JUDGMENT OF THE COURT (Sixth Chamber)
21 March 2002 *

In Case C-130/99,

Kingdom of Spain, represented by M. López-Monís Gallego, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J. Guerra Fernández, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

APPLICATION for partial annulment of Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 34) and Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 37), in so far as it concerns the Kingdom of Spain,

THE COURT (Sixth Chamber),

composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 April 1999, the Kingdom of Spain brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for the partial annulment of Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1999 L 61, p. 34) and Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37), in so far as they concern it.

2 The applicant seeks the annulment of Decision 1999/187 in so far as the Commission, when clearing the accounts for 1995, refused to charge to the European Agricultural Guidance and Guarantee Fund (hereinafter 'the EAGGF') the following expenditure:

— arable crops	ESP 1 471 398 749
— arable crops (land set aside for non-food production)	ESP 215 011 390

— premiums for suckler cows and special premiums for beef	ESP 1 393 983 000
— additional milk levy (exceeding quota)	ESP 3 129 240 958
— additional milk levy (default interest)	ESP 1 355 544 657
— production aid for olive oil	ESP 4 317 179 696
— wine	ESP 730 638 679
— fibre flax and hemp	ESP 42 616 276
— late payments in various sectors	ESP 3 362 203 596

3 The applicant also seeks annulment of Decision 1999/186 in so far as the Commission has excluded from Community financing, in respect of the 1996 financial year, ESP 5 754 750 215 corresponding to production aid granted in the olive oil sector.

General legislative framework

Regulation No 729/70

4 Under Articles 2(1) and 3(1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), the EAGGF Guarantee Section finances refunds on exports to third countries and interventions intended to stabilise the agricultural markets where they are granted or undertaken according to Community rules within the framework of the common organisation of agricultural markets.

5 Article 5 of Regulation No 729/70, as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), governs the clearance of accounts submitted by the national agencies authorised to make expenditure for that purpose. Article 5(2)(c) provides that the Commission must 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. The Commission is to evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found, taking into account, to that end, the nature and gravity of the infringement and the financial loss suffered by the Community.

6 Under the first subparagraph of Article 8(1) of Regulation No 729/70:

'The Member States, in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

— satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;

— prevent and deal with irregularities;

— recover sums lost as a result of irregularities or negligence.'

7 It is provided in the first subparagraph of Article 8(2) of the same regulation that, in the absence of full recovery, the financial consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States are not borne by the Community.

8 Under Article 9 of Regulation No 729/70, the Commission may take a number of measures to verify and supplement the information and documents furnished by the Member State authorities. It may, therefore, carry out inspections on the spot and authorised representatives appointed by the Commission to carry out such inspections are entitled to access to all books and documents relating to expenditure financed by the EAGGF.

Evaluation of the adjustments (Belle Group Report)

9 The Commission's Belle Group Report lays down guidelines (document No VI/216/93 of 1 June 1993) to be followed when financial adjustments must be applied in relation to a Member State.

10 That report sets out a flat-rate method for difficult cases:

'... As the systems audit approach has become more widely applied, EAGGF has had recourse increasingly to an assessment of the risk which a systems deficiency presents. By the very nature of ex-post auditing, it can rarely be established at the time of audit whether a claim was valid when paid... The loss to the Community funds must therefore be determined by an evaluation of the risk to which they were exposed by the control deficiency, which may concern as much the nature, or quality, of the controls operated as the quantity of controls effected....'

11 The Belle Group Report proposes three categories of flat-rate adjustments for difficult cases:

'A. 2% of expenditure — where the deficiency is limited to parts of the control system of lesser importance, or to the operation of controls which are not essential to the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was minor.

B. 5% of expenditure — where the deficiency relates to important elements of the control system or to the operation of controls which play an important part in the assurance of the regularity of the expenditure, such that it can reasonably be concluded that the risk of loss to the EAGGF was significant.

C. 10% of expenditure — where the deficiency relates to the whole of or fundamental elements of the control system or to the operation of controls essential to assuring the regularity of the expenditure, such that it can reasonably be concluded that there was a high risk of widespread loss to the EAGGF.'

12 The guidelines set out in the abovementioned report further provide that, where there is doubt as to the adjustment to be applied, the following points are to be taken into account as mitigating factors:

'— whether the national authorities took effective steps to remedy the deficiencies as soon as they were brought to light;

— whether the deficiencies arose from difficulties in the interpretation of Community texts'.

13 Those guidelines were reviewed in 1997 (document No VI/5330/97 of 23 December 1997), which, while maintaining the basic principles, now provide for the application of a flat-rate adjustment of 25% 'if the operation of the system

of checks by a Member State is completely non-existent or seriously deficient and there are signs of very frequent irregularities and of negligence in the campaign against irregular and fraudulent practices'.

Aid in the arable crop sector

14 Article 6(1) to (5) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36) provides:

'1. Administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms under which aids and premiums are granted.

2. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year without justification.

3. On-the-spot checks shall cover at least a significant percentage of applications. The significant percentage shall represent at least:

— 10% of "livestock" aid applications or participation declarations,

— 5% of "area" aid applications. However, this percentage shall be reduced to 3% for area aid applications numbering more than 700 000 per Member State in the calendar year.

Should on-the-spot checks reveal significant irregularities in a region or part of a region the competent authority shall make additional checks during the current year in that area and shall increase the percentage of applications to be checked in the following year.

4. Applications subjected to on-the-spot checking shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The risk analysis shall take account of:

— the amount of aid involved,

— the number of parcels and the area or number of animals for which aid is requested,

— changes from the previous year,

— the findings of checks made in past years,

— other factors to be defined by the Member State.

5. On-the-spot checks shall be unannounced and cover all the agricultural parcels and animals covered by one or more applications. Advance warning limited to the strict minimum necessary may however be given, although as a general rule, this should not exceed 48 hours.

At least 50% of the minimal checks on animals shall be made during the retention period. Checks may be effected outside that period only if the register provided for in Article 4 of Council Directive 92/102/EEC is available.'

15 Article 12 of Regulation No 3887/92 provides:

'Every inspection visit must be the subject of a report setting out, in particular, the reasons for the visit, the persons present, the number of parcels visited, those measured, the measuring methods used, the number of animals of each species found and, where applicable, their identity numbers.

It will be open to the farmer or his representative to sign the report. He may either merely attest his presence at the inspection or also add his observations.'

16 It appears from the Summary Report for 1995 (hereinafter 'the 1995 Summary Report') that the Commission imposed a 5% flat-rate reduction of the aid paid by the autonomous region of Aragon in respect of arable crops on the grounds that 'the checks carried out in Aragon in relation to the harvest of 1994, and which related only to the quality of on-the-spot checks, have revealed serious problems'.

17 First, industrial estates (which are defined as areas, rather than as holdings) in which inspections took place, were chosen in areas where the cadastral register was up to date. Contrary to the requirements of Article 6(4) of Regulation No 3887/92, that method of selection was not made on the basis of a risk analysis nor is it representative.

