90 and 2221/95. The Greek Government has not, however, demonstrated that, in comparison with the deficiencies the Commission identified, the checks carried out by the individual customs offices actually improved in the period at issue here between 1996 and 1998, as a result of the appointment of special officials responsible for monitoring the standard of the checks. In that respect, the Commission's argument is not rebutted. That objection to the legality of the contested decision has therefore to be rejected.

35. Neither does the objection that the instructions issued to the customs offices regarding the implementation of the Community rules were clear and unambiguous invalidate the Commission's finding that there were deficiencies. The mere fact that those instructions existed no more guarantees that the checks to be carried out under Regulations Nos 386/90 and 2221/95 were actually carried in a way that prevented irregularities than does the appointment of special officials. As the Commission correctly points out, that requires, for instance, a system of internal checks to monitor observance of the instructions. Only a system of that kind will guarantee that the requisite checks are carried out properly and uniformly. The Greek Government makes no mention of a precautionary measure of that kind. In that respect also, therefore, its submission does not justify declaring the contested decision to be invalid.

36. In relation to the Skydra customs office, the Greek Government points out that that office applied the circular of 18 December 1996 concerning the declaration to be made by the exporter, which forms annex 14 to the application. On that point, the Commission states, without contradiction, that, according to the Greek Government's letter No 166593 of 2 April 1999, submitted as annex 2 to the rejoinder, that circular was not put into effect until late 1998. That letter confirms the Commission's finding that its application was not secured in the period material to this case, between 1996 and 1998. The Greek Government has, consequently, failed to demonstrate that the deficiency the Commission identified in this respect does not exist. That objection has, therefore, also to be rejected.

21 — Case C-238/96 *Ireland* v *Commission* [1998] ECR I-5801 paragraphs 27 to 31 with further references. See also Case C-118/99 *France* v *Commission* [2002] ECR I-747, paragraph 37 et seq.

22 — See paragraph 2.4 on p. 22 of the Summary Report.

37. In relation to the Commission's criticism of a lack of proper infrastructure available to the customs office, the Greek Government points out that this is being set in place as part of the 'Customs 2000' programme. According to the abovementioned Summary Report, the Greek Government intended to put that infrastructure in place in the context of 'Agenda 2000'. [23] It does not matter which Community support measure is used to set in place the requisite infrastructure. The crucial factor is that the Greek Government's submission confirms the Commission's doubts as to whether the checks were properly carried out in view of the lack of infrastructure. For the material period of time, in respect of which the amount of expenditure to be refunded is being reduced, the customs offices inspected did not have the appropriate infrastructure. That objection to the contested decision must, therefore, also be rejected.

38. The Greek Government points out that the Commission has acknowledged that a particularly high number of checks were carried out in Greece. That is confirmed in the Commission's abovementioned Summary Report. But that objection fails to take into account that the Commission has criticised not the frequency but the standard of the checks. It refers to the fact that only visual checks were carried out; the goods were not unloaded because there was no suitable infrastructure. Random checks were carried out only on the easily accessible goods which had been loaded last. The Greek Government has not contradicted that statement of fact. The Commission's criticism, therefore, is that the lack of infrastructure meant that the checks could not be carried out to the requisite standard. The lack of infrastructure is not remedied by carrying out checks. They remain inadequate and inapt to prevent irregularities in relation to export refunds. Consequently, that objection too must be rejected.

39. In relation to the preparation of reports on the physical checks carried out, the Greek Government points out that the inspectors were not required to note the implementation of checks on the export declaration. Other documents, the inspectors' mission documents for example, could in fact show that the checks had been carried out. The Commission does not dispute this. It actually bases the reductions it has applied on the fact that there were no documents, mission documents, for example, which proved that the checks had actually been carried out.

23 — See paragraph 2.4 on p. 22 of Document VI/10529/99.

40. The reference to the circular of 15 February 1999 has also to be rejected. The material period of time in this case is between 1996 and 1998. A circular of 1999 cannot undo the shortcomings identified in the period before 1999; at best, it can prevent them for the future. That objection too has therefore to be rejected.

41. In conclusion, it has to be established that Regulations Nos 386/90 and 2221/95 stipulate the standard of the checks to be carried out and that the physical checks carried out in Greece between 1996 and 1998 did not meet those requirements.

(2) *The material period of time*

(a) Submissions of the parties

(i) The Hellenic Republic

42. The *Greek Government* considers that the Commission should not have reduced expenditure for the period after the outcome of the EAGGF checks was communicated, that is to say after 18 September 1997, as it had no legal basis for doing so. According to Article 5(2)(c) of Regulation No 729/70, as amended by Regulation No 1287/95, the Commission is to decide on the expenditure to be excluded from the Community financing. And, according to Article 8 of Regulation No 1663/95, the Commission is to provide an evaluation of any expenditure which it may propose to exclude. It is clear from the wording of those provisions that reductions cannot be imposed on other sums that arise after the Commission's findings have been communicated. That option was made available to the Commission only on the advent of Regulation (EEC) No 2245/99, which amended Regulation No 1663/95. But since Regulation 2245/99 did not enter into force until October 1999, it does not cover this case which relates to expenditure in the period 1996-1998. The reductions the Commission imposed after 18 September 1997 were not communicated in accordance with Regulation No 1663/95, and the Commission's action therefore also infringes the principle of legal certainty.

(ii) The Commission

43. The *Commission's* response to that objection is that Article 5 of Regulation No 729/70 and Article 8 of Regulation No 1663/95 do not prevent reductions being imposed for the period after the

outcome of the checks has been communicated. A distinction has to be made between the period in respect of which the checks were carried out and the period in respect of which reductions were imposed. The restriction to a period of 24 months before the communication contained in Article 5(2)(c) of Regulation No 729/70 was introduced for reasons of legal certainty. Once the Member State has been informed of a deficiency, however, the reduction of expenditure ceases to be contrary to the principle of legal certainty. The inadequacy of the checks was brought to the attention of the Greek Government by letter of 18 September 1997; consequently, between that date and until the deficiency was remedied no expectation worthy of protection stood in the way of a reduction in the expenditure eligible for refund.

(b) Analysis

44. The Greek Government is relying on the wording of Article 5(2)(c) of Regulation No 729/70, as amended by Regulation No 1287/95, as well as Article 8 of Regulation No 1663/95. It is therefore helpful to reproduce the text of those two provisions here.

45. Article 5(2)(c) of Regulation No 729/70 provides:

'[The Commission] shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules. Before a decision to refuse financing is taken, the results of the Commission checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.... The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community. A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned.

...'

46. In the version applicable to this case, that is to say before Regulation No 1663/95

was adopted, Article 8(1) of Regulation No 1663/95 provides:

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

...'

47. Relying on the wording of Article 5 of Regulation No 729/70 and Article 8 of Regulation No 1663/95 in the version which applies in this case, that it to say before the entry into force of Regulation No 2245/1999, the Greek Government argues that the contested Commission decision was adopted without a legal basis, in that it imposes a reduction on the expenditure eligible for refund for irregularities in the period after the communication in accordance with Article 8 of Regulation No 1663/95. The Commission merely retorts that the provisions relied on do not prevent a reduction of that nature. It does not state on which provisions its authority to reduce the amounts at issue is based.

48. The Commission's argument cannot suffice to establish the legality of the contested decision. The fact that, according to its wording, a provision does not prevent an action by the Commission does not mean that it authorises that action.

49. The Greek Government bases its interpretation on the wording, particularly the terms 'shall decide' in Article 5(2)(c) of Regulation No 729/70 and 'shall communicate [an evaluation of any expenditure which it may propose to exclude]' in Article 8(1) of Regulation No 1663/95. In that connection, it is necessary to point out that Article 5 specifically addresses only the question of how far back the disallowance of expenditure may extend, namely 24 months. The wording of that provision provides no specific answer to the question raised here of how far into the future the reduction can extend after communication, in accordance with Article 8 of Regulation No 1663/95. The term 'shall decide' merely implies that the Commission has the authority to determine which expenditure is to be excluded from Community financing. The provision is silent as far as the temporal scope is concerned. It does not regulate the matter of the period to which reduction can apply.

50. Similar considerations have to be raised in regard to the wording of Article 8(1) of Regulation No 1663/95, cited above. If the Commission indicates that certain expenditure may possibly be excluded from financing, that possibility too contains no indication of temporal scope.

51. It might be possible to consider interpreting Article 8 as meaning that in any event no more expenditure may be excluded than is stated in the Commission's communication. However, an interpretation of that nature does not accord with the system of EAGGF financing, as set out in Regulation No 729/70.

