JUDGMENT OF THE COURT (Sixth Chamber)

13 July 2000 *

In Case C-46/97,

Hellenic Republic, represented by P. Mylonopoulos, Legal Assistant in the Special Service for Contentious Community Matters at the Ministry of Foreign Affairs, and I. Chalkias, Deputy Legal Adviser at the Legal Council of State, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

applicant,

v

Commission of the European Communities, represented by M. Condou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Greek.

APPLICATION for partial annulment of Commission Decision 96/701/EC of 20 November 1996 amending Decision 96/311/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1992 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and in respect of certain expenditure for 1993 (OJ 1996 L 323, p. 26), in the part relating to Greece,

THE COURT (Sixth Chamber),

composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn, G. Hirsch (Rapporteur), H. Ragnemalm and V. Skouris, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 February 1997, the Hellenic Republic 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 96/701/EC of 20 November 1996 amending Decision 96/311/EC on the clearance of the accounts presented by the Member States in respect of the expenditure for 1992 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and in respect of certain expenditure for 1993 (OJ 1996 L 323, p. 26), in the part relating to Greece.

2 The application seeks the annulment of that decision in so far as the Commission declared that the following amounts were not chargeable to the EAGGF:

— GRD 5 251 911 509 in respect of production aid for olive oil;

— GRD 61 090 105 in respect of wine (permanent abandonment of areas under vines);

— GRD 12 910 334 855 in respect of production aid for cotton;

— GRD 3 916 884 473 in respect of tobacco.

3 The reasons for the corrections are summarised in Summary Report No VI/6355/95 of 27 March 1996 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1992 and of certain expenditure for 1993 (hereinafter 'the summary report') and in two supplements dated 14 June and 23 September 1996.

Expenditure by way of production aid for olive oil

4 According to the summary report, the checks carried out in Greece revealed no significant improvement on the situation reported in the 1990 and 1991 clearances. Thus, there was still no olive cultivation register and the computer files continued to be unusable.

5 Furthermore, the summary report described serious structural shortcomings in the system for the management and checking of applications for aid, which it summarises in 18 points. In that regard, particular mention is made of the lack of coordination between the competent local and national offices and the inadequacy of controls. According to the summary report, the alternative control procedures put in place by the Greek authorities instead of those specified in the Community regulations do very little to reduce the risk to which EAGGF expenditure is exposed.

6 The Greek Government contends that the complaints formulated in the summary report are unfounded.

7 As regards the absence of the olive cultivation register, it points out that in Case C-50/94 *Greece* v *Commission* [1996] ECR I-3331 the Court has already stated that the Hellenic Republic had informed the Commission of the difficulties experienced in establishing the register of olive cultivation after 31 October 1988, the deadline laid down in Council Regulation (EEC) No 3453/80 of 22 December 1980 amending Council Regulation (EEC) No 154/75 on the establishment of a register of olive cultivation in the Member States producing olive oil (OJ 1980 L 360, p. 15) for the completion of that work. On that ground the Court validated the financial correction of 10% imposed for the 1990 financial year. A penalty was therefore imposed.

8 The Greek Government asserts that since 1991 the Commission has been kept fully informed and has been fundamentally disposed to assist the Hellenic Republic in its efforts to overcome the objective difficulties in question. Consequently, the first of the conditions mentioned above, namely informing the competent Community institution in good time, is satisfied. Since the Greek authorities collaborated in good faith with the Commission throughout the period in question, namely the 1992 year, no correction should be applied in respect of the absence of a register of olive cultivation.

9 It should be pointed out, first, that pursuant to Regulation No 3453/80, the Greek Government was required to establish the register of olive cultivation by no later than 31 October 1988.

10 Second, it should be observed that Greece did not comply with that deadline and during the 1992 financial year there was still no register of olive cultivation.

11 Third, in *Greece* v *Commission*, cited above, and in Case C-61/95 *Greece* v *Commission* [1998] ECR I-207, paragraph 12, the Court has already rejected the Greek Government's argument that it was absolutely impossible to establish a

register of olive cultivation. In fact the Government did not raise those arguments until after the date laid down in Regulation No 3453/80 and did not make any approach to the Community authorities to vary that date (see, in that regard, Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 39).

12 In those circumstances, it cannot be accepted that it was absolutely impossible to comply with the requirements arising under Regulation No 3453/80.

13 As regards the computerised files, the Greek Government claims that they have been in existence since 1985 and that they work satisfactorily. In any event, any shortcomings which may exist are linked to the absence of the register of olive cultivation, since it is on that register that a large number of the data necessary for the file should appear. The Government maintains that the considerations referred to above in relation to the absence of the register of olive cultivation therefore apply *mutatis mutandis* to the computerised files. Moreover, where the control procedure proves inadequate additional checks and further inspections are carried out.