18 The Spanish Government points out that Article 6(4) of Regulation No 3887/92 uses the terms 'in particular'. Thus, according to that Government, the selection of municipalities subjected to on-the-spot checks was made in particular on the basis of a risk analysis, the number of applications, the amounts of aid granted and the date on which the cadastral register was brought up to date, criteria which comply with Community law. In each municipality, the on-the-spot inspection took place by whole cadastral estates, not all of which had up-to-date cadastral registers since classic checks had been carried out in 66 municipalities, 21 of which, that is 32%, dated from before 1960, and since checks by teledetection were carried out in 14 municipalities, 6 of which, that is 43%, had a cadastral register dating from before 1962. Moreover, in order for on-the-spot checks to be effective, the work should be concentrated on the municipalities for which there were up-to-date maps. The municipalities to be subjected to a check were selected in 1993, taking into account whether there existed a reliable cadastral register and the method of concentrating land ownership and on the basis of selecting files by drawing lots.

19 In that connection, it should be borne in mind that Article 6(4) of Regulation No 3887/92 provides that the selection of holdings for on-the-spot checking must be made by reference, in particular, to two criteria, namely risk analysis and representativeness.

20 Although it is true, as the Spanish Government claims, that other criteria may be taken into consideration for the purpose of carrying out checks, they must make it possible, in accordance with Article 6(1) of Regulation No 3887/92, to 'ensure effective verification of compliance with the terms under which aids and premiums are granted'.

21 Accordingly, selection criteria which would have the effect of reducing the likelihood that the controls carried out reveal irregularities are contrary to the abovementioned regulation.

22 Giving preference to controls in areas with up-to-date cadastral registers does not meet the objective laid down in Article 6 of Regulation No 3887/92, since the likelihood of bringing to light irregularities is greater in areas in which the cadastral register is old and therefore more likely to be deficient.

23 Secondly, according to the 1995 Summary Report, the on-the-spot checks carried out may not have included all of the agricultural parcels covered by aid applications, and that was the case even where inspections of certain parcels had revealed irregularities, which is contrary to Article 6(5) of Regulation No 3887/92.

24 In that regard, it is sufficient to observe that the Spanish Government merely pointed out that it should be possible to base the system of risk assessment on a representative sample of parcels likely to benefit from aid and that satisfactory results in respect of one parcel should render controls in other parcels superfluous, thus enabling a better distribution of financial means and human resources.

25 Thus, that Government has not at all denied the fact that, where irregularities or problems were brought to light during the partial inspection of any holding, the remaining parcels belonging to that holding were not examined if they did not fall within the area selected for inspection. Accordingly, those checks did not cover all the agricultural parcels and, therefore, did not meet the requirements of Article 6(5) of Regulation No 3887/92.

26 Thirdly, it appears from the 1995 Summary Report that, contrary to Article 12 of Regulation No 3887/92, the competent authorities did not draw up inspection reports in those cases where no irregularities were found.

27 In that connection, the Spanish Government points out, essentially, that while it is true that the inspectors did not systematically draw up individual reports, records do exist of each of the checks carried out. The fact that the farmers did not sign those records is irrelevant under Article 12 of Regulation No 3887/92. However, it states that, since 1995, instructions have been given to inspectors to report the results, whether they are correct or not.

28 Moreover, even if none of the on-the-spot checks carried out in Aragon in accordance with the classic system should be considered correct, the fact remains that the other on-the-spot-checks carried out in Spain represented a total of 6.24% of the 'area' aid applications at national level, in other words more than the 5% required by Article 6(3) of Regulation 3887/92.

29 In that regard, it must, first, be observed that, according to Article 12 of Regulation No 3887/92, every inspection visit must be the subject of a report setting out, in particular, the reasons for the visit, the persons present, the number of parcels visited, those measured and the measuring methods used.

30 It is clear from that provision that the establishment of purely internal records does not fulfil the requirements laid down in it since those records do not offer farmers any opportunity to read and to sign the document, nor do they enable the Commission to verify the effectiveness of the controls carried out.

31 Secondly, with regard to the fact that, even though it took no account of the checks carried out in Aragon, the Kingdom of Spain observed the 5% fixed in the second indent of the first subparagraph of Article 6(3) of Regulation No 3887/92, it must be borne in mind that the second subparagraph of that provision states that, where there are significant irregularities in a region or part of a region the competent authority is to make additional checks during the current year in that area and increase the percentage of applications to be checked in the following year.

32 Finally, it appears from the 1995 Summary Report that there were deficiencies in the quality of the on-the-spot checks carried out by the Aragon authorities since irregularities were found in two out of the 12 checks carried out afresh in the presence of EAGGF officials.

33 The Spanish Government does not dispute that finding. However, it contends that it is necessary to place those cases in which a lack of rigour was found by the EAGGF inspectors during on-the-spot checks in their proper perspective; in that context, those cases are not representative.

34 It should be pointed out, in that regard, that, although it is for the Commission to prove an infringement of the rules of the common organisation of agricultural markets, it is not obliged to demonstrate exhaustively the insufficiency of the checks carried out by national administrations or the irregularity of the figures transmitted by them, but must present evidence of a serious and reasonable doubt with regard to those checks or those figures (see, in particular, Case C-374/99 *Spain* v *Commission* [2001] ECR I-5943, paragraph 15).

35 In that respect, it appears from the file that such doubt existed.

36 Moreover, when the Commission criticises a Member State for not having established an effective monitoring and checking system, the discovery of individual cases in which it finds that the applicable agricultural legislation has been disregarded is only one element among others to justify its criticism in relation to the efficacy of the monitoring and checking system established by the Member State (see, in particular, *Spain* v *Commission*, cited above, paragraph 16).

37 The Spanish Government also states, with regard to the deficiencies as a whole found in the 1995 Summary Report, that the Conciliation Body created by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section (OJ 1994 L 182, p. 45), which had been seised by the Spanish authorities, stated that the information provided by the latter on the distribution according to the cadastral register of the municipalities to be checked, on the existence of documents attesting to the fact that checks had actually been carried out and on the actual scope of the irregularities committed during the two checks mentioned at paragraph 32 of this judgment may justify the view that the actual risk to the EAGGF is not as great as that estimated by the Commission.

38 The Spanish Government points out that, notwithstanding that conclusion, the Commission maintained the 5% flat-rate adjustment.

39 In this respect, it must be pointed out that under Article 1(2)(a) of Decision 94/442, 'the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts'. It follows that when the Commission makes its decision it is not bound by the findings of the Conciliation Body (see, in particular, *Spain* v *Commission*, cited above, paragraph 9).

40 In those circumstances, notwithstanding the conclusions of the Conciliation Body, the Commission was entitled to apply a flat-rate adjustment.

41 It is therefore necessary to examine whether the 5% flat rate applied by the Commission was excessive.

42 In that respect, it is settled case-law that, whilst it is for the Commission to prove that there has been a breach of the rules governing the common organisation of agricultural markets (see, for example, Case C-278/98 *Netherlands* v *Commission* [2001] ECR I-1501, paragraph 39, and the case-law cited), it is for the Member State to demonstrate, if appropriate, that the Commission erred as to the action called for, on the financial level, as a result of that breach (see Case C-235/97 *France* v *Commission* [1998] ECR I-7555, paragraph 39).

43 However, the Spanish Government has not provided any evidence that the Commission relied on incorrect facts, nor has it shown that the irregularities identified in Aragon did not affect the Community budget or that they did so to an appreciably lesser extent than was estimated by the Commission.

44 Moreover, where, instead of disallowing all the expenditure affected by the infringement, the Commission has endeavoured to establish rules for treating irregularities differently, depending on the extent of the shortcomings in the checks and the degree of risk to the EAGGF, it is for the Member State to show that those criteria are arbitrary and unfair (see, to that effect, Case C-28/94 *Netherlands* v *Commission* [1999] ECR I-1973, paragraph 56).

45 In this case, the Spanish Government has not adduced any such evidence.

46 It follows from all the foregoing that the Spanish Government's claim 1999/187 relating to the refusal to charge to the EAGGF certain expenditure relating to aid in the arable crop sector must be dismissed.

Aid for set-aside

47 Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12) makes grant of aid subject to producers' setting aside a predetermined percentage of their arable area. Article 7(4) of that regulation provides that '[t]he land set aside may be used for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption, provided that effective control systems are applied', without thereby becoming ineligible for aid.

48 That possibility was introduced by Commission Regulation (EEC) No 334/93 of 15 February 1993 laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption (OJ 1993 L 38, p. 12).

49 The fifth recital in the preamble to that regulation states:

'whereas, for reasons of control, it is necessary to require that the raw material cultivated shall be the subject of a contract between the agricultural producer designated as the claimant and either a first processor or a collector, before the

sowing of the raw material concerned; whereas this contract shall serve as a significant instrument in contributing to a balanced market;...'.

50 Article 3(3) of Regulation No 334/93 provides:

'The claimant must deliver all of the raw material harvested, and the collector or first processor must take delivery of it and guarantee that an equivalent quantity of this raw material be used within the Community in the manufacture of one or more of the end products specified in Annex II.'

51 Article 6(1)(e) of Regulation No 334/93 provides:

'In support of the application for compensation the claimant shall submit to his competent authority a contract, signed before the first sowing of the raw material concerned, concluded between himself and either the collector or the first processor. This contract shall contain the following:

...

(e) the forecast quantity for each species and variety, and any conditions which may apply to its delivery. That quantity shall at least accord with the yield considered representative by the competent authority for the raw material in question. The yield shall take account of *inter alia*, the stated average yield, if any, for the region concerned'.

52 Article 7(2) and the first subparagraph of Article 7(3) of Regulation No 334/93 provide:

'2. If the claimant is unable to provide the raw material specified in his contract, the contract may be adjusted or annulled. In that event, the competent authorities of both parties shall receive prior notice, in order to allow all necessary controls to be carried out. ...

3. The claimant shall declare to his competent authority the total quantity of raw material which has been harvested, by species and variety, and shall confirm the party to whom he has delivered this raw material.'

53 It appears from the 1995 Summary Report that the Commission applied a flat-rate adjustment of 5% of expenditure relating to compensatory payments for setting land aside granted to large producers because it had found numerous deficiencies in the checking system implemented in Spain. First, the competent authorities had not established representative yields, secondly, they had not checked whether the yields laid down in the contracts were realistic and, thirdly, no specific checks were made to verify whether the quantities delivered were less than the forecast production.

54 Furthermore, according to the information provided by the competent national authorities, quantities of the material produced on land set aside were diverted to markets in materials intended for human or animal consumption.

55 The Spanish Government contests those reasons, first, on the ground that Regulation No 334/93 does not impose an obligation on Member States to

establish representative yields for non-food production. Therefore, they are under an obligation only to check the plausibility of forecast quantities laid down in contracts between claimants and collectors/processors, but are not required to verify *a posteriori* that the quantities actually delivered correspond, on a case-by-case basis, to the forecast quantities provided for in the contract.

56 In that respect, it must be observed that the Spanish Government has not adduced any evidence that the plausibility of the forecasts laid down in the contracts between claimants and collectors/processors had been checked. As the Commission rightly pointed out, it is not possible to ascertain that the quantities inserted in those contracts correspond to the quantities actually produced since it is possible for a farmer to state in the contract a level of production which is less than his actual production and to use the remainder for a prohibited purpose, namely food production. In those circumstances, it is apparent that the absence of controls constitutes an infringement of Article 6(1)(e) of Regulation No 334/93, without its being necessary to decide whether that article requires the establishment of general representative yields.

57 Secondly, the Spanish Government claims that Regulation No 334/93 does not require on-the-spot checks aimed at verifying whether the quantities delivered were produced in areas subject to set-aside. There is only one case provided for by Article 7(2) of Regulation No 334/93 in which the competent authority of a Member State is to intervene *a posteriori*, namely where a contract between a claimant and a collector/processor is either annulled or amended.

58 In that regard, it must be observed, first, that according to the sixth recital in the preamble to, and Article 3(3) of, Regulation No 334/93, all raw material harvested from set-aside land and delivered must be declared to the competent authorities in order to guarantee that the end products will not be used for human or animal consumption and, secondly, that Article 7(4) of Regulation No 1765/92 requires the implementation of effective control systems.

59 Those last-mentioned provisions would be rendered ineffective if competent authorities did not carry out on-the-spot checks where declarations submitted by farmers raise suspicions of fraud or irregularity.

60 However, the Spanish Government has not proved that checks to that effect took place.

61 Thirdly, the Spanish Government claims that, in the present case, a flat-rate correction cannot be applied since the Commission based itself solely on a visit by the EAGGF inspectors to a single undertaking and failed to take account of the drought in 1994 which led to a reduction in the harvest from set-aside land.

62 In that regard, it is clear from the 1995 Summary Report that the 5% flat-rate adjustment is not based on the inspection, mentioned by the Spanish Government, of the premises of a processing undertaking in Andalusia and that the reference to that inspection is intended only to support the Commission's complaints concerning the deficiency in the control measures implemented by Spain, since the Commission took into consideration the data concerning delivery of raw material in several regions.

63 Moreover, it is clear from that report that the Commission took account of the consequences of the drought in 1994 with regard to the quantities of raw material produced, but found that that fact could not explain the considerable differences in the average yield between the parcels set aside and the others.

64 Finally, as has been observed at paragraph 34 of this judgment, although it is for the Commission to prove an infringement of the rules of the common organisation of agricultural markets, it is not obliged to demonstrate exhaustively the insufficiency of the checks carried out by national administrations or the irregularity of the figures transmitted by them, but must present evidence of a serious and reasonable doubt with regard to those checks or those figures.

65 Finally, the Spanish Government maintains that even if no adequate controls were implemented, the EAGGF would not have suffered any loss.