52. It is settled case-law that Articles 2 and 3 of Regulation No 729/70 permit the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production, leaving the Member States to bear the burden of any other sums paid, in particular any amount which the national authorities wrongly believed themselves authorised to pay in the context of the common organisation of the markets. [24]

53. In the light of that basis structure, the question the Greek Government raises does not appear to be the right one. The question is not whether the Commission had the authority to reduce the expenditure claimed. The real question is whether the Commission had the authority to charge to the EAGGF the expenditure on export refunds the Greek Government had applied for. It was authorised to do that only if the expenditure was in compliance with Community rules. Where irregularities, as in this case in the form of inadequate physical checks are identified, it is incumbent on the Commission, on the basis of Articles 2 and 3 of Regulation No 729/70, to exclude that expenditure from EAGGF financing in accordance with Article 5(2)(c). [25] To that extent, the Commission is not only authorised but is actually under an obligation not to take over expenditure which has not been incurred in compliance with Community rules.

54. On the basis of the above considerations, the Greek Government's objection of the lack of a legal base must be rejected. So long as the deficiencies identified persist, the Commission is not entitled, on the basis of Articles 2 and 3 of Regulation No 729/70, to charge to the EAGGF the financing for the expenditure claimed. It is actually under an obligation to exclude that expenditure from Community financing, in accordance with Article 5(2)(c) of Regulation No 729/70. The contested decision is therefore also legitimate in so far as it provides for a reduction in expenditure, as a result of irregularities, beyond 18 September 1997 and until the deficiencies identified have been remedied.

24 — Case 147/99 (cited in footnote 19 above) paragraph 54; Case C-28/94 (cited in footnote 19 above) paragraph 50 et seq.

25 — See Case C-28/94 (cited in footnote 19 above) paragraphs 49 to 51.

(3) Proportionality of the reduction

55. The Commission has imposed a flat-rate of reduction of 5% of the sums applied for by way of export refunds as a result of the deficiencies identified. The Greek Government considers this to be disproportionate. In particular, the Commission nowhere indicated the sums jeopardised as a result of inadequate physical checks. It is not clear what could justify that level of reduction.

56. On the basis of the abovementioned case-law on the reversal of the burden of proof, the Court has concluded, in settled case-law, that where a Member State is unable to prove that expenditure has been incurred in compliance with Community rule, the Commission 'has no choice but to disallow all the expenditure in question'. [26]

57. As early as its judgment in Case 347/85, the Court held that where the Commission, instead of rejecting all the expenditure affected by the infringement, which it is legally entitled to do, has endeavoured to establish the financial impact of the unlawful action by means of calculations based on an assessment of what the situation on the relevant market would have been if the infringement had not occurred, the burden of proving that those calculations are not correct rests on the State seeking to have the disallowance annulled. [27] That case-law was subsequently confirmed, including as a result of the adoption of the 'Guidelines on the calculation of the financial consequences when preparing the decision regarding the clearance of the accounts of EAGGF Guarantee', working paper VI/216/93 of 3 June 1993 and working paper VI/5330/97 of 23 December 1997 (hereinafter: the Guidelines). [28] The Guidelines are based on the findings of a working group which the Commission set up in 1990, chaired by Jacques Belle. The final report of the working group of October 1992 is known as the 'Belle report', which the Commission adopted in its unpublished Decision E/103/93 of 5 March 1993 (SEC[93]306). On the basis of that report, the abovementioned Guidelines were adopted in June 1993, and they have since been used by the Commission to calculate flat-rate reductions.

58. It follows from that case-law, firstly, that, in this case, the Commission would have been entitled to refuse to charge to the EAGGF all the expenditure in relation to export refunds. It is for the Greek Government to prove that the expenditure is lawful. As stated above, that Government failed to provide the proof required.

26 — Case C-50/94 Greece v Commission [1996] ECR I-3331, paragraph 26.

27 — Case 347/85 *United Kingdom of Great Britain and Northern Ireland* v *Commission* [1988] ECR 1749, paragraph 15 et seq. See also the Opinion of Advocate General Darmon of 3 October 1991 in Case C-197/90 *Italy* v *Commission* [1992] ECR I-1, I-13, point 42.

28 — Case C-50/94 (cited in footnote 26 above) paragraph 7 et seq.

59. It has further to be taken into account that the Commission informed the Hellenic Republic, by letter of 24 November 1998, that the lack of verifiable results of checks carried out made it impossible to ascertain the practical effects of the poor standard of those checks and, consequently, a flat-rate reduction had to be applied. In the light of the abovementioned case-law, there can be no legal objection to that conclusion.

60. As regards the level of the reduction, it has first to be pointed out that where the checks are defective, the Court has held a both a total disallowance of expenditure [29] and also a 10% reduction to be lawful. [30] The Commission has a power of discretion here, the exercise of which is defined in greater detail in the abovementioned Guidelines.

61. Under the Guidelines, a 5% reduction of the expenditure claimed is imposed where the deficiency relates to important elements of the control system or to the operation of controls which play an important part in the assurance of the regularity of the expenditure, such that it can be concluded that the risk of loss to the EAGGF was significant. The deficiencies the Commission criticises concern the equipment of the customs offices and thus constitute an important element of the control system. In addition, the thoroughness of the checks carried out by the Greek customs offices is criticised. That being so, it is clear that the 5% reduction is consistent with the Guidelines. It can therefore be deemed to be proportionate.

62. To summarise then, the first plea in law must be rejected.

B — *Budget post 1505*

(1) *Written undertaking to refrain from new planting*

(a) Submissions of the parties

(i) The Hellenic Republic

63. As regards the reduction as a result of the failure to include on the application for a premium a written undertaking by the owner/tenant to refrain from new planting, the *Greek Government* objects that Article 2(1)(a) of Regulation No 2505/95 and Article 3(4)(3) of Regulation

29 — Case C-45/97 *Spain* v *Commission* [2000] ECR I-5333, paragraphs 24 to 26.

30 — Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraphs 124 to 126; *Netherlands* v *Commission*, cited in footnote 19, paragraphs 54 to 56.

No 2684/95 have not been interpreted correctly. According to those provisions, it is sufficient for the written undertaking to be appended to the application. It is not, however, necessary for it to appear on the application form.

64. As regards the written undertaking to inform the owner/tenant that they must refrain from new planting, the Greek Government contends that that requirement is met because a permit is necessary before agricultural land can be sold or let. That ensures that the owner/tenant is informed that he is under an obligation to refrain from new planting.

(ii) The Commission

65. The *Commission*, however, maintains that the measures taken by the Greek authorities fail to meet the requirements of Article 3 of Regulation No 2684/95. In particular, the application form distributed does not include a declaration in which the vendor/lessor undertakes to point out, when the land is sold or let, that there must be no new planting. In its inspections, the Commission ascertained that the regional authorities used the form differently. In two of the three administrative districts (Nomoi) inspected, namely in Imathias (Veria) and Pella (Giannitsà), no written undertakings were required at all. The authorities in fact considered the permit requirement in relation to land transactions to be sufficient. But the Commission does not consider this sufficient to meet the obligation arising out of Article 3 of Regulation No 2684/95, since it does not ensure that the owner/tenant is aware of all the encumbrances affecting the land.

(b) Analysis

66. The first point to make is that the Greek Government does not dispute the Commission's actual findings. It is common ground that the undertaking in question to inform the owner/tenant that there must be no new planting was not required by all the customs offices inspected, as some considered the mandatory permit procedure to be sufficient.

67. Article 2(b) of Regulation No 2505/95 makes the grant of the grubbing-up premium subject, among other things, to the requirement that the beneficiary should refrain from any new planting. Article 3 of Regulation No 2684/95 fleshes out that provision by making a distinction between the undertaking not to engage in new planting oneself and the undertaking to inform an owner/tenant of the land in question that it is affected by an encumbrance of that nature. As the Greek Gov-

ernment correctly points out, those undertakings have to be 'appended' to the application. That term does not, necessarily at least, indicate that the undertakings must be recorded on the application form.

68. However, in accordance with Article 4 of Regulation No 2684/95, the body responsible for taking receipt of the application for a grubbing-up premium must record the undertaking referred to in Article 3 before deciding whether the application is admissible. That presupposes the existence of the relevant written undertaking at the time the application is submitted. The permit procedure may possibly be capable of informing a purchaser of the encumbrance affecting the land, as the Greek Government maintains. But it does not constitute a written undertaking by the owner/tenant as required by Article 3 of Regulation No 2684/95, as it does not take place at the time the application is submitted. That objection by the Greek Government must therefore be rejected.

(2) *Recording the date on inspection notes*

(a) Submissions of the parties

(i) The Hellenic Republic

69. In response to the criticism that no date was recorded on the inspection notes, the Greek Government objects that Article 4 of Regulation No 2684/95 has not been interpreted correctly and that the actual circumstances have been wrongly assessed. Article 4 does not require the date to be recorded on the inspection notes. It is sufficient for this to be apparent from other documents, such as the mission documents.

(ii) The Commission

70. The *Commission*, however, considers it essential that the date be recorded on the inspection notes. The date is of particular importance as a time-limited support programme is being implemented. In response to the objection that the date could be obtained from other documents, the Commission notes that in the administrative district of Imathias, the relevant documents contained nothing to indicate the date. More particularly, they contained no mission documents. Nor were the inspectors able to provide the dates on the basis of other documents. It is therefore clear that the administrative documents contained no evidence that the checks had been carried out within the requisite time-limits.

(b) Analysis

71. Article 1 of Regulation No 2505/95 provides that during the 1995 marketing

year, a one-off premium is to be paid for grubbing up peach and nectarine trees. Under Article 2(1)(a), that grubbing up has to take place before 30 April 1996. That rule is reiterated in Article 4(3) of implementing Regulation No 2684/95. Article 3(1) of that regulation further stipulates that the application for the grubbing-up premium must be submitted by 31 January 1996 at the latest, and, under Article 4(2), a decision on the application must be taken within two months of its receipt. Pursuant to Article 5(1), the Member States have to inform the Commission by 31 August 1996 of the areas for which applications for grubbing-up premiums have been submitted and the areas which have been grubbed up.

72. That relatively tight timetable is the reason why the Commission attaches importance to recording the date on the inspection notes. The obligation incumbent on the national authorities to certify the period at which the grubbing-up took place actually guarantees the prevention of abuses. Nor does the Greek Government appear basically to challenge the need to record the date of the national checks. But it does not consider it necessary to record the date of the check on the inspection notes.

73. But even assuming that the date did not necessarily have to be recorded on the inspection notes and that it is sufficient for it to be apparent from other documents, the Greek Government's submission does not seem capable of rebutting the Commission's criticism. The fact is that, in this case, it is impossible to tell when the checks took place from the documents submitted by the Greek authorities. The Commission asserts, without contradiction, that the Greek officials were not able to provide the dates on the basis of other documents either. According to the abovementioned rules of evidence, it has therefore to be established that the Greek Government's submissions are not sufficient to refute the Commission's findings that it was not possible to ascertain the date on which the checks were carried out. That objection too must therefore be rejected.

(3) *Notifying that grubbing-up has been completed*

(a) Submissions of the parties

(i) The Hellenic Republic

74. As far as notification that grubbing-up has been completed is concerned, the *Greek*

Government contends that the Commission has misconstrued Article 5 of Regulation No 2684/95. It does not follow from that provision that the authorities have to be given written notification. Notification could be provided in any other form, particularly by word of mouth. All that matters is that the trees have actually been felled and that this is verified by the competent authority, that being the prerequisite for the grant of the premium.

(ii) The Commission

75. The *Commission*, however, points out that it was not clear from the documents examined of the competent authorities that the beneficiaries had notified the date of grubbing-up. It was also particularly important that that provision should be complied with, as this was a time-limited programme. It had to be possible to verify the data in the application and check that grubbing-up had taken place. In the administrative district (Nomos) of Imathias, for instance, no notifications were recorded. In the administrative district of Pellas, the beneficiaries had notified not the date of grubbing-up but that it had taken place. That meant it was impossible for the competent authorities to verify the grubbing-up.

(b) Analysis

76. According to Article 5 of Regulation No 2684/95, the applicant is to notify the competent authority of the probable date of grubbing-up. That rule does not in fact expressly provide for the form notification is to take.

77. As set out above, on the basis of Article 8 of Regulation No 729/70, the Member States are, however, obliged to take the measures necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly even if the specific Community act does not expressly provide for the adoption of particular supervisory measures. [31] That case-law indicates that even if Article 5 does not require written notification of the date of grubbing-up, it must at least be clear from the competent authority's files that the beneficiary has provided notification. In addition, it must be also be possible to verify when that notification was made. Regulation No 2684/95 has set a very short period of time within which the individual measures have to be taken. Specific measures have to take place by a time-limit which the regulation lays down (the application by 31 January; the decision within two weeks; the grubbing-up by 30 April and the notification to the Commission by 31 August 1996). In the light of all those circumstances, it is clear that the individual measures, including notification by the

31 — Case C-54/95 (cited in footnote 16 above) paragraph 66; Case C-2/93 (cited in footnote 16 above) paragraphs 17 and 18.

beneficiary under Article 5, must be apparent from the national authorities' documentation.

78. The Greek Government's contention does not cast doubt on the Commission's findings that it was not possible to ascertain from the documents available whether and when the declarations at issue were made, and that in the administrative district of Pellas a declaration of that nature was not even required. The sole notification provided was that grubbing-up had taken place. But notification of that kind does not enable the authorities to verify whether the parcels of land for which a premium is being claimed were actually planted with peach or nectarine trees previously. It cannot therefore serve as notification within the meaning of Article 5. That objection on the part of the Greek Government must therefore also be rejected.

(4) *Size of the parcels in respect of which a premium was applied for*

(a) Submissions of the parties

(i) The Hellenic Republic

79. The *Greek Government* claims that neither Articles 1 and 2 of Regulation No 2505/95 nor Article 1 of Regulation No 2684/95 required that there should be a long-term or indeed indefinite tenancy agreement or that this should have been concluded long before 31 January 1996. By its interpretation, the Commission is introducing new, additional requirements for the grant of the premium.

(ii) The Commission

80. The *Commission*, however, points out that a substantial proportion of the agreements concluded in January 1996 — that is to say shortly before the qualifying date for the premium under Regulation No 2684/95, namely 31 January 1996 — related to parcels which were smaller than 0.5 hectares and, therefore, in principle excluded from the premium. Without the agreements in question, no premiums could therefore have been granted for those parcels. Those cases therefore represented an increased risk to the proper implementation of the programme and ought, consequently, to have prompted additional inspections. But it was ascertained that, in Imathias and Edessa, all the agreements concluded in January 1996 had been accepted, even when they were valid for only a relatively short period of a year or two. In the Commission's view, that should have resulted in more extensive checks.

(b) Analysis

81. The parties dispute whether the transactions in relation to the parcels, which benefited from the premium under Regulation No 2684/95 because they were the subject of a contractual agreement entered into in January 1996 and were thus combined to form an overall parcel of at least 0.5 hectares, should have prompted tighter controls. The Commission has not in practice demonstrated that specific parcels wrongly benefited from a premium. The issue is the failure to carry out checks which might possibly have uncovered irregularities.

82. The Greek Government is correct to say that the Community rules do not require that the parcels which benefit from a subsidy must be integrated within long-term tenancy agreements entered into well before 31 January 1996 or contracts for the sale of land. But that is not what the Commission is claiming. The real issue is whether the fact that certain parcels were the subject of agreements, which were entered into shortly before the qualifying date, should have given rise to more extensive checks.

83. The fact that the agreements at issue were concluded so near to the qualifying date and that the parcels in question would otherwise have been too small to qualify for the premium under Regulation No 2684/95 certainly seems to suggest that more extensive checks should have been carried out. There is at least a greater possibility of the misuse of premiums in this instance, as compared with longer-term agreements or agreements concluded long before the qualifying date. Pursuant to the abovementioned case-law, according to which the Member States must take all the measures necessary to prevent the misuse of EAGGF financing, even if the specific Community act does not provide for the adoption of particular supervisory measures, the circumstances described justify carrying out more extensive checks. That plea in law must therefore also be rejected.

84. The interim conclusion must therefore be that the reduction under budget item 1505 is also legitimate.

C — *Budget item 1512*

(1) *Delivery notes*

(a) Submissions of the parties

(i) The Hellenic Republic

85. As regards the third reduction from the expenditure in respect of which a refund

has been claimed, the *Greek Government* argues that Article 15 of Regulation No 1558/91 has been misconstrued and the facts incorrectly evaluated. In its view, there is no requirement to draw up delivery notes. Under Article 15 of Regulation No 1558/91, the drawing-up of delivery notes is optional, and even Article 14 of Regulation No 504/97 refers only to any receipts that have been issued. Nor is there any obligation to keeping weighing records.

86. However, the Greek Government points out that the national implementing legislation relating to Regulation No 504/97 makes the grant of the processing subsidy dependent on proof that the conditions of subsidy have been met on the basis of delivery notes and weighing records.

(ii) The Commission

87. The *Commission*, however, points out that the Greek authorities told the EAGGF inspectors that the whole of Greece's monitoring system relied on delivery notes. But the delivery notes inspected were incomplete, as they did not contain all the required signatures (producer — carrier — processor). It was also striking that, on receipt of the goods, the processor never queried the quantity declared by the producer. As stated by the chairman of the 'Axos' Cooperative, that was because the delivery notes were completed not by the producer but by the processor. The Commission therefore concludes that there was a high risk to the EAGGF.

(b) Analysis

88. The wording of Article 15 of Regulation No 1558/91 and Article 14 of Regulation 504/97 does not in fact require that proof should be provided in the form of delivery notes. But that objection, which is based on the wording of the provisions, does not undermine the Commission's findings in the Summary Report, namely that the whole of the Greek monitoring system relied on the use of delivery notes to verify that the minimum price had been paid to the producers and establish whether the processing yield accorded with the national rules. [32] That fact is actually further underscored by the Greek Government's claim that the submission of delivery notes is one of the implementing measures that Government requires in the context of the application of Regulation No 504/97. The Commission's account of

32 — See Summary report, p. 89, paragraph 3.5. The German text uses the term 'Verarbeitungssatz', while the French text refers to 'rendement de la transformation'. That in fact corresponds to the German term 'Verarbeitungsertrag' (processing yield).

how the Greek authorities told the EAGGF inspectors that the delivery notes were an essential element of the national checks and the statement by the chairman of the 'Axos' Cooperative cited in the defence confirm the Commission's argument that the delivery notes played a significant role in the Greek system. Those arguments have not been refuted.

(2) *National checks*

(a) Submissions of the parties

(i) The Hellenic Republic

89. In that connection, it should be pointed out that Article 15 of Regulation No 1558/91 and Article 14 of Regulation No 504/97 do not contain definitive rules on the evidence the processors must submit. Article 15(3) of Regulation No 1558/91, as well as the equivalent provision in Article 14(3) of Regulation No 504/97, stipulate that processors are to undergo any inspections or checks deemed necessary and to keep such additional records as the national authorities require. The Greek Government has not rebutted the Commission's finding that the delivery notes formed the basis of the Greek monitoring system. Nor has it — and this is the crucial point — argued that the irregularities in relation to the delivery notes (absence of signatures, no differences in the quantities delivered) were inaccurate. Consequently, the Greek Government's objection in relation to the delivery notes must be rejected.

90. As regards the standard of the checks carried out by the national offices, the *Greek Government* objects that Article 16 of Regulation No 1558/91 has been misconstrued and the facts incorrectly evaluated. It considers that a large number of checks were carried out and were executed carefully. The reports on those checks were in the administrative records. The Greek Government maintains that, in this respect, the Commission's complaint is actually very vague. Regulations Nos 1558/91 and 504/97 do not require checks on stocks. But those checks were in any event performed. Nor does Article 16 of Regulation No 1558/91 specifically require checks. It should, however, be noted that Greece checked 100% rather than the 15% of the quantities of finished products in question and later, when the rules were amended, it continued to check 100% rather that the 25% required.

(ii) The Commission

91. The *Commission*, however, points out that the administrative records either contain no documentation in relation to the checks carried out or, where reports exist, the data they contain is not verifiable. In Giannitsà in particular, there were no reports and, in Edessa, reports were submitted but contained no statement of conclusions.

were incomplete, as they contained no conclusions (the complaint directed against the Edessa customs office), it has at least to be established that the prescribed checks were in any event carried out inadequately. The Greek Government has failed to prove that both those customs offices drew up proper inspection reports. Consequently, the Commission's complaint that no adequate and verifiable checks were carried out is not disproved. That objection must therefore be rejected.

(3) *Payment of the minimum price*

(b) Analysis

(a) Submissions of the parties

92. The Commission's complaint relates to the impossibility of verifying that the checks the Greek authorities were supposed to carry out on the basis of Article 16 of Regulation No 1558/91 had in fact taken place. The Greek Government's claim that it checked 100% rather than the prescribed 15% or 25% of the quantities of finished products in question and that the inspection reports were submitted to the EAGGF inspectors with the other administrative documents cannot rebut the Commission's findings. Even if 100% of the quantities of finished goods were checked, but no reports were drawn up on the outcome or the reports were at least not made available to the Commission services (the complaint directed against the Giannitsà customs office, for example) or the existing reports

(i) The Hellenic Republic

93. As regards the complaint that there was a failure to pay the minimum price, the *Greek Government* argues that Article 9 of Regulation No 504/97 does not regulate the way in which a producer organisation should pay its individual members. That provision relates solely to the relationship between processors and producer organisations. It is not incompatible with Regulation Nos 1558/91 and 504/97 for producer organisations to apply reductions to

their individual members because of those members' debts to the organisation. Furthermore, such reductions have no impact on the EAGGF. But even if individual infringements were identified, it would not justify a reduction of 10% of the expenditure claimed. In that connection, the Greek Government complains, in the alternative, that the reduction in question is disproportionate and should at least be decreased to 2%.

(ii) The Commission

94. The *Commission* points out that, under Greek national legislation, a reduction of up to 5% of the weight of the raw materials supplied may be applied, if the consignment is not of the required processing standard. As a result of that possibility, the minimum price may not be guaranteed. The Commission considers that a consignment has either to be wholly accepted or to be rejected. According to the Commission, the abovementioned possibility of imposing reductions exists only in Greece. It results in increased income for processors. Such reductions were recorded in 1996 and 1997, but not in 1998 or 1999. As regards the level of the reduction imposed, the Commission points out that it has taken account of the opinion of the conciliation body concerning the situation in Giannitsà. In Giannitsà, it was established that a discrepancy of 2 632 469 kg existed between actual stocks and declared stocks. The Commission, consequently, first proposed disallowing GRD 71 097 342 of expenditure eligible for refund. It did not, however, proceed with that correction. That sum therefore no longer forms part of the flat-rate correction of 10% of the expenditure claimed for the processing of peaches in Greece, based on the failure to comply with the rules on the minimum price and serious deficiencies in the monitoring system.

(b) Analysis

95. It has first to be noted that the Greek Government's arguments concern the relationship between the producer organisations and their members. But the Commission's complaint relates to the price the processors paid to the producers. It is thus clear that no specific arguments of fact have been adduced in response to the Commission's findings.

96. Apart from that, the Greek Government's argument is incompatible with the second subparagraph of Article 9(2) of Regulation No 504/97. According to that provision, the producer organisation is to pay the amount paid to it by the processor,

which must be at least the minimum price, to its members without reductions. Any reduction in the minimum price between the producer organisations and their members is therefore incompatible with Community law.

97. Furthermore, the Greek Government has failed to submit arguments to rebut the Commission's findings that processors were able to impose a reduction of 5% of the weight of a consignment, if the goods supplied were found to be defective. The Commission is right to argue that a reduction of that nature is not provided for in Regulations Nos 1558/91 and 504/97. According to Article 10 of Regulation No 1558/91 and Article 10 of Regulation No 504/97, the producer must supply raw materials of sound and fair merchantable quality and suitable for processing. It follows from Article 14(2)(a) of Regulation No 1558/91 and — still more clearly — from Article 9(1) of Regulation No 504/97 that the processor has to pay the producer organisation at least the prescribed minimum price. Consequently, reductions in that price are not admissible.

98. Nor would a reduction of that nature by the processor be compatible with the institution of the minimum price. Under Article 4 of Regulation No 426/86 and Article 3 of Regulation 2201/96, the minimum price is set using an abstract formula at the beginning of the marketing year on the basis of: the minimum price applying during the previous marketing year, the movement of market prices and the need to ensure normal market disposal of basic fresh products for the various uses. No account is taken of the quality of the raw materials actually delivered to the processors in individual cases.

99. Nor are reductions of that nature without impact on the Community budget. The minimum price to be paid for the raw materials is only one of the criteria to be taken into account under Article 5 of Regulation No 426/86 and Article 4 of Regulation No 2201/96. If the minimum price is in fact not paid, then the subsidy to processors, which is again calculated using an abstract formula, is not correct.

100. As regards the proportionality of the 10% reduction, it has to be noted that, according to the Guidelines, a reduction of that nature is justified, where the deficiency relates to the whole of or fundamental elements of the control system or to the operation of controls essential to ensuring the regularity of the expenditure, such that it can be reasonably concluded that there was a high risk of widespread loss to the EAGGF.

101. This case concerns deficient delivery notes which, the Commission has established, are the lynchpin of the checks carried out by the Greek authorities. Similarly, there was no proof of the checks that had supposedly taken place. Finally, the possibility of making reductions in relation to the minimum price, which is not compatible with Community law, also resulted in a high risk to the EAGGF. In that respect, the reduction imposed is consistent with the Guidelines and cannot be defined as an abuse of power.

102. In conclusion, the last plea in law must also be rejected.

VI — Costs

103. In the light of the foregoing I propose that the Court should dismiss the application. Pursuant to Article 69 of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the application by the Hellenic Republic has been rejected and the Commission applied for the costs, the Hellenic Republic must be ordered to pay the costs.

VII — Conclusion

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

(1) dismiss the application.

(2) order the Hellenic Republic to pay the costs.