14 Pursuant to Article 16(1) 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), each producer Member State is to draw up and keep up to date permanent computerised files of olive and olive-oil production data. Article 14(5) of that regulation invites Member States to use those files for the checks and verifications referred to in that regulation. Those files are to contain all the information likely to facilitate the control operations and the rapid identification of irregularities (Article 16(2)). Furthermore, Member States are to enter in the file the basic data contained in the register of olive cultivation, as soon as such data become available (second subparagraph of Article 11(1) of Commission Regulation (EEC) No 3061/84 of 31 October 1984 laying down detailed rules for the application of the system of production aid for olive oil (OJ 1984 L 288, p. 52), as amended by Commission Regulation (EEC) No 98/89 of 17 January 1989 (OJ 1989 L 14, p. 14).

15 The first sentence of Article 11(2) of Regulation No 3061/84, as amended by Regulation No 98/89, provides that all the components of the computerised files are to be operational before 31 October 1990. Furthermore, Member States are to use the data for the checks as and when the specific files are established (second sentence of Article 11(2) of Regulation No 3061/84, as amended by Regulation No 98/89).

16 In that regard, it is sufficient to point out that the Greek Government has provided no detailed rebuttal of the Commission's assertion that the computerised files were not operational. On the contrary, by letter No 292675 of 21 July 1995 the Ministry of Agriculture informed the Commission that it was faced with the problem of having insufficient staff to input the data needed to carry out the checks. That statement also means that it cannot be accepted that it was absolutely impossible to comply with the requirements arising under Regulation No 3061/84, as amended, on the establishment of the files.

17 As regards, last, the effectiveness of the system of checks put in place, the Greek Government maintains that the list of 18 failings is quite inaccurate, that it is not supported by firm evidence and that it does not justify any financial correction.

18 As regards, more particularly, the complaint that the checks carried out in 1992 were inadequate, the Greek Government observes that those checks were indisputably more numerous and more thorough than those carried out in 1991 and 1990, in respect of which a financial correction of 10% had also been imposed.

19 According to Article 14(1) of Regulation No 2261/84, each producer Member State is to apply a system of checks to ensure that the product in respect of which aid is granted is eligible for such aid.

20 Article 14(2) of Regulation No 2261/84, as amended by Council Regulation (EEC) No 3500/90 of 27 November 1990 (OJ 1990 L 338, p. 3) provides that producer Member States are to verify the activities of each producer organisation and association and, in particular, that the checking operations have been carried out by those bodies within the meaning of Article 8(1) and Article 10, first indent, of that regulation.

21 Article 14(3a) of Regulation No 2261/84, as inserted by Regulation No 3500/90, provides that, for the purposes of paying aid to olive growers whose average production is at least 500 kilograms of olive oil per marketing year, the producer Member States are to check:

— the accuracy of the crop declarations on the basis of criteria to be determined,

— the correspondence between the quantity of oil entered in the aid application and that stated in the stock records of approved mills,

— the compatibility between the olive production declared by each olive grower as having been pressed in an approved mill and the particulars given in his crop declaration on the basis of criteria to be determined.

22 Article 14(4) of Regulation No 2261/84, as amended by Regulation No 3500/90, provides that, with regard to the olive oil referred produced by olive growers whose average production is less than 500 kilograms of olive oil per marketing year, the checks should verify:

— the accuracy of the crop declarations on the basis of criteria to be determined,

— the existence of evidence of the olives having been pressed in an approved mill.

23 Article 10(2) of Regulation No 3061/84, as amended by Commission Regulation (EEC) No 928/91 of 15 April 1991 (OJ 1991 L 94, p. 5), stipulates that Member States are to check on the spot a representative percentage of olive growers to be determined. Where an agency responsible for checks is entrusted with the task of carrying out such checks, that percentage is to be indicated in the agency's work schedule. The percentage is to vary according to whether or not the basic data from the olive cultivation register are available in the areas concerned. Priority is to be given to checks on growers whose production potential has changed substantially.

24 Finally, Article 10(3) of Regulation No 3061/84, as amended by Regulation No 928/91, provides that, in checking the accuracy of crop declarations as indicated in Article 14(3a) and (4) of Regulation No 2261/84, as amended by Regulation No 3500/90, Member States are to make use, in particular, of data in the register of olive cultivation and the computerised files, the figures from on-the-spot checks made on the grower and the yields of olives and oil set for the zone in which the holding or holdings are located.

25 In the present case, it is sufficient, first of all, to observe that the Greek Government does not dispute the figures presented by the Commission, according to which, at national level, the percentage of on-the-spot checks concerning producers' cooperatives were 0.1, 0.21 and 0.13% respectively for the 1990/1991, 1991/1992 and 1992/1993 marketing years. The percentages concerning independent producers were 0.8 and 0.87% respectively for the 1991/1992 and 1992/1993 marketing years. It is also apparent from the documents provided by the Greek authorities that, for the 1991-1992 control periods, the proportion of olive growers checked was 0.22%.

26 Those checks are manifestly insufficient to make up for the absence of the register of olive producers and operational computerised files. Since, moreover, the Greek Government does not contradict in detail the other failures found in the summary report, including the lack of general rigour in the checking procedure, the absence of methodology and system allowing information to be cross-checked and the fact that the competent body found it impossible to carry out an effective scrutiny of the financing of producers' organisations owing to the mixing of activities and interests, it must be concluded that the financial correction of 10% in respect of the serious shortcomings in the arrangements for checking the system of aid for the production of olive oil is fully justified.