66 In that respect, it is sufficient to note that, as the Commission rightly pointed out, on account of the absence of controls, certain farmers were able to divert raw materials produced on land subject to set-aside towards market in materials for human or animal consumption and thus improperly benefit from aid to the detriment of the Community budget.

67 In those circumstances, it must be concluded that the Spanish Government has failed to show that the application of the 5% flat-rate adjustment was unfounded or excessive.

68 It follows from all the foregoing that the Spanish Government's claim relating to the refusal to charge to the EAGGF certain expenditure relating to aid in respect of land set aside must be dismissed.

Special premiums for beef and premiums for suckler cows

69 The third recital in the preamble to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1) states that, in order to adapt the administration and control mechanisms to the new situation and improve their effectiveness and usefulness, it is necessary to set up a new integrated administration and control system (hereinafter 'IACS').

70 Article 2 of Regulation No 3508/92 provides:

'The integrated system shall comprise the following elements:

(a) a computerised data base;

(b) an alphanumeric identification system for agricultural parcels;

(c) an alphanumeric system for the identification and registration of animals;

(d) aid applications;

(e) an integrated control system.'

71 Article 8(1) of Regulation No 3508/92 provides that Member States are to carry out administrative checks on aid applications and Article 8(2) states that administrative checks are to be supplemented by on-the-spot checks covering a sample of agricultural holdings.

72 Article 6 of Regulation No 3887/92, adopted pursuant to Regulation No 3508/92, is also relevant.

73 Article 4(1) of Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals (OJ 1992 L 355, p. 32) provides in particular that keepers of bovine animals are to keep a register stating the number of animals present on their holding, which must include an up-to-date record of all births, deaths and movements of animals.

74 According to Article 5 of that directive, Member States are to ensure that an eartag, which must be approved by the competent authority and tamper-proof and easy to read for the animal's lifetime, must be applied before it leaves the holding of birth and may not be removed or replaced without the permission of the competent authority.

75 Under Article 11(1) of Directive 92/102, the period prescribed for implementing the provisions of that directive applicable to bovine animals expired before the end of the 1994 budgetary year.

76 According to the 1994 Summary Report (hereinafter 'the 1994 Summary Report'), first, the Commission applied, in certain regions or provinces, flat-rate reductions of 2%, 5% or 10% of expenditure relating to the premiums for suckler cows. Secondly, it applied, at the national level, a flat-rate reduction of

2% of expenditure relating to the special premiums for beef, a rate which, for certain regions or provinces, rose to 5 or 10%. According to that report, those reductions were justified by the numerous deficiencies in the control system applied in Spain. In that regard, first, the computerised database provided for in Article 2 of Regulation No 3508/92 was not fully operational. Annual and regional cross-checks on animals had therefore not taken place as required by Article 8 of Regulation No 3508/92 and Article 6(2) of Regulation No 3887/92.

77 Second, the selection of applications for on-the-spot checks was not based on up-to-date information, contrary to Article 6(4) of Regulation No 3887/92, which requires that controls should be determined on the basis of a risk analysis.

78 Third, the registration of animals had been inadequate, since Directive 92/102 was not transposed into Spanish law until February 1996. Thus, many animals appeared in the registry without any date of birth or precise indication of place of origin.

79 Fourth, a large proportion of the checks took place outside the period of retention although, under the second subparagraph of Article 6(5) of Regulation No 3887/92, checks may be carried out outside that period only if the register provided for in Article 4 of Directive 92/102 is available, whereas it is not disputed that that register did not exist during the period in question.

80 Fifth, it was found that many cattle did not carry easily readable and tamper-free eartags contrary to Articles 4 and 5 of Directive 92/102.

81 Sixth, it was found, during a control inspection, that inspectors carrying out on-the-spot checks had stated, in the reports drawn up by them, that animals were present on the holdings without having checked whether that information was true.

82 Seventh, compliance with the age-limits which apply to animals subject to Community aid had not been adequately controlled.

83 Finally, the competent authorities in certain Spanish regions had failed to fulfil their obligation to check 10% of all aid applications, as required under the first indent of Article 6(3) of Regulation No 3887/92.

84 The Spanish Government contests some of those findings. It claims, first, that despite the absence of cross-checks, it put in place an equally effective animal identification system. Secondly, while admitting that on-the-spot checks relied on information which was not up-to-date, that Government insists that a risk analysis was none the less carried out in the autonomous regions. Thirdly, it claims that checks carried out outside the period of retention were no less effective than those carried out within that period. Finally, the Spanish Government contends that compliance with the requirement to check 10% of all applications should be measured at national level rather than at the level of each province.

85 In addition, the Spanish Government complains that the Commission effected an unjustified extrapolation of the results of visits to certain regions to the whole of Spain and that it did not recalculate the adjustment, despite having given assurances to the Conciliation Body that it would do so.

86 It should be noted, first, that the Spanish Government does not deny the inadequacy of registration of animals in Spain, the problems in respect of earmarking and the unreliability of inspection certificates.

87 Furthermore, it is not disputed that the competent authorities did not carry out cross-checks. As to the assertion by the Spanish Government that an animal identification system was put in place, it is sufficient to observe that, quite apart from the fact that such a system does not remedy the absence of cross-checks, the Court has consistently held that where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective (see, among others, Case C-54/91 *Germany* v *Commission* [1993] ECR I-3399, paragraph 38).

88 Secondly, under Article 6(1) and (4) of Commission Regulation No 3887/92, in order to attain its objective, which is to ensure that the aid is properly granted, risk analysis has to be based on up-to-date information, which was not the case in Spain during the year in question.

89 Thirdly, as regards the period during which on-the-spot checks must be carried out, it is clear from Article 6(5) of Regulation No 3887/92 that they must be carried out during the retention period, so that it is irrelevant to examine whether the checks carried out outside that period were just as effective.

90 So far as concerns, first, the complaint that the Commission calculated the losses suffered by the EAGGF on an extrapolation from the results of the checks carried out, it has already been held at paragraph 42 of this judgment that, whilst it is for the Commission to prove that there has been a breach of the rules governing the

common organisation of agricultural markets, it is for the Member State to demonstrate, if appropriate, that the Commission erred as to the action called for, on the financial level, as a result of that breach.

91 However, the Spanish Government has not provided any evidence that the Commission relied on incorrect facts, nor has it demonstrated that the irregularities identified did not affect the Community budget or that they did so to an appreciably lesser extent than was estimated by the Commission.

92 Secondly, as regards the Commission's promise that it would carry out a recalculation, it is sufficient to state that the Spanish Government never submitted any detailed figures to the Commission which would have enabled it to change its position and carry out such a recalculation.

93 It follows from the foregoing considerations that, without its being necessary to rule on the question whether the level of 10% of inspections must be complied with at State, regional or provincial level, the Spanish Government's claim relating to the refusal to charge to the EAGGF certain expenditure linked to the special premiums for beef and special premium for suckler cows must be dismissed.

Additional milk levy

94 Article 5c of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), as amended by Council Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10, hereinafter 'Regulation

No 804/68'), establishes an additional levy payable by producers or purchasers of cows' milk aimed at regularising and stabilising the market in dairy products. The Member States may choose between two formulas when implementing the levy scheme. In Member States which opt for Formula A, the levy is payable by every milk producer on the quantities of milk and/or milk equivalent which he has delivered to a purchaser and which, for the 12 months concerned, exceed a reference quantity to be determined. In Member States which opt for 'Formula B', the levy is in principle payable by every purchaser on the quantities of milk or milk equivalent which have been delivered to him by a producer and which, during the 12 months concerned, exceed a reference quantity to be determined. Under the latter formula, the purchaser liable to the levy passes on the burden in the price paid to those producers who have increased their deliveries, in proportion to their contribution to the purchaser's reference quantity being exceeded.

95 When the scheme established by Regulation No 856/84 expired on 31 March 1993, it was extended for seven further consecutive periods of 12 months, starting on 1 April 1993, by Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

96 Article 3(4) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12) provides:

'Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.

Where the time limit for payment is not met, the sums due shall bear interest at a rate *per annum* fixed by the Member State and which shall not be lower than the rate of interest which the latter applies for the recovery of wrongly paid amounts.'

97 Under Article 5(2) of Regulation No 536/93, interest paid is to be deducted from the applications for reimbursement of expenditure on milk and milk products submitted to the EAGGF by the Member States.

98 It appears from the 1995 Summary Report that the financial adjustment applied by the Commission is ESP 3 129 240 958 as the outstanding amount of the additional levy payable in respect of the 1993/1994 marketing year, and ESP 1 355 544 657 by way of default interest. As regards the first of those amounts, it is clear from the 1995 Summary Report that the Commission justifies that exclusion by the fact that the Spanish authorities had omitted to collect from producers and purchasers the additional levy payable under Regulation No 804/68 in respect of 55 707 tonnes of milk delivered, in the 1993/1994 marketing year, in excess of the national reference quantity. The second amount represents interest owing by the Spanish purchasers on the additional levy payable in respect of an excess of 55 707 tonnes of milk and which had not been collected by the national authorities. That amount had been excluded from the clearance decision for the 1994 financial year and included in that for 1995 in order to afford the Spanish Government the opportunity to bring the matter before the Conciliation Body.

99 So far as concerns, first, the deduction of ESP 3 129 240 958, the Spanish Government claims that, during the reference period, there was no milk delivered in excess of the global quantity guaranteed to Spain because, although the quota for deliveries was in fact exceeded, there remained available a quota for direct sales of 131 574 tonnes. However, the transfer of the quota available for direct sales to the delivery quota could not be carried out in time because of the delay in allocating individual quotas. Secondly, that Government considers that the clearance of accounts ought to be restricted to the additional levy payable in respect of a 30 000 tonne surplus, by virtue of the principle of the protection of legitimate expectations, on the ground that, in the course of negotiations, the Commission informed it, by letter of 18 January 1995, that 'the levy payable in the financial year of 1993/94 will be calculated on the amount by which the guaranteed national quantity is exceeded, fixed at 30 000 tonnes. No adjustment is envisaged in that regard.'

100 In that respect, it must be noted, first, that while it is true that it would have been possible to transfer reference quantities from direct sales to commercial sales, the Spanish Government did not submit an application to that effect, so that the Commission was unable to carry out the transfer without infringing the applicable procedural rules and time-limits or failing to treat Member States equally. Next, it is not apparent from the evidence before the Court that the Commission accepted that the Spanish authorities were only required to collect the additional levy in respect of a 30 000 tonne surplus of milk and/or milk equivalent.

101 So far as concerns, secondly, the deduction of ESP 1 355 544 657 by way of default interest, it must be stated, first, that Article 3(4) of Regulation No 536/93 makes purchasers liable to pay interest, as from 1 September of each year, to the competent body in case of late payment of the additional levy. On the other hand, Article 5(2) of that regulation makes Member States responsible for deducting interest paid from the applications for reimbursement of expenditure on milk and milk products submitted to the EAGGF. It follows that the fact that certain sums due remain unpaid, or have been paid belatedly, does not *of itself* constitute failure to fulfil obligations laid upon the Member States by Community law.

102 It is true that, according to the first subparagraph of Article 8(2) of Regulation No 729/70, the Commission may apply an adjustment only where it is able to show that the EAGGF suffered a loss as a result of a negligent failure, attributable to the national authorities, to recover the disputed sums. In that regard, the Commission, in order to show such failure, need merely give the reasons for which it entertains serious and reasonable doubt (see, to that effect, Case C-277/98 *France* v *Commission* [2001] ECR I-8453, paragraphs 41 and 42).

103 However, in this case, the Commission's assertion that the length of time elapsed is in itself sufficient for negligence on the part of the Kingdom of Spain to be assumed cannot be upheld. The Commission has not shown, on the basis of specific examples, how the Spanish authorities, by their negligence, contributed to the protraction of the proceedings.

104 The Spanish Government's claim seeking the annulment of the deduction of ESP 1 355 544 657 in relation to interest due under the additional levy on milk products scheme must therefore be upheld.

Production aid for olive oil

105 Regulation No 136/66/EEC of the Council of 22 September 1966 (OJ, English Special Edition 1965-1966 (I), p. 221) established a common organisation of the market in oils and fats, the main purpose of which is, according to the first recital in the preamble to that regulation, to remedy low overall Community production. According to Article 5(1) of Regulation No 136/66, as amended by Council Regulation (EEC) No 1562/78 of 29 June 1978 (OJ 1978 L 185, p. 1), aid for the production of olive oil was introduced, designed to contribute towards the establishment of a fair income for producers. It is provided in Article 20d of Regulation No 136/66, as amended by Council Regulation (EEC) No 1413/82 of 18 May 1982 (OJ 1982 L 162, p. 6), that a percentage of the amount of production aid is to be withheld in order to contribute to the financing of the expenditure incurred in the work done by recognised producer groups or recognised associations thereof.

106 Article 1 of Regulation (EEC) No 154/75 of the Council of 21 January 1975 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1975 No L 19, p. 1) provides:

'1. The Member States producing olive oil shall, in accordance with this Regulation, establish a register of olive cultivation to cover all olive-growing holdings within their territory.

2. The register shall furnish the following information for each holding:

(a) within two years of the entry into force of this regulation, at least:

— the total olive-growing area, together with the cadastral reference of the parcels comprising it,

— the total number of olive trees;

(b) within six years of the entry into force of this regulation:

— the names of the owners of each parcel,

— the proportion of specialised and mixed areas of olive-cultivation,

— the distribution of the olive trees according to variety,

— the system of cultivation employed,

— the age of the trees and the state of cultivation and production,

— the number of trees under irrigated cultivation.

3. The register shall be brought up to date at regular intervals.'

107 Regulation No 154/75 entered into force on 25 January 1975.

108 Article 2(2) of 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) provides:

'The aid shall be granted to olive growers established in the Member States. For the purposes of this Regulation an olive grower shall be any grower of olives which are used to produce oil.'

109 Article 11(2) of Regulation No 2261/84, which appears in Chapter 5 'Rules common to olive oil producer organisations and associations thereof', provides:

'Member States in which olive oil is produced shall ensure that the sums made over to the associations and to producer organisations in application of paragraph 1 are used by them only for financing the activities for which they are responsible under this Regulation.'

110 Article 14 of Regulation No 2261/84 provides:

'1. Each producer Member State shall apply a system of checks to ensure that the product in respect of which aid is granted is eligible for such aid.

2. Producer Member States shall verify the activities of each producer organisation and association and, in particular, that the checking operations have been carried out by these bodies.

3. In the course of each marketing year and during the oil-pressing period in particular, producer Member States shall carry out on-the-spot checks on the activities and the stock records of a percentage of approved mills to be determined.

The mills selected must be representative of the pressing capacity of a production zone.

4. In the case of the olive oil defined at point 1 of the Annex to Regulation No 136/66/EEC and produced by growers who are not members of a producer organisation, checking shall be by sampling on the spot and must verify:

— that the crop declarations are accurate,

— that the olives harvested are to be used to produce oil and, if possible, that they have actually been processed into oil.

The checks shall be carried out on a percentage of growers to be determined on the basis of holding sizes in particular.

5. For these checks and verifications Member States shall use *inter alia* the computerised data files provided for in Article 16.

These files shall be used to guide the checking operations to be carried out pursuant to paragraphs 1 to 4.'

111 Finally, Article 16 of Regulation No 2261/84 states that each producer Member State must draw up and keep up to date permanent computerised files of olive and olive oil production data which must contain the information referred to in that provision.

112 The second recital in the preamble to 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) states that the on-the-spot checks on the declarations as to crops grown by their members made by recognised producer organisation must cover a sufficiently representative number of such declarations.

113 Article 1(5) of Regulation No 3061/84 provides:

'Where some of the olives have been used for purposes other than the production of olive oil, the aid shall be paid in proportion to the olives intended for the production of olive oil.'

114 Article 5(1) of Regulation No 3061/84 reads as follows:

'The application for aid to be submitted by each olive grower shall include at least the following:

(a) the surname, forenames and address of the olive grower;

(b) the quantity of virgin oil produced;

(c) the location of the holdings on which the olives were harvested, together with a reference to the crop declaration;

(d) the approved mill(s) at which the oil was produced, together with particulars for each mill of the quantity of olives used and the quantity of oil produced.

The said application must be accompanied by a declaration from the mill, the form and content of which shall be decided by the Member States, to corroborate the particulars referred to under (d).'

115 It is provided in the second subparagraph of Article 8(1) of Regulation No 3061/84 that where a producer group or association, having discharged all its responsibilities under Community rules, has not used the entire sum raised by the financing arrangements, it must distribute the balance among the producer organisations of which it is composed.

116 The first subparagraph of Article 9(2) of Regulation No 3061/84, as amended by Commission Regulation (EEC) No 828/90 of 30 March 1990 (OJ 1990 L 86, p. 18), provides:

'The standardised daily stock records referred to in Article 13(1)(d) of Regulation (EEC) No 2261/84 must show:

(a) the quantities of olives entering the mill, batch by batch, stating the producer and the owner of each batch;

(b) the quantities of olives pressed;

(c) the quantities of oil obtained;

(d) the quantities of olive residues obtained, determined on a flat-rate basis;

(e) the quantities of oil leaving the mill, batch by batch, stating the consignee. Where the quantity of olives crushed comprises several batches of less than the minimum quantity required to make up a pressing in the case of both mills with a traditional production cycle and mills with a continuous production cycle, the stock records must include the overall quantity of oil leaving the mill, broken down between the consignees in proportion to the quantities of olives crushed by each of them;

(f) the quantities of olive residues leaving the mill:

— determined batch by batch, stating the consignee, in the case of sale to an extraction establishment,

— determined on a flat-rate basis, stating the consignee, in other cases,

— weighed batch by batch where the mill has a weighbridge.'

117 The flat-rate adjustment in Decision 1999/186, in the sum of ESP 5 754 750 215, that is 5% of the expenditure declared for the 1996 financial year in respect of

production aid for olive oil and expenses related to the establishment of the register for olive cultivation, and that in Decision 1999/187, in the sum of ESP 4 317 179 696, that is 10% of the expenditure declared for the period prior to and including the agricultural year of 1992/93 and 5% of the expenditure declared for 1993/94 and subsequent agricultural years, are based on alleged shortcomings in control procedures, in particular the delay in establishing the register for olive cultivation and the central computerised file.

118 It appears from the 1994 and 1995 Summary Reports and from other documents in the file that Decision 1999/186 and Decision 1999/187 were based on essentially the same grounds. Following two visits by the EAGGF's inspectors to Spain in 1996 and 1997, the Commission found that supervision of expenditure in the olive oil sector was inadequate. In particular, the register of olive cultivation prescribed in Regulation No 154/75 and the permanent computerised files of olive and olive oil production data referred to in Regulation No 2261/84 remained incomplete and inoperative at least until the end of 1998. The controls carried out by the Spanish authorities to compensate for the absence of the register and the computerised files were inadequate.

119 Thus the Commission's investigations revealed a number of problems, including unexplained double payments of aid, inadequate on-the-spot checks of oil mills, a failure to respond adequately to instances of fraud, an insufficient number of on-the-spot checks of olive oil producers, and grant of production aid for olives which had been sold as table olives.

120 On that basis the Commission considered that the deficiencies found related to fundamental elements of the control system and controls essential to ensuring the regularity of the expenditure, and that the EAGGF had been exposed to a significant risk of widespread loss. Accepting however that the Spanish authorities had improved the system over the years, the Commission applied a lower flat-rate adjustment for the agricultural years after 1992/93.

121 The Spanish Government claims, first, that the Commission infringed certain general principles and provisions of Community law.

122 First, the applicant claims that the Commission infringed the principle of equal treatment on the ground that, despite the improvement in its system of controls, which was superior to that of certain other Member States, an identical adjustment was applied.

123 In that regard, it is sufficient to note that that argument, as put forward, is irrelevant. The Spanish Government has not alleged the existence of circumstances comparable to those in other Member States nor has it explained in what way its control system was superior to that of certain other Member States (see Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraphs 130 and 131).

124 Secondly, the Spanish Government contends that the Commission infringed Articles 5 and 190 of the EC Treaty (now Articles 10 EC and 253 EC), since it failed to reply convincingly, in the 1994 Summary Report, to which the 1995 Summary Report makes reference, to all of the arguments which it had put forward.

125 In that regard, it must be pointed out that it is settled case-law that the extent of the duty to state the reasons on which a decision is based, laid down in Article 190 of the EC Treaty, depends on the nature of the act in question and on the context in which it was adopted (Case C-28/94 *Netherlands* v *Commission*, cited above, paragraph 81).

126 In the particular context of the preparation of decisions relating to the clearance of accounts, the statement of reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was closely involved in

the process by which it came about and was aware of the reasons for which the Commission took the view that it should not charge the sum in dispute to the EAGGF (Case C-28/94 *Netherlands* v *Commission*, cited above, paragraph 82, and *Belgium* v *Commission*, cited above, paragraph 95).

127 In the present case, it is sufficiently clear from the 1994 and 1995 Summary Reports that the Spanish authorities were involved in the process of preparing Decisions 1999/186 and 1999/187 and that they were aware of the reasons for which the Commission considered that it should not charge the amounts in question to the EAGGF. In those circumstances, the applicant's argument must be rejected.

128 Thirdly, the applicant contends that it was impossible for it to comply with the time-limits laid down for the establishment of the register of olive cultivation and the computerised files of production data.

129 It must be observed that, apart from the fact that no information concerning that alleged difficulty has been provided to the Court, the Spanish Government did not apply to the Commission to adjust the time-limit for the setting up of the olive oil production register and of the computerised files of olive and olive oil production data. Its contention on this point cannot therefore be upheld.

130 Fourthly, the Spanish Government argues that, in so far as Decision 1999/186 excludes certain expenditure for the financial year 1996, the Commission infringed Article 5(2)(c) of Regulation No 729/70, as amended by Regulation No 1287/95, which provides that, '[b]efore a decision to refuse financing is taken, the results of the Commission's checks... shall be notified in writing' and that '[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'.

131 According to that Government, the Commission's letter, dated 10 March 1998 and received on 12 March 1998, by which it was notified of the final conclusions of the Commission's investigations into the control system operated in Spain in 1994 and the following years should be regarded as a 'written communication' within the meaning of Article 5(2) with the result that the Commission could not refuse to charge to the EAGGF expenditure incurred before 12 March 1996.

132 The Commission contends that the Spanish Government cannot rely on that provision because there were no new 'checks' within the meaning of that provision but only inspections and bilateral meetings with a view to remedying the deficiencies in the Spanish control systems in the olive oil sector, deficiencies which were known to the Spanish authorities since 1990. Thus, those checks took place long before the Commission's letter of 10 March 1998, which did no more than confirm the existence of deficiencies ascertained earlier.

133 In that regard, it must be stated that, as the sixth recital in the preamble to Regulation No 1287/95 makes clear, the intention of the Community legislature in establishing the period referred to in Article 5(2)(c) of Regulation No 729/70, as amended by Regulation No 1287/95, was to 'determine the maximum period to which the consequences to be drawn from the [Commission's] checks on conformity may be applied'. The purpose of that limitation is to protect Member States against the absence of legal certainty which would exist if the Commission were able to call into question expenditure incurred several years before the adoption of a compliance decision.

134 Therefore, the interpretation according to which the temporal limitation does not apply where the Member State concerned is aware that the Commission considers its control system to be deficient does not fulfil the purpose of providing legal certainty. Article 5(2)(c) of Regulation No 729/70, as amended by Regulation No 1287/95, can provide effective legal certainty for the Member States only if the latter are able to ascertain precisely the date from which the limitation is to be calculated. It is clear from the wording of Article 5(2)(c) of that regulation that

the relevant date is that on which the Commission notifies by a formal written communication the results of its checks as regards the financial years in issue.

135 In those circumstances, it must be held that the Commission, by notifying on 12 March 1998 the final conclusions it had drawn from the checks carried out in 1996 and 1997, was not entitled to refuse to charge to the EAGGF expenditure incurred prior to 12 March 1996.

136 Accordingly, Decision 1999/186 must be annulled in so far as it excludes from Community financing expenditure relating to production aid for olive oil incurred by the Spanish Government prior to 12 March 1996.

137 Secondly, the Spanish Government contends, without denying that there was delay in establishing the register of olive cultivation and implementing the computerised files of production data, that the controls carried out in Spain were none the less effective and that the EAGGF did not suffer any loss.

138 In that regard, suffice it to note, as the Court has already done in paragraph 87 of this judgment, that, where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective.

139 In those circumstances, the remainder of the Spanish Government's claim relating to the refusal to charge to the EAGGF certain expenditure relating to production aid for olive oil must be dismissed.

Aid in the wine sector

140 Articles 6 to 8 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1) prohibit the planting of new vines and provide for an administrative authorisation procedure for the grubbing and replanting of vines.

141 It is apparent from the 1995 Summary Report that the controls introduced to verify the proper application of Community rules on the plantation of vines were inadequate, which resulted in the Commission applying a financial adjustment.

142 While the Spanish Government does not contest the findings of fact on which the Commission's adjustment was based, it none the less claims, first, that the process of regularisation of unlawful plantations was a legal and social necessity given the large number of such plantations, second, that the Commission had been aware since 1992 of the process of regularisation designed to deal with that situation but did not object to it until much later, and, finally, that the process of regularisation did not affect the grant of Community aid, since there is no subsidy for the production of wine.

143 In that regard, it must be observed, first, that, although the social need to regularise unlawful plantations is undeniable, the fact remains that that need is the specific result of the Spanish authorities' failure to apply controls in compliance with Articles 6 to 8 of Regulation No 822/87, second, that the Spanish Government has not demonstrated how the fact that the Commission was aware of the existence of unlawful plantations affects the lawfulness of Decision 1999/187 and, finally, that, although it is true that the absence of controls and enforcement measures in Spain did not lead to unlawful grant of production aid, that does not mean that the planting of vines contrary to the

provisions of Regulation No 822/87 did not undermine the effectiveness of the schemes relating to aid for the permanent abandonment of areas under vines and aid for preventive distillation of wine, schemes financed by the EAGGF, since there is no Community system of aid for the production of wine.

144 It follows from all the foregoing that the Spanish Government's claim relating to the refusal to charge to the EAGGF certain expenditure relating to aid in the wine sector must be dismissed.

Aid in the fibre flax and hemp sector

145 Article 4 of Regulation (EEC) No 619/71 of the Council of 22 March 1971 laying down general rules for granting aid for flax and hemp (OJ, English Special Edition 1971 (I), p. 169) provides:

'1. Member States shall ensure by administrative supervision that the product for which aid has been requested qualifies for that aid.

2. For the purposes of that supervision, Member States shall require areas sown and harvested to be declared.'

146 Article 5 of Regulation No 619/71 provides:

'Member States shall verify the accuracy of the declarations of areas sown and harvested and applications for aid submitted by the producers by means of spot checks.'

147 Article 4(a) of Commission Regulation (EEC) No 1164/89 of 28 April 1989 laying down detailed rules concerning the aid for fibre flax and hemp (OJ 1989 L 121, p. 4) states that aid is to be granted only in respect of areas which have been completely sown and harvested and on which normal cultivation work has been carried out.

148 Article 6 of Regulation No 1164/89 provides:

'1. The checks provided for in Article 5 of Regulation (EEC) No 619/71 shall be carried out on at least 5% of the declarations of areas sown referred to in Article 5 and on a representative percentage of the aid applications provided for in Article 8, having regard to the geographical distribution of the areas concerned.

2. Where significant irregularities arise relating to 6% or more of the checks carried out, the Member States shall notify the Commission thereof forthwith and shall state what measures have been adopted.'

149 Under Article 7 of Regulation No 1164/89:

'If the checks provided for in Article 5 of Regulation (EEC) No 619/71 show that the area declared is:

(a) less than that ascertained during the checks, the area ascertained shall be used;

(b) greater than that ascertained during the checks, the area used shall be the ascertained area minus the difference between the area originally declared and that ascertained, without prejudice to any penalties laid down under national law, except where the difference is considered justified by the Member State concerned; in that case the area ascertained shall be used.

Member States shall notify the Commission of the measures taken for the application of this Article.'

150 It is apparent from the 1994 Summary Report, to which the 1995 Summary Report makes reference, that the controls on expenditure in Spain were inadequate and that Community legislation was misapplied, which is why the Commission effected a 10% flat-rate adjustment of the expenditure incurred in the 1994 and 1995 financial years.

151 Thus, it is clear from the Summary Report that the competent authorities failed to carry out the administrative supervision of declarations of areas and applications, that checks carried out on the spot did not comply with the requirements laid

down in Article 5 of Regulation No 619/71 because the reports drawn up by the inspectors were imprecise and no attempts had been made to control the quantities of fibre flax and hemp harvested and sold, that the mechanism provided for in Article 7(b) of Regulation No 1164/89 had not been applied correctly inasmuch as there had been a general absence of controls aimed at verifying whether the delivery contracts submitted by applicants for aid were actually carried out and that the competent authorities failed to coordinate and control the efforts of the autonomous regions, increasing the risk of loss to the EAGGF. Furthermore, the Commission maintains that the Spanish authorities should have used the data collected for the purpose of the IACS, even if the relevant legislation did not require it, since those data were useful for the purposes of checks.

152 The Spanish Government does not contest most of the findings made by the Commission, but points out, first, that, although the Commission had justified its financial adjustment on the ground that unusually low amounts of seed were used and very low yields of flax fibre and seed were obtained, there was no requirement in Article 4(a) of Regulation No 1164/89 applicable at the material time as to a specific yield to be obtained but only that 'normal... work' be carried out, a concept not defined in that regulation.

153 In that regard, it must be observed that, as the Commission rightly points out, the use of low amounts of seed and the low yield lead to the suspicion that aid was granted in respect of areas that were not properly cultivated, so that the competent authorities should have refused to grant the aid.

154 Second, the Spanish Government argues that, when the checks in question were carried out, there was no obligation to carry out cross-checks by reference to information collected in the context of the IACS.

155 In that regard, it must be pointed out that, although Community legislation does not require such cross-checks, they should have been carried out, since it was possible to do so. It follows from the first subparagraph of Article 8(1) of Regulation No 729/70 that checks must make it possible to ensure that transactions financed by the EAGGF are executed correctly. The abovementioned cross-checks would have made it possible to ensure correct execution.

156 Finally, the Spanish Government contends that it discharged its obligations under Article 6(1) of Regulation No 1164/89 inasmuch as more than 5% of the applications were checked.

157 On that point, it is sufficient to observe that the fact that the competent authorities carried out a sufficient number of checks is irrelevant to the matter of the lawfulness of Decision 1999/187, given that it is not disputed that the Commission's complaint relates to the quality and not the quantity of those checks.

158 It follows from all the foregoing that the Spanish Government's claim relating to the refusal to charge to the EAGGF certain expenditure relating to aid for fibre flax and hemp must be dismissed.

Late payments in various sectors

159 It is apparent from the 1995 Summary Report that a financial adjustment amounting to ESP 3 362 203 596, relating to late payments in the arable crops, beef premiums and oils and fats sectors, was decided and that Decision 1999/187 was adopted although the Conciliation Body had not yet delivered its opinion.

160 In accordance with Article 4(2) of Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5), part of that amount, namely ESP 1 951 844 235, was deducted from the advances paid by the Commission to the Spanish authorities for the months of November to August of the relevant financial year. The remaining amount, ESP 1 410 359 361, had not been deducted from the advances for September and October of that year, but in the clearance of accounts decision for 1995, as provided for in Article 4(3) of Regulation No 296/96. Owing to the fact that the Spanish Government had challenged some of the reductions applied by the Commission before the Conciliation Body, which had not completed its work when Decision 1999/187 was adopted, the Commission inserted a negative reservation in that decision, thereby reserving the right to review the reductions at the end of the conciliation procedure.

161 The Spanish Government submits that since the conciliation procedure was not completed, the Commission should not have deducted the sum of ESP 1 410 359 361, which had not been deducted from the monthly advances. Accordingly, the decision on reimbursement of that amount should have been postponed and dealt with in a later decision on clearance of accounts.

162 The Commission states in its reply that, if, instead of inserting a negative reservation, the expenditure in respect of the 1995 financial year had been excluded, it would have been required to reimburse that amount to the applicant pending the outcome of the conciliation procedure. However, in most cases, the proposed adjustments are upheld, so that the Member State concerned is required to return the disputed amounts promptly to the Commission. The Commission states that, for those reasons, it prefers to opt for the negative reserve method.

163 In that regard, it must be borne in mind that a clearance-of-accounts decision subject to a negative reservation is not definitive, since the Commission must re-examine it in the light of the conclusions of the Conciliation Body.

164 Where the conciliation procedure is not yet completed or where it has not been possible to implement the conclusions to be drawn from that procedure, the Commission is entitled to draw up the accounts on the basis of the information obtained during the clearance procedure, reserving to itself the possibility of correcting that decision in a subsequent clearance (Case C-61/95 *Greece* v *Commission* [1998] ECR I-207, paragraph 30).

165 Since that was the course taken by the Commission in the present case, the Spanish Government's claim relating to the refusal to charge late payments to the EAGGF must be dismissed.

166 It follows from all the foregoing considerations that Decision 1999/186, in so far as it excludes from Community financing expenditure relating to production aid for olive oil incurred by the Spanish Government prior to 12 March 1996, and Decision 1999/187, in so far as it excludes from Community financing the sum of ESP 1 355 544 657, representing interest due under the additional levy on milk products scheme, must be annulled and that the remainder of the application must be dismissed.

Costs

167 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of Spain has been unsuccessful in the majority of its claims and the Commission has applied for costs, the Kingdom of Spain must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Annuls Commission Decision 1999/186/EC of 3 February 1999 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it excludes from Community financing the expenditure incurred by the Kingdom of Spain before 12 March 1996 in respect of production aid for olive oil;

2. Annuls Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund in so far as it excludes from Community financing ESP 1 355 544 657, representing the interest payable in the context of the additional levy on milk and milk-related products;

3. **Dismisses the remainder of the application;**

4. **Orders the Kingdom of Spain to pay the costs.**

Macken Gulmann Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 21 March 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber