JUDGMENT OF THE COURT (Sixth Chamber)

20 September 2001 *

In Case C-263/98,

Kingdom of Belgium, represented initially by J. Devadder and, subsequently, A. Snoecx, acting as Agents, and H. Gilliams, advocaat, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by H. van Vliet, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28), in

* Language of the case: Dutch.

so far as it disallows, in respect of the applicant, Community financing for the sum of BEF 382 208 436 by way of expenditure incurred for the advance payment of export refunds,

THE COURT (Sixth Chamber),

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

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

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 1 February 2001, in which the Kingdom of Belgium was represented by H. Gilliams and the Commission by C. van der Hauwaert, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 March 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 July 1998, the Kingdom of Belgium brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the partial annulment of Commission Decision 98/358/EC of 6 May 1998 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1994 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1998 L 163, p. 28, hereinafter 'the contested decision'), in so far as it disallows, in respect of the applicant, Community financing for the sum of BEF 382 208 436 by way of expenditure incurred for the advance payment of export refunds.

2 The abovementioned sum represents a flat-rate correction of 10% in the total expenditure of the Kingdom of Belgium during 1994 in connection with the advance financing of export refunds for the beef and veal sectors and the cereals sector.

The legal context

3 Under Articles 1(2)(a) and 2(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 Guarantee Section of the EAGGF is to finance refunds on exports to third countries granted in accordance with the Community rules within the framework of the common organisation of agricultural markets.

4 Under the first paragraph 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.'

5 It follows from Article 8(2) of the same regulation that the financial consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States are not borne by the Community.

6 Article 4(1) of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5) provides that '[a]n amount equal to the export refund shall, at the request of the party concerned, be paid as soon as the basic products are placed under customs control ensuring that the processed products or the goods will be exported within a set time-limit' (known as the 'advance payment for processing' system).

7 Article 5(1) of Regulation No 565/80 states that '[a]n amount equal to the export refund shall, at the request of the party concerned, be paid as soon as the products or goods have been brought under the customs warehousing or free zone procedure with a view to their being exported within a set time-limit' (known as the 'advance payment for warehousing' system).

8 The specific rules applying to the Community advance payment system are laid down in Chapter 3, Title 2, of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1).

9 Under Article 25 of Regulation No 3665/87, where an exporter states his intention to export products or goods after processing or storage, and to qualify for a refund, in accordance with Article 4 or Article 5 of Regulation No 565/80, admission under those provisions is subject to the lodging with the customs authorities of a declaration, known as 'the payment declaration', showing all the particulars necessary for determining the refund.

10 With regard to processed products or goods obtained from basic products, Article 27(1) of Regulation No 3665/87 provides that the result of a scrutiny of the payment declaration, combined with inspection of the basic products, is to be used for determining the refund.

11 Pursuant to Article 27(3) of Regulation No 3665/87, basic products covered by the 'advance payment for processing' system must form all or part of the processed products or goods which are exported. Under the equivalence rule laid down in the same provision, the basic products may, provided the competent

authorities agree, 'be replaced by equivalent products, falling within the same subheading of the Combined Nomenclature, of the same commercial quality, having the same technical characteristics and meeting the requirements for the granting of an export refund'.

12 Under the first subparagraph of Article 27(5) of Regulation No 3665/87, the period during which the basic products may remain under customs control with a view to their being processed is six months from the date of acceptance of the payment declaration.

13 Commission Regulation (EEC) No 32/82 of 7 January 1982 laying down the conditions for granting special export refunds for beef and veal (OJ 1982 L 4, p. 11) provides for the possibility of granting increased refunds for the export of certain products in the beef and veal sector.

14 Commission Regulation (EEC) No 1964/82 of 20 July 1982 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals (OJ 1982 L 212, p. 48) provides that individually packaged boneless cuts from fresh or chilled hindquarters of adult male cattle may qualify for increased export refunds.

15 The first paragraph of Article 8 of Regulation No 1964/82 provides that the Member States must 'take all necessary measures to make substitution of the products in question impossible, in particular by identification of each piece of meat', while the third paragraph of the same article states that '[t]he bags, cartons or other packaging material in which the boned cuts are placed shall be officially sealed by the competent authorities and bear particulars enabling the boned meat

to be identified, in particular the net weight, the type and the number of the cuts and a serial number'.

16 Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts (OJ 1990 L 42, p. 6) lays down certain procedures for monitoring whether operations conferring entitlement to the payment of refunds on and all other amounts in respect of export transactions have actually been carried out and executed correctly.

17 Pursuant to Article 3 of Regulation No 386/90, the physical checks of goods at the time of customs formalities on export must take the form of spot checks conducted frequently and without prior warning and must relate to a representative sample of 5% of the export declarations giving a right to payment of refunds and all other amounts in respect of export transactions.

18 Under Article 5(1)(a) of Commission Regulation (EEC) No 2030/90 of 17 July 1990 laying down detailed rules for the application of Regulation No 386/90 as regards physical checks carried out at the time of export of agricultural products attracting refunds or other amounts (OJ 1990 L 186, p. 6), physical checks are to be carried out during the period between the lodging of the export declaration and authorisation to export the goods. According to Article 6 of Regulation No 2030/90, in cases where the refund is paid in advance in accordance with the advance payment for processing system or the advance payment for warehousing system, the physical checks carried out during storage and, where appropriate, at the time of processing may be taken into account for calculating the minimum rate of checks referred to in Article 3 of Regulation No 386/90. This possibility is subject to the conditions that the physical checks carried out prior to the completion of the customs export formalities meet the same criteria of intensity as those to be carried out normally at the time of export and that the products which have been the subject of previous physical checks are identical to those which are the subject of the export declaration.

The evaluation of corrections (Belle Group Report)

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

20 For difficult cases the Report sets out a flat-rate method:

'As the systems audit approach has become more widely applied, the 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....'

21 The Report proposes three categories of flat-rate corrections:

'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.'

22 The guidelines laid down by the abovementioned report further provide that, where there is doubt as to the correction to be applied, the following points may 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.'

23 As a result of the Belle Report, Article 5(2) of Regulation No 729/70 was amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1) as follows:

'The Commission, after consulting the Fund Committee,

...

(c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community.

...'

The clearance procedure for 1994

24 The EAGGF control services carried out checks concerning the rules and procedures in the matter of the advance financing of export refunds applied by certain Member States during the 1993 and 1994 financial years. In Belgium the customs offices of Louvain, Alost, Beauraing and Termonde were inspected in September and November 1994.

25 After an exchange of correspondence between the Commission and the Belgian authorities on the result of the checks, the Commission notified the Belgian authorities, by letters of 8 and 19 July 1996, of the final conclusions of its investigation into the Belgian control system.

26 On 1 October 1996 the Belgian Government lodged a request for conciliation pursuant to 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). The conciliation body adopted its final report on 13 February 1997.

27 On 31 December 1996 the Commission adopted a draft summary report for the 1993 financial year. On 3 March 1997 the summary report on the results of the checks for the clearance of the accounts of the EAGGF Guarantee Section for 1993 (hereinafter 'the 1993 summary report') was discussed by the EAGGF committee.

28 On 23 April 1997, the Commission, on the basis of the 1993 summary report, adopted Decision 97/333/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 1997 L 139, p. 30).

29 The Kingdom of Belgium requested the Court to partially annul that Decision in so far as it disallowed, in respect of the Kingdom of Belgium, Community financing for the sum of BEF 413 309 611 by way of expenditure incurred for the advance payment of export refunds. That application was dismissed by the judgment of 18 May 2000 in Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421.

30 For the 1994 financial year, the Commission adopted on 24 November 1997 the summary report on the results of the checks for the clearance of the accounts of the EAGGF Guarantee Section for 1994 (hereinafter 'the 1994 summary report'). In that report the Commission merely referred to the description of the results recorded in the summary report for 1993, without adapting, changing or completing the analyses or conclusions set out in that latter report.

31 The contested decision was adopted on 6 May 1998 on the basis of the 1994 summary report.

First plea in law

32 By its first plea in law, the Belgian Government claims that the contested decision was adopted contrary to Article 5(2) of Regulation No 729/70, as amended by Regulation No 1287/95, the principle of *bona fide* cooperation laid down in Article 5 of the EC Treaty (now Article 10 EC), the principle that due care should be taken and the obligation to state reasons provided for in Article 190 of the EC Treaty (now Article 253 EC).

33 The Belgian Government submits that the procedure for adopting the contested decision was invalid because, first, the Commission did not examine the information provided by the Belgian authorities before adopting the final conclusions of its investigation into the Belgian control system and, secondly, it regarded the conciliation procedure initiated by the Belgian Government as a mere formality. The Commission did not seriously examine the observations and information submitted by the Belgian Government and did not even await the final report of the conciliation body before adopting the draft 1993 summary report on 31 December 1996.

34 As a result, according to the Belgian Government, the 1994 summary report, in so far as it refers to the 1993 summary report, contains many inaccuracies which ought to have been avoided. More particularly, the Belgian Government disputes the accuracy of the Commission's findings or analysis on 11 points concerning the beef and veal sector and four points concerning the cereals sector.

35 It must be observed at the outset that the EAGGF finances only intervention undertaken in accordance with the Community rules in the framework of the common organisation of agricultural markets.

36 In that connection, the Court has consistently held that, where the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of breach of Community rules for which a Member State can be held responsible, it is for that State to show that the conditions for obtaining the financing refused are fulfilled (see Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 14, and Case C-48/91 *Netherlands* v *Commission* [1993] ECR I-5611, paragraph 16). The Commission is not required to demonstrate exhaustively that there are irregularities in the data submitted by Member States; it is sufficient for it to put forward evidence in support of the serious and reasonable doubt which it entertains concerning the figures supplied by the national authorities.

37 The reason for this mitigation of the burden of proof on the Commission is that it is the State which is best placed to collect and check the data required for the clearance of EAGGF accounts, and which is consequently required to adduce the most detailed and comprehensive evidence that its figures are accurate and, if appropriate, that the Commission's calculations are incorrect (*Netherlands* v *Commission*, cited above, paragraph 17; Case C-59/97 *Italy* v *Commission* [1999] ECR I-1683, paragraph 55). In the event of a dispute, it is for the Commission to prove that the rules of the common organisation of the agricultural markets have been infringed and, once it has established such an infringement, the Member State concerned must then, if appropriate, demonstrate that the Commission made an error as to the financial consequences to be inferred from that infringement (Case C-281/89 *Italy* v *Commission* [1991] ECR I-347, paragraph 19, *Netherlands* v *Commission*, cited above, paragraph 18, and Case C-59/97 *Italy* v *Commission*, cited above, paragraph 55).

38 The evidence adduced by the Belgian Government against the findings on which the Commission based the contested decision must be examined in the light of the foregoing considerations.

The alleged errors in the 1994 summary report

The beef and veal sector

39 As regards the beef and veal sector, the Belgian Government disputes, first, the Commission's assertion that the store belonging the firm Sivafrost at Termonde, where goods under the advance payment for warehousing regime are stored, is opened every morning and closed every evening by a customs official and left without supervision during the interval. The Government states that the store is opened by a customs official only when goods are brought in for storage or removed from the store and it is closed by the official on completion of the operation, at which he is present.

40 As shown by a letter of 22 May 1995 from the Belgian authorities to the Commission, the correspondence between them which preceded the Commission's adoption of, first, Decision 97/333, and subsequently the contested decision, does not prove that the Sivafrost store is opened solely for the purpose of bringing in and removing stored goods and then immediately closed again. Consequently the Belgian Government has been unable to prove that the Commission's findings that the store is opened in the morning and not closed again until the evening are erroneous.

41 It follows that the Belgian Government's argument does not rebut the Commission's objection.

42 Second, the Belgian Government denies the Commission's assertion that there were insufficient staff and basic equipment at the customs office in Termonde. In the first place, while admitting that the office did not have a weighing machine accurate enough to weigh boxes of 20 kg, the Government contends that this is

irrelevant because 90% of the meat exported through that office is initially stored under the advance payment for warehousing regime in the Sivafrost and Vandenavenne stores which do have weighing machines suitable for carrying out the checks required when goods enter and leave the store. In the second place, as regards the fact that the Termonde customs office did not have an official car, which is alleged to have limited the ability to make checks without prior warning, the Belgian Government points out that the inspector who decides to carry out a physical check accompanies the lorry from the customs office to the store. The carrier can therefore never know whether the inspector will accompany him for the purpose of a physical check or not. Finally, the Belgian Government observes that the Termonde customs office had three officers responsible for controls, with the task of carrying out administrative formalities, and one inspector solely responsible for carrying out physical checks, which was sufficient for overseeing the Sivafrost and Vandenavenne stores.

43 On this point, it must be observed first of all that the Belgian Government does not deny that the Termonde customs office does not possess a weighing machine suitable for checking the weight of 20 kg boxes. It follows that the physical checks required by Article 3(1) and (2) of Regulation No 386/90 cannot be carried out effectively. The weighing of 90% of the meat at an earlier stage does not fill this gap in the control system because it means that some of the meat placed under the advance payment for warehousing regime is never weighed by custom officers.

44 Next, it is also not in dispute that, because there is no official car, the inspector was able to carry out a physical check only by contacting beforehand the manager of the store or the undertaking to be checked. Consequently, the Belgian Government has not succeeded in showing that, for goods placed in the store, the physical checks without prior notice required by Article 3 of Regulation No 386/90 were possible under those conditions.

45 Finally, as regards the Belgian Government's statement that, in addition to the inspector, three officers were responsible for controls in the Termonde customs

office, this information was supplied by the Belgian authorities in the course of their application submitted on 3 July 1997 in Case C-242/97, that is, after 28 February 1997, the time-limit fixed by the Commission in its final Decision C(97)515 of 24 February 1997 for Member States to forward additional information for the clearance of accounts for 1994. The Belgian Government puts forward no exceptional circumstances to justify this delay. Since that information was supplied after the time-limit, it could not be taken into account (see Case C-197/90 *Italy* v *Commission* [1992] ECR I-1, paragraph 9; Case C-54/91 *Germany* v *Commission* [1993] ECR I-3399, paragraphs 13 to 15; Case C-41/94 *Germany* v *Commission* [1996] ECR I-4733, paragraph 23; Case 61/95 *Greece* v *Commission* [1998] ECR I-207, paragraph 45; Case 27/94 *Netherlands* v *Commission* [1998] ECR I-5581, paragraph 29, and Case 59/97 *Italy* v *Commission*, cited above, paragraph 37).

46 It follows that this allegation must be rejected.

47 Third, as regards the Commission's findings that the customs authorities carried out their checks entirely on the basis of a list drawn up by the trader concerned, showing the number of boxes and their weight, because the export declaration and the payment declaration were prepared later, the Belgian Government states that the Commission found this procedure only at the Beauraing customs office, that it did not create a risk of incorrect payment and that it was altered immediately after it was reported to the Belgian authorities. According to the Belgian Government, an inspector from the Beauraing customs office was always present when goods were taken into storage and he systematically checked the weight of the goods delivered, which made it possible to detect any discrepancy between the list drawn up by the trader and the weight when the goods were weighed. The procedure applied at Beauraing did not, therefore, make the checks less effective, even if the payment declaration was made at a later stage, particularly as this procedure guaranteed a physical check of much more than 5% of the goods concerned. In addition, as the stored meat had undergone a preliminary veterinary inspection, the customs checks provided an additional safeguard, so that the Commission has been unable to prove the existence of a real risk of fraud.

48 It must first be observed that, as appears from the letter of 22 May 1995 from the Belgian authorities to the Commission, there was no complete weight check by the Beauraing customs office by weighing. Moreover, as the Belgian Government admitted, checking of the weight lists drawn up by the trader could also have been carried out before the production of the export declaration, whereas Article 5(1) of Regulation No 2030/90 requires the physical check to be made after the declaration is lodged. Under these circumstances, it cannot be maintained that the Belgian authorities carried out physical checks in conformity with Community law.

49 In view of this finding, it is immaterial that the checks carried out by the Belgian authorities covered more than 5% of the goods concerned, as the Belgian Government claims.

50 For the rest, the Belgian Government has not shown that, in the absence of a valid physical check, the possibility of substitution of goods, to which the Commission refers, was non-existent.

51 Fourth, the Belgian Government denies the statement in the 1993 summary report that, in stores in the area of the Termonde customs office, it was possible to remove the labels from several boxes containing hindquarters of beef and to replace them without damaging them. While admitting that it was possible for the Commission inspectors to remove and replace labels without damaging them, the Belgian Government contends that this occurred on an unrepresentative sample and that in practice it is impossible to replace the meat stored in a customs warehouse with other meat because of the difficulty and the amount of time involved. Accordingly, the Commission has not shown that the seals applied in Belgium entail a considerable risk of making payments that are not due.

52 It must be observed that it is common ground that, at the date of the check in question, it was possible to open boxes of high-refund beef without damaging the seals. The statements by the Belgian Government in no way call into question the Commission's findings in this respect and the Government's argument must be rejected.

53 Fifth, the Belgian Government asserts that the Commission was mistaken in maintaining that some of the meat checked in Termonde was cow meat when it was in fact meat of male animals, which was confirmed by DNA analysis.

54 As the Court pointed out at paragraph 51 of its judgment in *Belgium v Commission*, cited above, the Commission withdrew that charge, which had been made in Annex II to its 1993 summary report; it also stated that Decision 97/333 was not based on that charge. However, the contested Decision is based on the same grounds as Decision 97/333.

55 As the Belgian Government has not contended that the withdrawn charge gave rise to a specific correction in the contested decision, its argument on this point, although factually well founded, is of no consequence.

56 Sixth, the Belgian Government denies that the only means of identifying the different boxes stored in the Sivafrost store was a sheet of paper attached to a pallet, showing the numbers of the payment declarations, and that it was therefore possible to replace boxes placed in that store. It asserts that the boxes stored there had labels showing the nature, weight and number of the goods. In addition, since 1994 the Sivafrost store had used storage lists showing the same details as the labels, which made it possible to check whether the boxes had left the store.

57 It must be noted that the Belgian Government has not established that the findings on which the contested Decision is based are incorrect. In particular, the Belgian Government has been unable to rebut the Commission's complaint that the pallets were not adequately identified in 1994. In that respect, it is apparent from the documents before the Court that storage lists were not introduced throughout Belgium until 1995 at the earliest. Furthermore, while the Belgian Government claims that storage lists were used in the Sivafrost store from 1994, it does not give any precise date, the only fact established being that, during inspections carried out in November 1994, such lists were kept in that store. In any case the Belgian Government is unable to rebut the Commission's claim that those lists do not allow a reliable identification of stock.

58 Therefore the Belgian Government's argument cannot be upheld.

59 Seventh, the Belgian Government contends that veterinary officials were always present when meat was boned and weighed after boning, so that the Commission's complaint that they did not thoroughly carry out the weight checks required by Regulation No 1964/82 is unfounded.

60 The Belgian Government's argument must be rejected. As regards weight checks of boneless cuts from beef hindquarters, the mere presence of a veterinary official in the boning room to check the automatic weighing operation does not meet the requirements of Regulation No 1964/82. Since, under Article 4 of that regulation, the competent authorities must endorse the 'boned meat certificate' which, under Article 5(3) of the same regulation, must state the total quantity of meat produced by boning, the authorities must satisfy themselves of the weight of the boned hindquarters, which means that they must weigh them themselves so as to prevent the obvious risk of fraud which would arise where the weighing is done by other persons. It follows that the Belgian Government has failed to adduce adequate proof that the Commission was wrong in the conclusions it drew from its findings concerning the risk of fraud.

61 Eighth, the Belgian Government criticises the Commission's allegation that the physical checks carried out at the advance payment stage in the Beauraing and Termonde customs offices did not fulfil the requirements of Article 6 of Regulation No 2030/90. The Government states that these checks, which relate to the weight and seals of boxes, are as thorough as those at the export stage and conform with the conditions laid down in Regulations Nos 386/90 and 2030/90.

62 On this point it must be held that the Belgian Government has not succeeded in rebutting the Commission's findings concerning the inadequacy of the check carried out during the storage period. First, as is pointed out in paragraph 43 of the present judgment, at the Termonde office the weight of goods was not properly checked either on entering or on leaving the store. Furthermore, as pointed out in paragraph 52, the checks of the sealing of the boxes at the same customs office were also inadequate, and, as found in paragraphs 57 and 60, other shortcomings made the substitution of goods possible. Second, as paragraphs 48 to 50 of the present judgment show, the checks at the Beauraing customs office did not exclude all risk of substitution, so that those checks cannot be regarded as physical checks within the meaning of Article 6 of Regulation No 2030/90.

63 In those circumstances it must be found that the checks carried out by the Beauraing and Termonde customs offices in the context of the Community system for advance financing were not of the thoroughness required by Article 6 of Regulation No 2030/90.

64 The Belgian Government's assertion to the contrary must therefore be rejected.

65 Ninth, the Belgian Government admits that, contrary to the requirements of Article 2(3) of Regulation No 1964/82, the weight of beef hindquarters before

boning was not established by the competent authorities by weighing, but was calculated by applying a yield coefficient to the weight of the hindquarters after boning. However, it disputes the conclusions drawn by the Commission from its findings on the ground that this practice was observed in relation to only one undertaking covered by the Beauraing customs office and that this method of determining weight before boning did not affect the amount of refunds finally paid as they were calculated according to the net weight of the boned meat, which was measured by automatic weighing. Finally, it claims that the weight certificate is optional, which shows that the Commission attaches no importance to that factor.

66 In this connection, it must be observed that it is common ground that the weight before boning of the meat in question was not established by the competent authorities, as required by Article 2(3) of Regulation No 1964/82, but was merely estimated by means of a coefficient applied to the weight after boning, mentioned in the certificate provided for by the said regulation. Furthermore, it serves no point for the Belgian Government to argue that the refunds are calculated according to the net weight of the boned meat because, as found in paragraph 60 of the present judgment, that weight was not properly recorded either.

67 With regard to the Belgian Government's argument that showing the net weight before boning is optional, this fails to take account of the obligation laid down by Article 2(3) of Regulation No 1964/82, which provides that, on acceptance of the declaration, the competent authorities are to establish the net weight of the hindquarters.

68 In those circumstances the Belgian Government's argument cannot be upheld.

69 Tenth, the Belgian Government rejects the Commission's statement that the veterinary official at the Zele abattoir was unable to identify to the Commission's officers the person who had established the net weight of the hindquarters to be

cut up, referred to in the certificate prescribed by Regulation No 32/82, or to state on what basis he could have checked, if necessary, the accuracy of the weight which he had entered. The Belgian Government explains this incident by the fact that those hindquarters are weighed, not in the Zele abattoir, but in the cutting room belonging to the firm Dierickx, where this is done under the supervision of a veterinary official present on the premises.

70 On this point, it is sufficient to observe that, even assuming it to be established that the veterinary official in the cutting room is the competent authority within the meaning of Article 2(3) of Regulation No 1964/82, the Belgian Government admits that he does not himself carry out the weighing, but merely validates the result. That practice, which creates a risk of fraud, is contrary to Article 2(3) of Regulation No 1964/82, which requires the competent authorities to 'establish' the net weight of products before boning and to enter it in the certificate provided for by Regulation No 32/82.

71 In those circumstances the Belgian Government's arguments must be held to be unfounded and they must therefore be rejected.

72 Eleventh, the Belgian Government rejects the Commission's argument that, because the cuts intended for export were not stamped individually, the customs services could not determine whether the meat presented had been previously checked by an official of the veterinary service. The Belgian Government states that a veterinary official is always present in the cutting room and that he oversees the cutting-up of carcasses and the packaging of each cut. A label with the following information is affixed to each cut: Belgium, abattoir number and EEC number. The label enables the customs services to check whether the meat presented has been checked by the competent veterinary official.

73 It must be observed that the first paragraph of Article 8 of Regulation No 1964/82 provides that the checks made by the competent national authorities,

the conditions of which are determined by the Member States, must make substitution of the products impossible, particularly by measures such as the identification of each piece of meat.

74 However, the label used in Belgium did not enable that objective to be attained since it did not show the net weight or the nature and number of the cuts.

75 In those circumstances the Belgian Government's statements are not sufficient to show that the Commission's criticisms on this point are unjustified.

The cereals sector

76 With regard to the cereals sector, the Belgian Government disputes, first, the Commission's statement that the customs checks were not sufficient for identifying products placed under the Community advance-financing system. It contends that the effectiveness of the Belgian system for supervising the advance payment of cereal refunds is based on a watertight licensing system, continuous checking of the quantity and nature of the products in question and a detailed check of documents after completion, combined with a systematic physical check at the time of export. It therefore rejects the Commission's criticism regarding the allegedly insufficient number of physical checks by the Alost and Louvain customs offices before export, in so far as, in its opinion, it is doubtful whether such physical checks would be useful, having regard to the existing control system. In addition, it claims that as the question of the number of physical checks was raised for the first time in the 1993 summary report, the Commission is not entitled to take it as a ground for making financial corrections.

77 On this point it must be observed, first, that the correspondence between the Commission and Belgian authorities, which has been produced to the Court, shows that the latter were informed by the Commission of the shortcomings in question at a very early stage and that they had an opportunity to comment on this matter during the conciliation procedure.

78 Second, in view of the importance, for the correct application of the Community advance-payment system, for customs authorities of keeping each other informed with regard to the true state of goods and the composition of products, it is essential that those authorities carry out a sufficient number of physical checks of the goods.

79 In the present case it is common ground that the physical checks during storage were very few and that no information was exchanged between the various customs authorities concerning all the goods stored and the quantities in question. That being so, the various customs offices could not have an overall view of the goods declared for export, which meant that the competent authorities were not informed at all times of the true state of the goods and the composition of the stored products.

80 Consequently, the Belgian Government has not succeeded in rebutting the Commission's findings on this point in the 1993 summary report, to which the 1994 summary report refers.

81 Second, the Belgian Government rejects the Commission's argument that the Belgian authorities, while accepting the application of the principle of equivalence to finished products, are misinterpreting that principle. It states that Article 27(3) of Regulation No 3665/87 does not specify the products to which

the principle of equivalence is applicable, as it does not state clearly whether the equivalent products must be basic products or processed products.

82 According to Article 27(3) of Regulation No 3665/87, the basic products may be replaced by equivalent products, falling within the same subheading of the Combined Nomenclature, of the same commercial quality, having the same technical characteristics and meeting the requirements for the granting of an export refund.

83 It follows that, contrary to the Belgian Government's contention, only products at the same processing stage as the basic products may be regarded as having the same commercial quality and the same technical characteristics as the latter.

84 Consequently, the Commission was justified in finding that the Belgian authorities had infringed Article 27(3) of Regulation No 3665/87 by authorising the replacement of basic products by processed products.

85 The Belgian Government's submissions to the contrary must therefore be dismissed.

86 Third, with regard to checking that the goods are present when the payment declaration is lodged, the Belgian Government maintains that Community law does not require the physical presence of the prefinanced goods when the declaration is lodged. Accordingly, contrary to the Commission's claim in the 1993 summary report, the official in charge of the customs office is not required to check, on receipt of the payment declaration, whether the trader lodging it has a sufficient stock.

87 On this point it must be observed that, under Article 26(1) of Regulation No 3665/87, products or goods are placed under customs control from the time of acceptance of the payment declaration until they leave the customs territory of the Community or reach their destination. It follows that the customs authorities must be kept constantly informed of the quantities of goods in stock which have been placed under the Community advance-payment system so that non-existent goods cannot be declared.

88 It may thus be seen that a customs check of products and goods which must be physically in stock from the time of acceptance of the payment declaration is essential in order to reveal any fraud at or after the declaration stage.

89 The Belgian Government's argument must therefore be rejected.

90 Fourth, the Belgian Government denies the claim in the 1993 summary report that the time-limits for the export of prefinanced goods were not observed, which, it is alleged, enables exporters who do not yet have a final destination for their goods to prolong the advance-financing period and to avoid specifying a final destination.

91 It is clear from paragraph 88 of *Belgium* v *Commission*, cited above, that the Commission, while it considers the method used by Belgian authorities to be undesirable, did not regard it as infringing Community law and did not take it into account in connection with the financial corrections made in Decision 97/333. The same is true for the contested Decision, which is based on the same grounds as Decision 97/333.

92 As no specific financial correction was made in relation to the Kingdom of Belgium on that ground, the Belgian Government's challenge on this point in the 1993 summary report, to which the 1994 summary report refers, is to no purpose in the context of the present action and there is no need to examine it.

93 It follows that the part of the first plea in law which is directed at the Commission's factual findings must be dismissed.

Breach of the principles of bona fide *cooperation and due care*

94 With regard to the objection that, when the Commission adopted the contested decision, it failed to observe the principles of *bona fide* cooperation and due care, the documents before the Court show that a large amount of information was exchanged by the Commission and the Belgian authorities before the adoption of, first, Decision 97/333 and subsequently the contested Decision, *inter alia* during the conciliation procedure.

95 As regards, in particular, the fact that the Commission adopted the 1993 draft summary report without awaiting the report of the conciliation body, it must be observed, first, that the Belgian Government has raised this fact, not as a ground of annulment of the contested decision, but in support of its plea for annulment based on breach of the principles of *bona fide* cooperation and due care. Second, notwithstanding the Commission's haste in adopting the 1993 draft summary report, the documents before the Court show that in any event the Commission took note of the Belgian authorities' arguments and examined them, even if it did not find them persuasive.

96 In those circumstances, neither the principle of *bona fide* cooperation nor the principle of due care has been infringed.

Breach of the obligation to state reasons

97 Finally, the Belgian Government complains that the Commission did not give a sufficient statement of the reasons on which the contested decision was based.

98 On this point, the Court has consistently held that, 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 sufficiently involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the EAGGF (see Case C-22/89 *Netherlands* v *Commission* [1990] ECR I-4799, paragraph 18, and Case C-27/94 *Netherlands* v *Commission*, cited above, paragraph 36).

99 In the present case, it is clear from the documents before the Court that the Belgian Government was involved in the process by which the contested decision came about. The Commission's doubts concerning the reliability of the Belgian control system in the beef and veal sector and the cereals sector were brought to the attention of the Belgian authorities several times in writing, discussion took place and the matter was referred to the conciliation body.

100 Furthermore, it must be observed that, in the 1994 summary report, the Commission indicated, by reference to the 1993 summary report, the reasons which led it to refuse clearance of the disputed amount.

101 The statement of the reasons for the contested decision must therefore be held to be sufficient.

102 It follows that the first plea in law must be dismissed as unfounded.

Second plea in law

103 By its second plea in law the Belgian Government claims, first, that the Commission is not entitled to impose flat-rate corrections if it does not have concrete proof that a certain number of amounts have been improperly paid. In the present case, however, the Commission has adduced no such proof. Second, the Commission has no justification for arguing that the Belgian control system, taken as a whole, has shortcomings which entail a high risk of losses to the EAGGF and justify a 10% correction. Third, the Commission has likewise given insufficient reasons for its decision relating to the corrections made. By proceeding in this manner, it has infringed Regulation No 729/70 and Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section (Official Journal 1972 L 186, p. 1) and has failed to fulfil the obligation to state reasons, laid down in Article 190 of the Treaty.

104 The Belgian Government submits that the check carried out by the Commission was not representative as it covered only four of the 15 customs offices which regularly deal with advance payments. In addition, the alleged shortcomings were not found in all the customs offices which were checked, so that the Commission was not justified in concluding that those shortcomings affected systematically the whole of the Belgian control system.

105 It must first be observed that, as has already been pointed out in paragraph 35 of this judgment, the object of the procedure for clearing accounts is to ensure that the appropriations made available to the Member States have been used in accordance with the Community rules in force within the framework of the common organisation of markets.

106 Article 8(1) of Regulation No 729/70, which expressly lays down the obligations imposed on the Member States in this field by Article 5 of the Treaty, defines, in accordance with the Court's case-law, the principles in accordance with which the Community and the Member States are to ensure the implementation of Community decisions on agricultural intervention financed by the EAGGF and combat fraud and irregularities in relation to those operations. It imposes on the Member States an obligation to take the measures necessary to satisfy themselves that operations financed by the EAGGF are actually carried out and are executed correctly (Case C-2/93 *Exportslachterijen van Oordegem* [1994] ECR I-2283, paragraphs 17 and 18, and Case C-235/97 *France* v *Commission* [1998] I-7555, paragraph 45).

107 Next, as already pointed out in paragraph 36 of the present judgment, where the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of breach of Community rules for which a Member State can be held responsible, the Commission is not required to demonstrate exhaustively that the checks carried out by the Member States are inadequate, but to supply evidence in support of the serious and reasonable doubt it entertains concerning the checks carried out by the national authorities. The reason for this mitigation of the burden of proof on the Commission is that it is the State which is best placed to collect and check the data required for the clearance of EAGGF accounts, and which is consequently required to adduce the most detailed and comprehensive evidence that its checks are actually carried out and, if appropriate, that the Commission's assertions are incorrect.

108 As regards, in the present case, the facts found by the Commission in its 1993 summary report, to which the 1994 summary report refers, the Commission was

able, as may be seen from paragraphs 39 to 92 of the present judgment, to adduce evidence of numerous breaches of the rules of the common organisation of agricultural markets, and the Belgian Government has not shown that the Commission's findings were incorrect. Consequently there are serious doubts as to whether there was an appropriate and effective system of supervision and control.

109 Finally, as to the question whether the shortcomings found were such as to justify a flat-rate correction of 10%, it must be observed that the Commission carried out a sufficient number of checks at the premises of the customs offices and undertakings representative of the whole. It is clear from the documents before the Court that, in the beef and veal sector, the undertakings checked received 22.8% of advance payments in 1993 and that the customs offices checked made more than 25% of the advance payments. Those documents also show that in the cereals sector the checks covered more than 32.3% of expenditure. The Belgian Government does not dispute those percentages and does not claim that they were reduced significantly during 1994. That being so, the investigations carried out by the Commission in relation to the Belgian control system must be considered to be sufficiently representative to permit extrapolation to the system as a whole.

110 Alternatively, the Belgian Government contends that a flat-rate correction could be applied only to budget headings which had in fact been the subject of a check.

111 First, with regard to the cereals sector, the Belgian Government contends that, as the Commission's checks related only to budget headings 1001 (malt) and 1003 (other cereals), the Commission was wrong to apply flat-rate corrections to the other budget headings which had not been checked by its officials, particularly heading 1000 (common wheat). It contends that its argument on this point is supported by the Belle Group Report, which permits flat-rate corrections only

where the shortcomings in question have been systematic and entailed a risk of loss to the EAGGF, which was not the case here.

112 Second, the Belgian Government contends that the checks carried out by the Commission were not representative because the common wheat sector, which accounts for 27% of all advance-payment expenditure in the cereals sector, was not covered. Furthermore, it could have been shown, if the Commission had so requested, that there was a special control system for the common wheat sector.

113 Finally, the Belgian Government claims that, as the EAGGF checks related only to the system of advance payment for processing, the Commission was not entitled to make a correction in respect of expenditure incurred under the system of advance payment for warehousing.

114 It must be observed that the Commission's inspections covered all the checks carried out by customs offices concerning advance payments which were granted within the framework of advance financing and that the Commission found shortcomings in the cereals sector as well as the beef and veal sector.

115 In those circumstances, the Commission was entitled to make a correction to budget heading 1000 (common wheat) as part of the cereals sector.

116 As regards the Belgian Government's argument concerning the Belle Group Report, it must be observed that, according to the Report, flat-rate corrections

can be applied only to the sector of expenditure affected in the administrative area or region where the shortcoming was found, unless it is proved that the same shortcoming occurs in other regions or throughout the Member State in question. As the Report refers only to different geographical and administrative sectors, it does not prohibit the application of a flat-rate correction to a budget heading other than that under which the expenditure has been checked by the Commission, provided that the two headings fall within the same sector, such as headings 1000, 1001 and 1003 in the present case. Accordingly, it cannot be found that the Commission acted in breach of the Community rules.

117 As for the Belgian Government's submission that the Commission ought to have taken account of the special control system in Belgium for common wheat, that information was only put forward by the Belgian authorities at the stage of their reply in Case C-242/97, that is, after 28 February 1997, the time-limit fixed by the Commission in its final Decision C(97)515 of 24 February 1997 for Member States to forward additional information for the clearance of accounts for 1994. For the same reasons as those given in paragraph 45 of the present judgment, that information was supplied after the time-limit, and therefore could not be taken into account.

118 The submission that the correction should not have been extended to the system of advance payment for warehousing was also out of time, having been raised after 28 February 1997.

119 Second, with respect to the beef and veal sector, the Belgian Government contends that only the suitability of the control system in relation to products for which a higher refund is provided was checked. It submits that the conclusions of such an investigation cannot be extended to control systems for other expenditure incurred in the beef and veal sector without a more thorough examination or without stating the detailed reasons for taking such a step. It maintains, in particular, that the checks for export refunds on beef of female animals ought to have been carried out separately from those in connection with special refunds.

120 On this point, as already noted in paragraph 114 of the present judgment, the Commission's inspections covered all the checks carried out by customs offices concerning advance payments which were granted within the framework of advance financing, and checks revealed shortcomings in the cereals sector as well as the beef and veal sector.

121 The shortcomings found in the Belgian control system were such as to have negative repercussions on all the control procedures in that sector, so that the Commission was right to apply the flat-rate correction for the whole of the beef and veal sector.

122 In view of the foregoing, the Belgian Government's second plea in law must be dismissed.

Third plea in law

123 By its third plea in law, the Belgian Government claims that, in deciding to make flat-rate corrections, the Commission did not apply the guidelines which it itself laid down in the Belle Group Report and failed to give a sufficient statement of the reasons for this approach, or applied the guidelines incorrectly. It observes that the contested decision applies the highest correction, 10%, to the applicant and adds that the application of the correction factor at the highest rate requires proof of shortcomings relating to the fundamental elements of the control system

or the carrying-out of essential checks, and also the existence of a high risk of general loss.

124 The Belgian Government also complains that the Commission failed to apply the weighting factors which it laid down in the Belle Group Report, as it is obliged to do where there is doubt as to the correction factor to be applied. The Belgian Government adds that the application of the 10% correction factor to the whole of Belgian territory is inconsistent with the fact that the checks carried out in Belgium by the Commission were made in only two of the 15 Belgian control centres for the beef and veal sector, and in only two of the 39 Belgian control centres for the cereals sector.

125 It must be observed, first, that so far as the amount of the financial correction is concerned, the Commission may even refuse to charge to the EAGGF the whole of the expenditure in question if it finds that there are no adequate control procedures.

126 Second, as already pointed in paragraph 35 of the present judgment, the EAGGF finances only intervention undertaken in accordance with the Community rules in the framework of the common organisation of agricultural markets. Since, as is pointed out in paragraph 37 of the present judgment, it is the State which is best placed to collect and check the data required for the clearance of EAGGF accounts, it is the State which is required to adduce the most detailed and comprehensive evidence that its figures are accurate and, if appropriate, that the Commission's estimates are incorrect.

127 In the present case, the Belgian Government has not adduced proof that the criteria applied by the Commission were arbitrary and unfair.

128 First, the shortcomings found by the Commission concerned the fundamental elements of the Belgian control system and the carrying-out of checks which play an essential part in ensuring that expenditure is properly incurred, and second, the Commission has shown that, in view of the extent of the shortcomings found to exist, there was a corresponding risk of high losses for the EAGGF.

129 In those circumstances, the Commission was entitled to conclude that there was a considerable risk such as to justify a flat-rate correction of 10%.

130 Consequently, the Belgian Government's third plea in law must be dismissed.

Fourth plea in law

131 By its fourth plea in law, the Belgian Government claims that, by applying in the beef and veal sector a 10% correction for the Kingdom of Belgium but only 5% for the Federal Republic of Germany, the French Republic, the Italian Republic and the Kingdom of the Netherlands, the Commission infringed the principle of equality and that, in any case, the contested decision does not state adequate reasons on this point. It contends that in other Member States there were shortcomings similar to those alleged against the Kingdom of Belgium, but that the sanctions imposed on it were more severe.

132 In this connection, it must be observed first of all that each case must in principle be assessed separately to determine whether, when the Member State in question carried out operations financed by the EAGGF, it acted in accordance with the requirements of Community law and, if it failed to do so, to what extent.

133 That does not mean that a Member State is not authorised to plead breach of the principle of equal treatment. However, it may do so only if the cases it cites are at least comparable as regards all the elements which characterise them, including, in particular, the period during which the expenditure was incurred, the sectors concerned and the nature of the irregularities complained of.

134 Next, it should be borne in mind that the Court has consistently held that prohibited discrimination can arise only where comparable situations are treated differently, unless such treatment is objectively justified (see, in particular, Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 26).

135 In the present case, the list of shortcomings affecting the Kingdom of Belgium is longer than that relating to the other Member States which were checked, and the shortcomings and defects in the Belgian control system were more serious than in the other Member States to which the contested decision relates.

136 It follows that the situations were not comparable and there was no breach of the principle of equal treatment.

137 Finally, with regard to the obligation to state reasons, as the Belgian authorities were informed of the Commission's complaints and were given an opportunity to comment on them, it must be held that no breach of this principle has been demonstrated in the present case.

138 It follows that the fourth plea in law must be dismissed as unfounded in its entirety.

Fifth plea in law

139 By its fifth plea in law, the Belgium Government claims that the inspections carried out by the Commission were limited to the 1992 and 1993 financial years, as expressly confirmed in the Commission's letters. Consequently, it challenges the application on the basis of those inspections of a flat rate adjustment for the 1994 financial year.

140 The Commission replies that the inspections also relate to the 1994 financial year. The fact that the headings of the letters disclosing the results of those inspections include the words 'Budgetary Years 1992/1993' is irrelevant. The 1994 financial year was mentioned in other documents from the Commission, such as the official notification of the results of the inquiry, sent to the applicant.

141 It is not disputed that the inspections carried out by the Commission took place in September and November 1994, that is, both during and after the 1994 financial year, which, as set out in the second recital to the contested Decision, began on 16 October 1993 and ended on 15 October 1994. Therefore the Belgian Government cannot claim that the checks carried out do not prove that there were irregularities during the 1994 financial year.

142 Furthermore, the fact that the Commission did not specifically mention the 1994 financial year in the headings of the notifications of inspection, regrettable as that may be, does not prohibit the Commission from carrying out adjustments

justified by irregularities discovered in respect of that financial year. In the first place, the Commission clearly referred to the 1994 financial year, especially in its formal notification of the results of checks for the clearance of the accounts of the EAGGF Guarantee Section for 1992, 1993 and 1994, dated 7 November 1995. Secondly, Articles 2 and 3 of Regulation No 729/70 permit the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the various sectors of agricultural production, leaving the Member States to bear the burden of any other sum paid, and in particular any amounts which the national authorities wrongly believed themselves authorised to pay in the context of the common organisation of the markets (see Case 233/96 *Denmark* v *Commission* [1998] ECR I-5759, paragraph 52, and Case C-242/96 *Italy* v *Commission* [1998] ECR I-5863, paragraph 122). It would therefore, as correctly stated by the Commission in its defence, be contrary to those provisions not to apply adjustments to a budgetery year during which those provisions were breached simply because that year had not been expressly mentioned at the beginning of letters giving the results of the checks.

143 It follows that that last plea in law must be dismissed as unfounded.

144 Having regard to all the foregoing considerations, the action brought by the Kingdom of Belgium must be dismissed.

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the application;

2. Orders the Kingdom of Belgium to pay the costs.

Gulmann Puissochet Schintgen

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 20 September 2001.

R. Grass — Registrar

C. Gulmann — President of the Sixth Chamber