Expenditure by way of aid for permanent abandonment of areas under vines

27 The summary report states that it has been found that for the third year in succession the Greek authorities have failed to apply the recommendation communicated by official letters and referred to in the summary reports for 1990 and 1991, namely that the regional controllers carrying out the administrative verification of dossiers must not be the same persons who carry out on-site inspections before and after grubbing-up of the areas under vines. That practice had been found to lead to irregularities.

28 The summary report further states that, having regard to the fact that there is no vine cultivation register or land register in Greece, that Member State had not taken sufficient measures to make up for the absence of a reliable system of identifying and measuring plots, in particular by reinforcing the system for inspecting the areas grubbed up. The fact that additional annual representative checks are carried out on a random 1% of the number of dossiers inspected is not considered sufficient to compensate for the absence of a vine production register and a land register.

29 The Commission therefore applied a flat-rate correction of 2% to all expenditure under that head.

30 The Greek Government claims that the financial correction in the wine sector is based on a misassessment of the facts.

31 It claims that the on-the-spot checks carried out concerned not only all applications submitted prior to grubbing-up but also all those submitted subsequent thereto in order to establish on the spot that the vines had been grubbed up. Eighteen thousand three hundred and thirty-three applications were checked and approved in the period 1990-1991, 17 061 in the period 1991-1992 and 7 000 in the period 1992-1993; the average number of plots per vine grower was two.

32 As regards, next, the assertion in the summary report that the regional controllers carrying out the administrative verification of dossiers must not be the same persons who carry out on-site inspections before and after grubbing-up, a practice which had been found to lead to irregularities, the Greek Government contends that, for reasons associated with the absence of a vine cultivation register, the agronomists who carried out the check before grubbing-up also carried out the check after grubbing-up, precisely because they knew the plots concerned and where they were located.

33 As regards the percentage of additional controls, the Greek Government claims that the fact that the Commission first disputed in 1996, when clearing the accounts for 1992, that the percentage (1%) of additional checks was sufficient and that, moreover, it did so in 1996, the final year of application of the measure of permanent abandonment of areas under vines, when Greece was no longer in a position to increase that percentage for subsequent years, shows at least a lack of good faith on the Commission's part.

34 It should be pointed out that Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/1989 to 1995/1996 wine years, of permanent abandonment premiums in respect of wine-growing areas (OJ 1988 L 132, p. 3), was designed to give an incentive to the abandonment of wine-growing areas by granting premiums in amounts to be varied on the basis of the productivity of the areas concerned, in order to cover the cost of the grubbing-up operations, the loss of replanting rights and the loss of future income.

35 In the interests of ensuring that the system operated efficiently and could be supervised, the Commission, by Regulation (EEC) No 2729/88 of 31 August 1988 laying down detailed rules for the application of Regulation (EEC) No 1442/88 (OJ 1988 L 241, p. 108), specified the information to be included in applications for premiums and provided for the verification of that information. Article 4(2) of that regulation provides that the competent body of the Member State is to verify the information mentioned in paragraph 1, including the area which the applicant has under vines, whether these be a specialised crop or grown in a mixed system, and the areas under vines, in hectares, ares and centiares, to be grubbed up.

36 Finally, Council Regulation (EEC) No 2048/89 of 19 June 1989 laying down general rules on controls in the wine sector (OJ 1989 L 202, p. 32) provides, in Article 3(1), that Member States are to take the necessary measures to improve control of compliance with the rules in the wine sector notably in the particular fields listed in the Annex, which include grubbing-up. Article 6(1) of that regulation provides that the Commission is to set up a body of specific officials to collaborate with the competent authorities of the Member States in on-the-spot-checks in order to ensure the uniform application of the rules in the wine sector and in particular in the areas referred to in Article 3. The 16th recital in the preamble to the regulation refers to the need to ensure the objective nature of the controls.

37 In the present case the Commission's findings, which were made in the course of inspection missions in Greece, revealed that the national inspectors had not been in a position to justify the areas admitted in the context of the administrative procedure for the control and approval of applications. The members of the

EAGGF mission were unable to obtain any objective assurance in respect of the identification of the plot, its precise area, the identification of the owner and its precise location. Owing to the absence of a register of vine growers, a land registry and detailed geographical maps they were required to consult a person with a good knowledge of the region, since isolated plots are recognised not according to their situation but according to the owners of the neighbouring plots.

38 Those findings, which are not contradicted by the Greek Government, show that the system of inspections put in place relies exclusively on the competence and action of specific agents, who alone are in a position to verify the accuracy of applications for premiums. Verification by external services, both national and Community, is thus precluded. The system of controls therefore lacks the objectivity required by Community legislation.

39 In those circumstances, the financial correction of 2% of declared expenditure appears to be justified.

Expenditure by way of cotton production aid

40 The summary report recalls, first, that the possibility of significant fraud in the cotton sector, raised by an unexplained gap between the Greek authorities' production estimate for the 1991/1992 marketing year and the volume for which aid was claimed, had led the Commission, given the previous history of the sector (see 1989 and 1990 summary reports), on 10 July 1992, to call on the Greek authorities to carry out an investigation on the basis of Article 6 of Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11).

41 According to the summary report, the first stage of that investigation, from 26 October to 4 December 1992, consisted in a joint operation by the Commission, the Greek authorities and an external firm of auditors. Irregularities were found, as were serious deficiencies in the Greek Cotton Board's control arrangements. The second stage of the investigation, scheduled for January to June 1993 and intended to cover checks to be carried out at ginning undertakings, was not carried out, in spite of repeated demands from the EAGGF.

42 The summary report acknowledges that administrative penalties were imposed on and legal proceedings initiated against a number of producers and ginning plants, covering the 1991/1992 marketing year in particular, and that action was taken to improve the quality of national control and new instructions issued for 1992/1993, 1993/1994 and 1994/1995. It expresses the view, however, that those steps did not constitute a satisfactory response to the precise requests made by the EAGGF from February 1993 onwards with specific regard to the outcome of the investigation under Article 6 of Regulation No 595/91. The Greek administration notified neither the final conclusions of the investigation nor a precise evaluation of the financial implications of the irregularities uncovered.

43 The Commission therefore considered that the Hellenic Republic had failed to fulfil its obligations under Article 8 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), which provides that Member States, in accordance with national provisions laid down by law, regulation or administrative action, are to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, prevent and deal with irregularities and recover sums lost as a result of irregularities or negligence. Consequently, the EAGGF proposed a financial correction of 25% of expenditure for the 1991 financial year.

44 Owing to the persistent lack of information on progress of the investigation requested in 1992, the fact that 1992 expenditure was made under the same management and control arrangements as in 1991, since the new instructions had not been actually applied until the 1993/1994 and subsequent marketing years,

the EAGGF, while acknowledging the progress made in the quality of cooperation, owing to the efforts of the joint working party, also proposed a correction of 25% of expenditure for the 1992 financial year.

45 In a supplement to the summary report dated 23 September 1996, however, the Commission decided to reduce the corrections for 1991 and 1992 from 25% to 10%, since the EAGGF investigations carried out in 1995 and 1996 had confirmed that adequate measures had been adopted by the Greek authorities to restore cooperation with the Commission and to ensure, as from the current marketing year, that the checks on cotton production aid and aid to small producers complied with the applicable Community provisions.

46 The Greek Government claims that the correction of 10% is based on an incorrect assessment of the facts and implies that the Commission has misused its powers or exceeded the limits of its discretion.

47 In that regard, it maintains, first, that the findings of the summary report do not correspond to any of the grounds set out in document No VI/216/93 of 1 June 1993 on the common principles applicable to the clearance of accounts, as justifying a correction of 10%. The risk of loss for the EAGGF is ultimately non-existent, since the rare cases of irregularities or fraud which may initially have escaped detection have been identified, even at a later stage, so that fines and administrative penalties have been imposed, the courts have established criminal liability on the part of certain operators and the sums wrongly paid have been recovered.

48 The Greek Government further maintains that Articles 2, 3 and 8 of Regulation No 729/70 provide for the application of financial corrections to Member States only where those States have failed to carry out the controls either specified in the relevant regulations or deemed necessary to ensure that the expenditure

chargeable to the EAGGF is regular, but not where certain operators act in an irregular or unlawful manner. The Greek authorities not only carried out the controls and imposed heavy fines on all those who had acted unlawfully, but also forwarded a large number of dossiers to the Greek public-prosecution authorities with a view to securing convictions and, by means of the compensation method, they recovered all the sums unduly paid. Consequently, it is inappropriate to impose that very high financial correction of 10% on Greece.

49 The Greek Government further contends that during the 1992 financial year the effectiveness of the control system had already improved, cooperation between the Greek authorities and the community authorities had been placed on a firmer footing and irregularities had been limited. With particular regard to the control of subsidised production, the Greek authorities took a number of measures, including carrying out more stringent checks of production and the consignment of products, by means of unannounced controls by committees or by the central service; using daily files to control ginning plants operating on a shift basis, specifically in order to control the stages of ginning and the production of ginned cotton; and immediately notifying the regional services and the central service of data relating to the introduction of unginned cotton, the production of ginned cotton and the consignment of the products, by sending the daily control files and the product consignment notices on a daily basis.

50 The Court observes that, according to Article 10 of Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton (OJ 1981 L 211, p. 2), producer Member States are to set up a system of controls to ascertain the quantity of unginned Community cotton which has entered each cotton ginning undertaking, ascertain the quantity of unginned Community cotton which has been ginned and ensure that the minimum price is complied with. According to Article 12 of that regulation, the provisions of Regulation No 729/70 are to apply by analogy to the matters dealt with in Regulation No 2169/81.

51 Under Article 8(1) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton (OJ 1989 L 123, p. 23), all cotton growers are, before a date set by the Member State concerned and, except in cases of *force majeure*, not later than 1 July, to send an annual declaration of the areas sown. Article 8(2) of that regulation provides that if the areas declared differ from those found during the inspections referred to in Article 12(1)(a), the Member States are to adjust the declarations concerned and take such adjustments into account in determining the total area declared.

52 Article 12(1) of Regulation No 1201/89 provides that the agency appointed by the producer Member State is to verify, *inter alia*:

(a) the accuracy of the declarations of areas sown, on the basis of random inspections relating to not less than 5% of the declarations;

(b) that the contracts lodged fulfil the conditions laid down in Article 10, in particular compliance with the minimum price;

(c) that the quantity of cotton for which aid is being applied for corresponds to the quantity of unginned cotton of Community origin produced on the area indicated in the contract(s);

(d) that the quantity of cotton for which aid is paid corresponds to the quantity of Community cotton actually ginned.

53 Last, Article 12(2) of Regulation No 1201/89 states that the competent agency is to allow as qualifying for aid only the quantity of cotton in respect of which all the conditions are fulfilled. Article 13 of that regulation provides that the stock records provided for in Article 6(2) of Regulation No 2169/81 are to contain, separately in respect of unginned cotton harvested inside the Community and unginned cotton harvested outside the Community, information on the quantities of unginned cotton, ginned cotton, seed, oil and cotton linters in stock on the first day of each month.

54 It is clear from the documents before the Court that the investigation carried out in Greece in 1992 and 1993 pursuant to Regulation No 595/91, in regard to fraud in the cotton sector, was supplemented by five EAGGF control missions which took place between 9 and 13 January 1995, 13 and 16 June 1995, 10 and 14 July 1995, 13 and 17 November 1995 and 22 and 26 January 1996. The purpose of those missions was to examine the national procedures for the management and control of aid in the cotton sector in connection with the clearance of accounts for 1992 and subsequent years.

55 In the course of those controls serious shortcomings were found, in particular excessive negligence on the part of the Greek authorities, at various levels, as regards the protection of Community funds against the risks of fraud and irregularities.

56 Thus, the EAGGF inspectors established that the controls and verifications required under Articles 8 and 12 of Regulation No 1201/89 could not be carried out effectively by the Greek authorities in relation to the declarations of the areas sown. The data received for the determination of the plots were not properly used by the Greek Cotton Board in such a way as to constitute a genuine means of checking the areas declared by the producers. Those data were never computerised for the purpose of setting up the equivalent of a land register. The local branches of the Greek Cotton Board did not use the available data to check the accuracy of the declarations of cultivation and to determine the areas which had been declared by more than one producer. It was further found that there was no

delimitation of the plots, so that the plots and land in question could not be objectively checked.

57 Finally, it is clear from those findings that the unannounced checks were not satisfactory. In practice, there was no 'plausibility' control of undertakings' energy consumption, staff and ginning capacity. The Greek Cotton Board did not have the computer equipment necessary to follow up the various applications for interim payments, the applications for calculation of the aid and the actual applications for aid in relation to the applications for checks in order to be able to apply correctly and verify the application of the percentage of aid to the various quantities processed.

58 The Court has consistently held that a Member State against which the Commission has justified its decision finding the absence of or shortcomings in the checks carried out in the framework of the application of the EAGGF 'Guarantee' section operating rules cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. If it is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures (Case C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 7).

59 In the present case the Greek Government does not dispute in detail the lacunae and shortcomings found in the control arrangements in question, but merely asserts that the controls have improved and, in particular, made it possible to detect breaches committed by economic operators. However, the fact that fines were imposed on all those who acted unlawfully does not suffice to preclude doubts as to the effectiveness of the control system.

60 The financial correction of 10% cannot therefore be called in question, either from the aspect of an incorrect assessment of the facts or on the basis that the Commission misused its powers or exceeded the limits of its discretion.

Expenditure by way of tobacco production aid

Reduction of premiums and intervention prices where the maximum guaranteed quantities are exceeded

61 The summary report states that Commission Regulation (EEC) No 2065/93 of 27 July 1993 determining, for tobacco from the 1992 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities (OJ 1993 L 187, p. 26) obliged Member States to recover immediately the overpayment of premiums where the maximum guaranteed quantities had been exceeded. According to that report, such recovery was to commence even before the new tobacco harvest so as to ensure that operators complied with the new maximum guaranteed quantities. It was found, however, that recovery occurred long after the date on which the rules came into force, thus rendering them ineffective from a financial point of view given currency depreciations. The recovery was in fact spread over 41 months, whereas the Greek authorities should have seized in September 1992 the securities lodged for that purpose.

62 The Commission therefore imposed a financial correction by calculating a rate of interest of 10% over an average of 20.5 months on the total amount recovered late, or a correction of GRD 552 174 314.

63 The Greek Government contends that the Commission's position is based on an incorrect interpretation of the applicable Community rules.

64 It asserts, in that regard, that the amounts by which the premium is reduced because the maximum guaranteed quantities were exceeded must be repaid when the tobacco is released from supervision, that is when the recipient becomes entitled to the premium. That follows from Articles 6 and 7 of Regulation (EEC) No 1726/70 of the Commission of 25 August 1970 on the procedure for granting the premium for leaf tobacco (OJ, English Special Edition 1979 (II), p. 587). The Greek Government maintains that the Commission's argument that premiums unduly paid are to be recovered immediately does not follow from Article 2 of Regulation No 2065/93, which concerns only the date on which that regulation is to enter into force. That argument also comes up against practical difficulties. Thus, when Regulation No 2065/93 was adopted at the end of July 1993, and in particular when the producers were informed of it during August, it was too late for processors and producers to be required to comply with the maximum guaranteed quantities before the beginning of the following harvest, since the volume of production is not fixed during the harvest (for example in August, September, etc.) but during planting-out, which takes place between March and June.

65 The Greek Government further states that even if there were an obligation to recover immediately the excess premiums paid as a result of the maximum guaranteed quantities being exceeded, it would be arbitrary to calculate a rate of interest of 10%.

66 In the alternative, it contends that it would be necessary to deduct from the final sum an amount of GRD 58 713 320 which was not repaid because the companies required to make repayment had initiated legal proceedings and been granted interim relief in the form of a protection order.

67 It should be pointed out that Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organisation of the market in raw tobacco (OJ,

English Special Edition 1970 (I), p. 206) establishes a system of maximum guaranteed quantities under which, where the quantities fixed for a variety or group of varieties are exceeded, the prices and premiums concerned are to be reduced in accordance with the provisions laid down in Article 4(5) of that regulation, as inserted by Council Regulation (EEC) No 1114/88 of 25 April 1988 amending Regulation (EEC) No 727/70 on the common organisation of the market in raw tobacco (OJ 1988 L 110, p. 35).

68 According to Article 1 of Commission Regulation (EEC) No 2824/88 of 13 September 1988 laying down certain detailed rules for the application of the system of maximum guaranteed quantities in the tobacco sector and amending Regulations (EEC) No 1076/78 and (EEC) No 1726/70 (OJ 1988 L 254, p. 9), on the basis of the data notified by the Member States or of other sources of information, the Commission is to determine, for each harvest, before 31 July of the year following that of harvest and for each of the varieties or groups of varieties of tobacco for which a maximum guaranteed quantity has been fixed, the quantity actually produced. Article 3(1) of Regulation No 2824/88, as amended by Commission Regulation (EEC) No 2907/92 of 6 October 1992 (OJ 1992 L 291, p. 6), provided that until actual production has been determined as provided for in Article 1, not more than 77% of the amounts fixed for the intervention prices and premiums for the 1992 harvest may be paid. However, at the discretion of the Member State, 100% of those prices and premiums may be paid if a security equal to 23% is lodged for the 1992 harvest. Finally, Article 3(2) of Regulation No 2824/88 provides that any balance is to be paid and the security released or forfeited after actual production has been determined in accordance with Article 1.

69 By Regulations (EEC) No 2046/90 of 18 July 1990 (OJ 1990 L 187, p. 23), (EEC) No 2267/91 of 29 July 1991 (OJ 1991 L 208, p. 26), (EEC) No 2178/92 of 30 July 1992 (OJ 1992 L 217, p. 75) and (EEC) No 2065/93 of 27 July 1993 (OJ 1993 L 187, p. 26), the Commission established, as is clear from their wording, for the tobacco harvest 1989 to 1992 the actual production and the prices and premiums to be paid under the maximum guaranteed quantities scheme. Article 2 of each of those regulations fixes the day on which it is to enter into force as the third day following its publication in the *Official Journal of the European Communities*.

70 Regulation No 1726/70 provides in Article 6(1) that the right to the premium is to accrue as soon as the tobacco leaves the place in which it was under supervision, and pursuant to Article 7(1) the premium is to be payable as soon as the right to the premium accrues.

71 It follows from those provisions that, in accordance with Article 3(2) of Regulation No 2824/88, securities lodged for premiums which have been paid before actual production has been determined, that is to say the securities referred to in the summary report, are to be forfeited after actual production has been determined. From that point Member States know the amounts to which the recipients of the premiums are actually entitled and, consequently, the over-payments which must be repaid or the amounts in respect of which the securities must be forfeited, as the case may be.

72 For the 1992 harvest, the actual production of each of the varieties or groups of varieties of tobacco and the overrun of the maximum guaranteed quantities, together with the prices and premiums payable, were set out in Regulation No 2065/93, which entered into force on 1 August 1993. Any overpayment of premiums should have been recovered and any securities lodged for that purpose should have been forfeited from that date. Any delay in initiating those procedures had the effect of conferring on the recipients concerned advantages which were not justified by the Community legislation.

73 As regards the argument based on Articles 6 and 7 of Regulation No 1726/70, it is sufficient to observe that the present case concerns premiums to which the recipients were, specifically, not entitled.

74 As regards the amount of the financial correction applied, it is clear from the summary report that the Greek authorities spread the recovery of the relevant amounts over 41 months, whereas they should have seized the securities lodged for that purpose as soon as Regulation No 2065/93 entered into force. The

Commission calculated the correction by applying a rate of interest of 10% on an average of 20%.

75 It should be pointed out in that regard that the period taken into consideration by the Commission amounts to half of that entailed by the delay in recovering the relevant amounts and that the rate of interest applied is lower than the current rate in Greece. In those circumstances, the correction cannot in any event be called in question by the Greek Government.

76 Last, as regards the deduction of the sum of GRD 58 712 320 from the amount of the final correction, which the Greek Government puts at GRD 614 401 142, it is sufficient to observe that, in accordance with the summary report, the final correction comes to GRD 552 174 314 and that the Greek Government has not established that the GRD 58 712 320 which it seeks to have deducted forms part of that sum.

Failure to comply with Commission Regulation (EEC) No 1197/92 of 8 May 1992 amending Regulation (EEC) No 1726/70 (OJ 1992 L 124, p. 31), on the checking of 5% of cultivation contracts or declarations per undertaking and variety

77 According to the summary report, the Greek authorities acknowledged that the checks which they had carried out in the Nafplion Region, where production represented only 3% of total tobacco production, were particularly fictitious. The Commission therefore applied a flat-rate correction of 10%, an amount of GRD 316 280 755.

78 It is also clear from the summary report that, in spite of the publication in the *Official Journal of the European Communities* on 9 May 1992 of Regulation No 1197/92, it was not until 3 September 1992 that a national decree authorised

the checks provided for in that regulation. Since those checks were carried out for the most part after the harvest, between the end of September and the beginning of November 1992, whereas, according to Regulation No 1197/92, they should have been carried out while the tobacco was still in the field, the Commission applied a flat-rate reduction of 2%, or an amount of GRD 1 929 330 791.

79 As regards the Nafplion Region, the Greek Government claims that, although the records of inspections bear dates between 10 and 26 September 1992, a fact which the Commission interpreted as proof of the time when on-the-spot checks had actually been carried out, the checks did take place properly, in accordance with circular F109/1989/A.4126 of 27 May 1992. The records of the checks were signed after 10 September 1992 because it was then that decree No 378988 of the Minister for Agriculture of 3 September 1992, which provided a legal basis for any responsibilities attributable following the checks, was issued. According to the Government, the checks in the Nafplion Region had been scheduled earlier, because that region is the one in which the tobacco harvest is the earliest, being completed before the end of August. The corrections are therefore unlawful and unjustified.

80 The Greek Government further claims that immediately after the adoption and publication of Regulation No 1197/92 in May 1992, the Greek Tobacco Board (EOK) adopted the first instructions for its application, in circular No F109.1989/A.4126 of 27 May 1992, while ministerial decree No 278988/92, which provided a legal basis for the penalties associated with the checks, was actually adopted on 3 September 1992. With the exception of the Nafplion Region, the checks commenced on 9 September 1992 and were concluded at the beginning of November 1992.

81 The Greek Government maintains on that point that the checks carried out were entirely consistent with Article 2c of Regulation No 1726/70, as inserted by Regulation No 1197/92. The Greek authorities produced evidence in respect of the checks, which were carried out in a proportion of 5%. Furthermore, the majority of those checks were not late in being carried out. Although the

producers had finished harvesting the appropriate leaves, it was an easy matter for the inspectors to verify both the area cultivated and the variety, which they did by examining the stalks left behind and the leaves which they still bore. It is also necessary to take into account that that was the first year of application, owing to the delay in adopting Regulation No 1197/92, whereas tobacco cultivation had already commenced and a large number of contracts (73 462) had been registered. Even if it is accepted that certain checks were slightly late in being carried out, in other words they were carried out after the harvest, they were carried out in a reliable manner.

82 It should be observed that, in accordance with Article 2c(1) of Regulation No 1726/70, as inserted by Regulation No 1197/92, Member States are to conduct unannounced on-the-spot-checks to verify the information given in cultivation contracts and declarations and in particular the area and variety cultivated. Such checks are to cover at least 5% per variety or group of varieties of the cultivation contracts and declarations registered in respect of each processing undertaking. Pursuant to Article 2c(4) of Regulation No 1726/70, as inserted by Regulation No 1197/92, Member States are to take any further measures necessary for the application of that regulation.

83 The Greek Government acknowledges that the unannounced on-the-spot checks provided for in Article 2c(1) of Regulation No 1726/70, as inserted by Regulation No 1197/92, essentially took place only after September 1992, after the tobacco harvest, although that regulation required the Greek authorities to carry out those checks as soon as it entered into force, on 12 May 1992. The Greek authorities' attitude thus undermined the effectiveness of those checks.

84 It should further be observed that, by decision of 13 January 1995, the Commission fixed the deadline for the forwarding of further information in connection with the clearance of accounts for 1992 at no later than 28 February 1995. Although the Greek authorities were requested on a number of occasions to provide proof of the regularity of the checks, they did not respond within the prescribed period.

85 In those circumstances, the financial correction imposed by the Commission cannot be called in question.

The cultivation of tobacco in communes not eligible under Council Regulation (EEC) No 2267/88 of 19 July 1988 amending Regulation No 727/70 (OJ 1988 L 199, p. 18)

86 The summary report refers to special report No 8/93 of the Court of Auditors on the common organisation of the market in tobacco, which found that the tobacco cultivated in 61 Greek communes was not eligible under Regulation No 2267/88. On the basis of that special report, the Commission applied a financial correction in the sum of GRD 1 098 436 000, equivalent to the premiums that were not payable.

87 The Greek Government maintains that, as a rule, the regions to which the communes in question belong are tobacco production regions where the soil and weather conditions are homogeneous. On that basis, those regions have been approved by the Community and used to determine the intervention tobacco production areas for a decade and more. According to the Government, in those villages other varieties of tobacco were cultivated, and were replaced by the Virginia variety. The other varieties were replaced by the Virginia variety in application of Community structural programmes designed to replace varieties less in demand than the Virginia variety. All producers cultivating the Virginia variety obtained prior approval for their proposed investments to put in place the infrastructure of drying rooms indispensable to the cultivation of that variety.

88 The Greek Government states that the producers who participated in those programmes immediately abandoned the cultivation of tobacco of the Tsebelia and Mavra varieties. If those producers had to carry out experimental cultivations for one year without receiving the premium, the Commission should

pay them compensation for 'loss of income' as in other cases of restructuring. In any event, it would be odd if a correction were now imposed for an activity which was encouraged by the Community.

89 In that regard, the Court points out that in Council Regulation (EEC) No 2062/92 of 30 June 1992 (OJ 1992 L 215, p. 22) the Council fixed, for the 1992 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities and the production areas. Those areas are set out in Annex III to that regulation. The areas recognised for the production of the Virginia variety include the Sterea Hellas and Macedonia areas, to which, according to the Greek Government, the 61 communes referred to in the summary report belong.

90 Under Article 3(2) of Regulation No 2062/92, the prices and premiums granted to purchasers of tobacco are to apply to the varieties gown in the production areas referred to in Annex III, but without prejudice to Article 7a of Regulation No 727/70. That provision, which was inserted by Regulation No 2267/88, provides that the prices and premiums are to apply only to varieties of tobacco from communes where that variety has already been grown at least once in the five years preceding the harvest in question.

91 In the present case it is common ground that although the tobacco in question was grown in an area recognised by Regulation No 2062/92, it does not entitle the growers to the premium requested, since that variety is not from communes where it has already been cultivated previously.

92 Nor did the Council make use of the option provided for in Article 7a(2) of Regulation No 727/70, as inserted by Regulation No 2267/88, to 'determine at the same time as the prices and premiums and in accordance with the same procedure, the varieties to which paragraph 1 does not apply'.

93 Finally, the fact that in the context of Community structural programmes the producers of the Virginia variety abandoned production of other varieties of tobacco has no effect on the right to the premiums granted under Regulation No 727/70.

94 It follows from the foregoing that the expenditure incurred in connection with the cultivation of tobacco in communes which are ineligible under Regulation No 2267/88 cannot be recognised. Consequently, the corresponding financial correction cannot be called in question.

The securities lodged some time ago and not released

95 According to the summary report, the list of securities lodged before 16 April 1991 and still open on 15 October 1992 was analysed. It follows from the Commission's findings that Didagep, the competent agency, released all the securities in the meantime and that the satisfactory supporting documents relating to their management were forwarded to the Commission, except in the case of dossier No 30277/24.02.92, in respect of which specific details relating to the recognition of *force majeure* were missing. Accordingly, the Commission applied a financial correction in the amount of GRD 10 853 000.

96 The Greek Government contends that the financial correction is incorrect because it was applied in respect of two exports of tobacco, one of which had been eligible for full refund, which was made in accordance with 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), and the other for partial refund. The sum which should have been attributed to Greece by way of refund came to GRD 1 043 387 and not to GRD 10 853 000, as calculated by the Commission.

97 As the Court has pointed out in paragraph 84 of this judgment, the Commission fixed the deadline for communication of further information in connection with the clearance of accounts for 1992 at no later than 28 February 1995. The Greek Government does not dispute the Commission's assertion that the information set out in the application was not communicated within the prescribed period. In those circumstances, the Greek Government cannot call in question the financial correction.

The negative reserve concerning 1990

98 Last, the Greek Government claims that when clearing the EAGGF accounts for 1990 the Commission withheld GRD 4 500 million on the ground that that sum related to subsidised tobacco in breach of the Community legislation and, more specifically, tobacco exported to Albania and Bulgaria without being subjected to first processing and market preparation, as required by Article 3 of Regulation No 727/70, and without deduction of the weight of tobacco not corresponding to the minimum quality characteristics, in accordance with Article 11 of Regulation No 1726/70. Having regard to the investigation carried out with the assistance of the Community, the Commission issued a negative reserve corresponding to the abovementioned amount.

99 Since the relevant investigation had now been completed and its findings had been communicated to the Commission, the Greek Government contends that the

Commission was therefore required, pursuant to Articles 5, 2(b) and 9(1) of Regulation No 729/70, to proceed forthwith to the definitive clearance of that financial correction when it cleared the accounts for 1992.

100 In that regard, it is sufficient to observe that the correction to which the Greek Government refers was made definitive in the context of the clearance of the accounts for 1991. It cannot therefore be re-examined in the context of the present year.

101 Since none of the pleas in law put forward by the Greek Government has been successful, the application must be dismissed.

Costs

102 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 Hellenic Republic 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 Hellenic Republic to pay the costs.**

Schintgen Kapteyn Hirsch

Ragnemalm Skouris

Delivered in open court in Luxembourg on 13 July 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber