2. Refusal by a Member State to assist the Commission in the investigations which the latter is carrying out in order to determine whether breaches of Community law flowing from regulations and practices in that State have been committed constitutes a failure to fulfil the duty incumbent on every Member State under Article 5 to facilitate the achievement of the Commission's tasks.

# REPORT FOR THE HEARING
delivered in Case 240/86 *

## I — Facts

During February and March 1984 certain traders and a Member State informed the Commission of difficulties being encountered in the importation of cereals into Greece.

Such imports required the grant of a foreign currency permit by the banks; a certificate was issued by the banks and had to be presented when goods were cleared through customs. Decision No E 6/963 of 21 February 1984 of the Minister for Commerce made this procedure more rigorous, inasmuch as the approval of the Bank of Greece was required for any permit or certificate issued by other banks for the purposes of granting foreign currency.

The effect of the measures in question was to delay or even prevent certain wheat imports since in many cases the Bank of Greece refused to issue the foreign currency permit.

On 12 and 15 March 1984 the Commission sent telexes to the Hellenic Republic requesting information and calling upon the Hellenic Republic to adopt the measures necessary to remove the trade barriers thereby created. Having received no reply to these two telexes, on 21 September 1984 the Commission sent the Hellenic Republic a letter of formal notice.[1] On 22 November 1984 the Hellenic Republic replied to the Commission's letter, arguing that the measures adopted were necessary in order to prevent clandestine exports of currency which had been observed, and were based on Articles 67 and 68 of the EEC Treaty. They did not impede imports since all import applications had been accepted.

The Commission consulted the importers and the complainants and then, in a letter of 13 February 1985 from the Director-General for Agriculture, requested the Greek Government to inform it of the text of the regulations in question and to provide a list of the foreign currency applications relating to cereal imports submitted during the first half of 1984. Certain details concerning the course of the

* Language of the Case: Greek.

1 — A letter of formal notice had been sent on 14 May 1984 concerning all imports.

procedure (date of submission of the request, date of the decision of the Bank of Greece, date of importation) and information on delays and refusals concerning the granting of foreign currency permits were also requested. In reply to these requests the Greek Government only communicated the list of import permits granted.

Since the barriers to cereal imports continued to exist and since it disputed the legal basis relied on by the Greek authorities to justify the measures adopted the Commission sent them a further telex on 23 October 1985. No reply to that telex was forthcoming, and on 25 November 1985 the Commission delivered a reasoned opinion with which the Greek Government was invited to comply within one month of the date of its notification.

In 1985 the Commission had meanwhile become aware that the grant of a foreign currency permit for the import of wheat was in certain cases subject to conditions intended to ensure that the product would be processed and re-exported with a greater added value. It also became aware of Decision No E 6/2931 of 25 July 1985 of the Minister for Commerce, which revoked foreign currency permits concerning wheat imports issued before that date but not yet used. The only exceptions concerned imports subject to the condition that the processed product would be re-exported and cases where irrevocable letters of credit had already been issued and had not yet expired.

By telexes of 14 and 30 August 1985 the Commission asked the Greek authorities to intervene to prevent the decision being implemented but no reply to those telexes was forthcoming.

Since, in the Commission's view, these measures constituted additional barriers to the import of cereals it commenced a new procedure under Article 169 of the EEC Treaty by a letter of formal notice sent on 25 November 1985. It received no reply, and on 15 May 1986 the Commission therefore delivered Reasoned Opinion No E(86) 796 final.

## II — Written procedure

By an application lodged at the Court Registry on 11 September 1986 the Commission brought an action under the second paragraph of Article 169 of the Treaty concerning the alleged failures of the Hellenic Republic to fulfil its obligations.

Upon hearing the report of the Judge Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, the Court asked several questions of the Greek Government and requested it to submit certain documents.

## III — Conclusions of the parties

The *Commission* claims that the Court should:

(1) Declare that by requiring foreign exchange permits for imports of cereals and making such permits subject to an obligation to re-export the products, by revoking permits already granted and by failing to communicate to the Commission the information and regulations requested, the Hellenic Republic

has failed to fulfil its obligations under Articles 30, 106 (1) and 5 of the EEC Treaty and under Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals;

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

The *Hellenic Republic* contends that the Court should:

(1) Dismiss the Commission's action;

(2) Order the Commission to pay the costs.

## IV — Submissions and arguments of the parties

The *Commission* considers that the system of foreign currency permits, which incorporates a two-stage examination and the possible revocation of permits which have already been issued, in practice functions as a system of import licences the purpose of which is to control the cereal market.

Wheat imports have been completely liberalized between the Member States by Council Regulation (EEC) No 2727/75 and Article 65 (1) of the Act of Accession. Consequently, the measures concerned, the effect of which is to delay or even in certain cases to prevent the granting of the necessary foreign currency, are incompatible with Article 106 (1) of the EEC Treaty since the movement of those goods is liberalized between the Member States (see the judgments of the Court of 9 June 1982 in Joined Cases 206, 207, 209 and 210/80 *Orlandi* v *Ministry of Foreign Trade* [1982] ECR 2147, and in Case 95/81 *Commission* v *Italy* [1982] ECR 2187).

The Commission acknowledges that the Member States may legitimately exercise control over flights of capital, but such controls may not be systematic. They must be limited to cases where there are serious doubts as to the genuine nature of a transaction or the level of the prices charged. Furthermore, the Greek Government has not provided any information or evidence regarding the flights of capital which had allegedly been observed in the sector concerned at the beginning of 1984.

The regulations in question infringe Article 30 of the EEC Treaty, which is an integral part of the provisions concerning the common organization of the market in the cereals sector. The two-stage examination, the obligation to present the bank guarantee certificate in order to clear customs and the possible revocation of permits already granted alter the nature of the procedure in question from a system of exchange control to a rigorous system of import licences resulting in complete control of the cereal market in Greece to the extent of segregating that market for certain periods.

The amount of wheat imported, whatever its relationship to domestic consumption, it is not of itself capable of proving that no trade barriers exist. The volume of imports, calculated after the fact, does not reflect importers' possible choices and there is nothing to indicate that the level of domestic consumption was not determined precisely by the barriers or restrictions on imports. There is nothing to preclude the supposition that cereal imports would have been much greater and that cereal

consumption would therefore have increased considerably in the absence of the barriers to trade in cereals found to exist. The case concerns potential effects which, under the Court's case-law commencing with the judgment in *Dassonville*, are sufficient to stigmatize the disputed measures as measures having an effect equivalent to quantitative restrictions.

In the Commission's view, the statistics presented by the Greek Government are meaningless when they are presented without any reference to the level of domestic production in relation to the country's real needs, in particular for products which, at least for certain uses, cannot be replaced by other similar or analogous products.

Eurostat data show that wheat production in Greece was exceptionally low in 1985 and 1986. That factor may explain the higher level of wheat imports during that period as well as the fact that the Greek authorities have failed to produce statistics for 1984, although the Commission's action also relates to that period.

Those data are as follows:

Table I: Imports of wheat into Greece (all sources)

*(tonnes)*

| | Common | Durum | Total |
|---|---|---|---|
| *1985* | | | |
| March | 7 486 | | 7 486 |
| April | 44 033 | | 44 033 |
| May | 51 819 | | 51 819 |
| June | 23 250 | | 23 250 |
| July | 36 102 | | 36 102 |
| August | 28 939 | | 28 939 |
| September | 46 371 | | 46 371 |
| October | 7 831 | | 7 831 |
| November | 44 429 | | 44 429 |
| December | 44 027 | | 44 027 |
| *1986* | | | |
| January | 81 824 | | 81 824 |
| February | 59 039 | 2 868 | 61 907 |
| March | 50 025 | 8 872 | 58 897 |
| April | 46 170 | 3 136 | 49 306 |
| | | | Total 586 221 |

Table II: Total imports into Greece

*(tonnes)*

| | Common wheat | Durum wheat |
|---|---|---|
| 1980 | 0 | 0 |
| 1981 | 0 | 0 |
| 1982 | 28 233 | 1 112 |
| 1983 | 2 690 | 0 |
| 1984 | 28 485 | 0 |
| 1985 | 390 052 | 1 006 |

Table III: Total exports from Greece

*(tonnes)*

| | Common wheat | Durum wheat |
|---|---|---|
| 1980 | 0 | 0 |
| 1981 | 48 938 | 32 662 |
| 1982 | 129 163 | 248 537 |
| 1983 | 146 310 | 514 062 |
| 1984 | 406 473 | 548 860 |
| 1985 | 59 755 | 285 026 |

Table IV: Greek production

*(tonnes)*

| | Common wheat | Durum wheat |
|---|---|---|
| 1982 | 2 236 000 | 747 000 |
| 1983 | 1 477 000 | 567 000 |
| 1984 | 1 734 000 | 904 000 |
| 1985 | 1 146 000 | 645 000 |
| 1986 | 1 100 000 | 900 000 |

Consequently, the grant of foreign currency permits by the Bank of Greece, which is subject in certain cases to the condition that the product be processed and re-exported within six months with an added value of 30% in foreign currency, compliance with this condition being ensured by a personal guarantee of 100% of the cif value of the imported goods, is *ipso facto* contrary to Articles 30 and 106 (1) of the EEC Treaty. As regards Article 30, the obligation to re-export is incompatible with the principle

of an open market, which is one of the basic principles of the common organization of the markets (judgment of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347).

Articles 30 and 106 (1) of the EEC Treaty were also infringed by the revocation of permits by Decision No E 6/2931 of the Minister for Commerce. That measure obliged traders who wished to import wheat to submit fresh applications. The result of this was that for an indeterminate period towards the end of July 1985 imports of wheat into Greece were stopped. This prohibition on imports cannot be justified by the necessity of ascertaining the intentions of traders with unused authorizations, for the simple reason that the permit system is in itself incompatible with Community law.

The Commission also considers that the Greek Government has failed to fulfil its obligations under Article 5 of the EEC Treaty by failing to reply to the telexes sent to it and then failing to communicate the text of the regulations which had been requested or to provide detailed information as regards foreign currency permits issued and cereal imports during the first quarter of 1984.

The Hellenic Republic maintains that the measures adopted are compatible with Community law. The grant of foreign currency permits is a summary procedure the purpose of which is to ascertain the true extent of trade in wheat. The centralized procedure established in 1984 (grant of permits by the Bank of Greece) was necessary in order to deal with illegal exports of foreign currency. At the beginning of that year it was observed that the grant of foreign currency permits for cereal imports did not always correspond to the imports which actually took place. The procedure did not have the effect of creating barriers to wheat imports, as the following statistics prove: (data from the Greece, in tonnes)

*1985*

| | |
|---|---|
| March | 95 900 |
| April | 37 470 |
| May | 48 000 |
| June | 30 000 |
| July | 6 000 |
| August | 6 000 |
| September | 81 500 |
| October | 147 394 |
| November | 145 340 |
| December | 94 660 |

*1986*

| | |
|---|---|
| January | 79 800 |
| February | 53 615 |
| March | 7 628 |
| April | 18 960 |

The data in this table show that in a period of one year 852 267 tonnes of wheat were imported, that is to say around half Greece's annual requirements of 1 700 000 tonnes.

Wheat is a staple food product for the Greek population and since domestic consumption is very high there is very little scope for any further increase. Consequently, the measures adopted could not influence consumers' habits.

In any event, the Hellenic Republic states that, contrary to the Commission's arguments, the examination in question has been carried out either by the competent banks or by the Bank of Greece, but never at both levels.

In the view of the Hellenic Republic, Decision No E 6/2931 of the Minister for Commerce, which revoked foreign currency permits in respect of cereal imports which had not yet been carried out except where the importer had irrevocable secured credits which had not expired (and not valid letters of credit, as the reasoned opinion wrongly states), was an indispensable measure in order to ensure that importers were treated equally during a particular period. The figures set out above refute the Commission's assertion that no imports took place during an indeterminate period.

The re-exportation of the processed product was not a condition of the grant for the necessary currency. In such cases the importation remained subject to the former procedure (foreign currency permits granted by the commercial banks).

Finally, the Hellenic Republic maintains that what the Commission considers to be a failure to cooperate is attributable to the fact that it was practically impossible to give the Commission all the material relating to trade in cereals which was spread among 3 000 branches of the competent banks, so that the Greek authorities were not in a position to collate all the data in a short period of time. However, since March 1985 all information concerning imports (date, application, number of the permit, holder, quantity, value) has been kept. However, that information only covers the period up to April 1986, since at that time import procedures were once again entrusted to the competent banks by Ministerial Decision No E 6/4492.

**V — Replies to the questions asked by the Court**

When it submitted the text of the Ministerial Decisions requested by the Court, the Greek Government gave the following replies to the questions which the Court had asked:

(a) Data concerning import authorizations in respect of the period from February 1984 to February 1985 were not communicated to the Commission because the Bank of Greece did not systematically record the authorizations granted during that period.

(b) The Government of the Hellenic Republic has already explained in its rejoinder (page 2, point 2) that the discrepancy between the data which it communicated in its defence and the Eurostat data is due to the fact that the first set of data concerned authorizations which were applied for and granted whereas the second concerned the goods which finally cleared customs.

J. C Moitinho de Almeida
Judge-Rapporteur