OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 6 March 2001 [1]

Facts

1. In this case, the Spanish Government is seeking the annulment of the decision of the Commission of the European Communities of 28 July 1999, excluding from Community financing certain expenditure effected by the Member States, in so far as that decision imposed on the Kingdom of Spain the financial adjustments referred to in the application. Specifically at issue is a flat-rate reduction of 5% applied to a series of amounts which the Spanish authorities had declared to the European Agricultural Guidance and Guarantee Fund ('EAGGF') in respect of expenditure in the beef and veal public storage sector. The Commission is asking for the application to be dismissed.

The legal framework

2. The financing of the Common Agricultural Policy is governed by Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy. [2] Article 3(1) provides that certain measures are to be financed by the EAGGF.

3. Article 5(2) of the regulation, as amended by Council Regulation (EC) No 1287/95 of 22 May 1995, [3] provides 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.

1 — Original language: Dutch.

2 — OJ, English Special Edition 1970 (I), p. 218. Now replaced by Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

3 — OJ 1995 L 125, p. 1. Now Article 7(4) of Regulation (EC) No 1258/1999.

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 decree 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.

...'

4. Also relevant to the application of this provision is Article 8(1) of Regulation No 729/70 [4] which obliges Member States to adopt the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and executed correctly.

5. This obligation is governed by Article 8(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section: [5]

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

6. The conciliation procedure referred to in Article 5 of Regulation No 729/70 is governed by Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section. [6] That decision set up a Conciliation Body. Article 2(2) of the decision provides:

'A request for conciliation is admissible only where the financial adjustment recom-

4 — Now Article 8(1) of Regulation (EC) No 1258/1999.

5 — OJ 1995 L 158, p. 6.

6 — OJ 1994 L 182, p. 45.

mended by the Commission in respect of a budget heading:

either,

— exceeds ECU 0.5 million; or

— represents more than 25% of the Member State's total annual expenditure under the budget heading concerned.

In addition, if, during the bilateral discussions referred to in Article 1(1)(a), the Member State claims, and demonstrates, that the matter is one of principle relating to the application of Community rules, the Chairman of the Body may declare a request for conciliation to be admissible.'

The prior administrative procedure

7. As a result of the enquiries made by its services to establish whether Community provisions regarding the public storage of beef and veal had been complied with, the Commission sent the Spanish authorities a notification pursuant to Article 8 of Regulation No 1663/95. The enquiries had revealed that, during the inspection of certain forequarters of slaughtered cattle, vital checks on weight, classification, presentation and temperature had not been conducted with the rigour required by Community legislation. The Commission stated in the notification that, in the clearance of the accounts for the financial years 1996 and 1997, it proposed to apply a flat-rate adjustment of 5% of the amounts declared by the Kingdom of Spain under budget headings 2111 (technical expenditure), 2112 (financial expenditure) and 2113 (other expenditure). This adjustment related to the 'purchase and stocks' of beef and veal. At the same time, the Commission invited the Spanish authorities to file a request for conciliation. The Spanish Government did not exercise that option.

8. By a decision dated 28 July 1999, the Commission resolved to apply a flat-rate adjustment of 5% to certain expenditure, specifically the budget headings referred to in the notification of 12 June 1998.

Pleas in law and arguments submitted by the parties

9. The Spanish Government founds its application on two pleas in law. First, it alleges infringement of its rights of defence and of the principle of legal certainty (the first two complaints). Second, it asserts that there has been an infringement of the principle of equal treatment (the third complaint).

10. Analysed as a whole, the Spanish Government's complaints can be summed up as follows:

1. Since the notification did not indicate the amount of the financial adjustment, this adjustment being subject to the sending of further information, it was not possible for the Kingdom of Spain to know whether the conditions laid down in Commission Decision 94/442 for seeking intervention by the Conciliation Body had been satisfied. In the Spanish Government's opinion, the reference to the decision is not a mere formality but must permit a Member State to request the Conciliation Body's intervention.

2. The notification stated that, owing to deficiencies in complying with legislation concerning the storage of beef and veal, a financial adjustment of 5% of the expenditure declared by the Kingdom of Spain under budget headings 2111, 2112 and 2113 would be imposed in the clearance of the accounts for the financial years 1996 and 1997. However, since the expenditure declared under budget heading 2113 was negative, the Spanish authorities considered that the Commission's services would not take this expenditure into account when calculating the total amount of the financial adjustment. The Commission's services only applied an adjustment to the expenditure under heading 2113 relating to the purchase of beef and veal, rather than to the total — negative — amount of the expenditure declared under that heading during the financial year. Consequently, the proposed adjustment was far higher than that which was implied by the actual wording of the notification.

3. The deficiencies in the checks on the storage of beef and veal described in the Commission's summary report are similar to those detected in other Member States. However, in the latter cases a financial adjustment of only 2% was imposed while, in the Kingdom of Spain's case, the Commission stipulated an adjustment of 5%. In its application, the Spanish Government claims that Spain's position is comparable to that of the other Member States concerned, namely the United Kingdom and the Federal Republic of Germany. In short, in all three cases the deficiencies were discovered during the prior inspection of carcasses and the deficiencies themselves were also similar. In fact, in each case the independence of the agents responsible for carrying out the checks was not sufficiently assured.

11. The Spanish Government does not dispute the facts which gave rise to the financial adjustment.

12. In its response to the first complaint, the Commission draws attention to the fact that, at the time of the notification of 12 June 1998, its services were unable to calculate the financial adjustment exactly because they needed information from the Spanish authorities about the weight and

the value of the meat. Nevertheless, the notification of 12 June 1998 contained a precise explanation of the expenditure to which the adjustment referred. The Spanish authorities could, by a simple mathematical operation, have calculated the amount of the financial adjustment referred to in the notification of 12 June 1998. The absence of an exact quantification at this stage of the procedure complies with Article 8 of Regulation No 1663/95 and with customary practice, and does not preclude a request being made to the Conciliation Body. In its notification of 12 June 1998, the Commission expressly invited the Kingdom of Spain to request such intervention. In this regard, the Commission goes on to point out that a request for conciliation is inadmissible only where the amount in question is lower than EUR 0.5 million. In this case, the amount is significantly in excess of that sum. In addition, the limit of EUR 0.5 million is not strictly applied.

13. According to the Commission, the second complaint is materially incorrect. The Commission claims that the deficiencies discovered occurred during the purchase and storage of beef and veal. The adjustment only applied to expenditure in these two areas. In order to be able to examine the substance of this complaint the Court of Justice asked the Commission to specify which expenditure was actually taken into consideration under each of the budget headings. In a document dated 15 January 2001, the Commission clarified once more how the financial adjustment was calculated. In that document, the Commission again draws attention to the deficiencies found in the purchase and storage, but not in the sale, of stored beef and veal. At the time of the inspection no sales had yet been made. Therefore the sale price was not taken into account for the purposes of calculating the adjustment. The Commission also explains why — in the context of a penalty relating to purchase and storage — it would be unfair to take the sale price into account. Nevertheless, the Commission adds that it did take sales into account for the purposes of the adjustment under heading 2111 but that its effect was negligible (approximately EUR 350). The Commission is willing to re-calculate the amount of the adjustment in this regard should the Court of Justice deem it necessary. The Commission has attached a series of annexes from which it emerges that, after the response of the Spanish Government, the amount initially proposed in respect of the adjustment was adjusted.

14. In its response to the third complaint, the Commission denies that the checking deficiencies imputed to the Kingdom of Spain are similar to those found in the other Member States cited, to which a flat-rate reduction of 2% was applied. In this regard, the Commission refers to the summary report. The Commission applied the criteria laid down in its document VI/5330/97 of 23 December 1997, which contains guidelines for calculating the financial consequences of deficiencies from the point of view of the EAGGF. The Commission adds that a Member State always has the right to prove that the risk of actual loss to the EAGGF is lower than the amount of the adjustment proposed. However, the Kingdom of Spain should rather dispute the significance and the consequences of the deficiencies recorded by the Commission rather than the rate of the adjustment. Unlike the United Kingdom and German Governments, the Spanish Government has failed to submit convincing arguments which prove that the risk of actual loss to the EAGGF is lower than the

rate of the reduction applied. Finally, the Commission also asserts that there is not a marked difference between the effect of the reduction on Spain and on Germany because, in Germany's case, the 2% reduction applies to all expenditure relating to the storage of beef and veal whereas, in Spain's case, the 5% reduction only applies to certain budget headings.

15. In the reply, the Spanish Government criticises the Commission for not having deemed it necessary to refute the information provided by Spain and for having confined itself to repeating general statements. The Spanish Government also claims that it was unaware of the interpretation espoused by the Commission regarding intervention by the Conciliation Body. The reply also deals with the question of (fixing the amount of) the budget headings to which the adjustment was applied.

16. In the rejoinder, the Commission summarises again the procedure to be followed. The Commission must prove that there has been an infringement of Community law. Once it has done so, the Commission has a wide discretion to decide the rate of the reduction, having regard for this purpose to its evaluation of the gravity of the infringement. The Commission does not have the means necessary to determine the actual loss to the Community budget. The Commission is of the opinion that Member States are entitled to challenge the rate of the reduction. In doing so, not only must Member States repudiate the evaluation of the gravity of the infringement but, in addition, they must prove that the amount of the potential loss is not proportional to the rate of the reduction imposed.

The Commission's policy

17. For the purpose of applying financial adjustments the Commission follows a policy which was first laid down in a working paper dated 1 June 1993, known as the Belle Group Report. [7] This document has been cited before the Court of Justice on a number of occasions. In his Opinion in *Greece* v *Commission*, [8] Advocate General Fennelly set out the background to and the nature of this document. In 1992, the Commission set up an internal study group to which it assigned the task of devising a method of imposing penalties on Member States which incorrectly applied Community law. The Commission and the representatives of the Member States on the EAGGF Committee approved the rules drawn up by this study group. These rules were not formulated as binding provisions. The rate of the reduction must be fixed by reference to the estimated risk to the Community budget caused by the deficiencies in the checks carried out by Member States. The study group set three levels of flat-rate reduction to be applied to reimbursements: 2%, 5% and 10%. Subsequently, the Belle Group Report was replaced by Commission working paper VI/5330/97 of 23 December 1997, setting out new guidelines for the calculation of

7 — Document VI/216/93 of 1 June 1993.

8 — Opinion in Case C-50/94 [1996] ECR I-3331.

financial consequences. While this new document does not contain any important amendments to the Belle Group Report criteria, it does add an extra category, namely a 25% reduction in serious cases. The Commission decision contested in these proceedings is based on the guidelines contained in the latter working paper.

18. Thus, the Belle Group Report and the aforementioned working paper contain guidelines for situations where financial adjustments must be imposed on a Member State. Provision is made for a flat rate to be applied in difficult cases: [9]

'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....'

9 — The text is taken from the Belle Group Report.

The report provides for three levels of flat-rate adjustments:

'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.'

19. The guidelines laid down by the abovementioned report further provide that,

where there is doubt as to the adjustment 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.'

20. The Belle Group Report is the outcome of a long-standing Commission practice of imposing flat-rate adjustments on the refunds to Member States of expenditure incurred in applying the Common Agricultural Policy. In the Commission's view, the Belle Group Report criteria constitute 'a common basis of agreement in that, if it proves impossible to determine the amount of the adjustments precisely, a middle way is chosen by withholding a flat-rate amount, thus making it possible both to respect Community law and the sound management of Community resources and to comply with the understandable wish of the Member States to avoid excessive and disproportionate adjustments.' [10]

10 — See *Greece* v *Commission*, cited in footnote 8, paragraph 24 of the judgment.

The Court's case-law on this policy

21. The practice of flat-rate adjustments and the way in which they are interpreted in the Belle Group Report and in the working paper that replaced it have been examined by the Court on numerous occasions, and recently in *Greece* v *Commission*. [11] Like the judgment in *Italy* v *Commission*, [12] the judgment in that case confirms that the Court of Justice does not call in question the Belle Group Report criteria. Those criteria also form the starting point for the Court's assessment.

22. The Court's approach, therefore, is the following. As follows from, *inter alia*, *United Kingdom* v *Commission*, [13] the Commission must establish that a Member State has infringed the rules of the common agricultural policy by, as for example in these proceedings, having carried out insufficient checks on expenditure. Having established that this is the case, the Commission must act. However, it has a wide discretion when it comes to deciding what penalties to impose. The Member State concerned must demonstrate that the facts found by the Commission are incorrect and that the institution committed an error as to the inferences to be drawn from them, for example by applying an excessive flat-

11 — Case C-243/97 [2000] ECR I-5813.

12 — Case C-242/96 [1998] ECR I-5863.

13 — Case 347/85 [1988] ECR 1749, paragraph 16 of the judgment. This judgment deals in depth with the burden of proof. See also *Italy* v *Commission*, cited in footnote 12, paragraph 58 of the judgment.

rate adjustment. In *Greece* v *Commission*, [14] cited above, the Court stated:

'26. The Court observes that, according to its case-law... , where it proves impossible to establish with certainty the extent to which a national measure which is incompatible with Community law has caused an increase in the expenditure entered under a budgetary item of the EAGGF, the Commission has no choice but to disallow all the expenditure in question.

27. When the Commission refuses to charge certain expenditure to the EAGGF, on the ground that it was incurred as a result of breaches of Community rules imputable to a Member State, it is for that State to show that the conditions for obtaining the financing refused by the Commission are fulfilled...

28. If, then, in its function of clearing the accounts the Commission, instead of refusing the entire expenditure, endeavours to draw up rules to differentiate according to the degree of risk posed to the EAGGF by different levels of defective supervision, the Member State must show that those criteria are arbitrary and unfair...'

23. I refer also to *Netherlands* v *Commission*, [15] which clarifies the burden of proof between the Commission and the Member State concerned. At paragraph 17, the Court states: 'The Commission is required not to demonstrate exhaustively that there are irregularities... but to adduce evidence of serious and reasonable doubt... 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 verify the data required for the clearance of EAGGF accounts; consequently, it is for the State to adduce the most detailed and comprehensive evidence that its figures are accurate and, if appropriate, that the Commission's calculations are incorrect.' The Court has subsequently repeated that formulation in a number of judgments. [16]

24. As I have already indicated, it follows from the settled case-law of the Court that the Commission has a wide discretion when it comes to imposing penalties where Member States have failed adequately to control expenditure in the context of the common agricultural policy. The Commission is entitled to refuse to reimburse any of the expenditure in question but it may also impose a percentage reduction, as has happened in this case. It is quite clear that the rates of reduction contained in the Belle

14 — Cited in footnote 8, paragraph 26 et seq. of the judgment.

15 — Case C-48/91 [1993] ECR I-5611.

16 — See, *inter alia*, Case C-242/97 *Belgium* v *Commission* [2000] ECR I-3421, paragraph 104 of the judgment.

Group Report, namely 2%, 5% and 10%, amount to a much more lenient penalty than a refusal to reimburse any of the expenditure.

25. As to the burden of proof, the following observation must be made. It follows from, *inter alia*, *Greece* v *Commission*, that the burden of proving a series of points falls on the Member State contesting the regularity of the penalty imposed on it: [17]

(a) the right to charge to the EAGGF the expenditure incurred by that Member State;

(b) the correctness of the information on which the Commission bases its findings;

(c) the correctness of the criteria used by the Commission to impose the reduction. In the event that the Belle Group Report criteria are used, [18] it must be assumed that these are the correct criteria. However, as the rules in question are not binding, it is my view that the Member State is entitled to attempt to demonstrate that, as far as it is concerned, the Belle Group Report criteria are arbitrary or unfair;

(d) the way in which the criteria were applied.

Analysis of the dispute

The key to the system

26. The EAGGF's financing of the execution of the common agricultural policy by Member States has given rise to an extensive body of case-law of the Court of Justice. Therefore, consideration of a dispute such as that now before the Court can, to a large extent, be based on the Court's existing — often abundant — case-law.

27. In my opinion, the key to the system — and to the Court's case-law — lies in the fact that in this case it is the Member States who are responsible for implementing a system financed by the Community. Consequently, the obligation to justify in detail the expenditure effected in this regard falls on them. It is also the Member States which are in possession of the information relating to actual expenditure. The Commission must confine itself to conducting sample checks, for which it also largely depends on the information supplied by the Member States. This — fragile — system requires that the Commission should have a wide discretion to be able to impose penalties when it detects irregularities. Flat-rate

17 — Cited in footnote 8.

18 — In these proceedings, in the document dated 23 December 1997.

reductions are indispensable because it is not possible for the Commission to possess all the information. In addition, the Commission's services must naturally avoid any arbitrariness in administering the system. The Commission must act diligently when determining and assessing facts which might lead to the application of an adjustment and when imposing the said adjustment.

28. Should the need arise, the Commission must be able to prove — as a result of its inspection — that an irregularity has occurred, and it must also indicate the nature of the irregularity. It may then propose a penalty. For this purpose, it needs to adduce evidence that the penalty proposed is proportionate to the nature, the gravity and the importance of the irregularity discovered. It is then for the Member State to prove — by reference to information which it alone, rather than the Commission, has at its disposal — that the Commission has not determined correctly or, where appropriate, has not assessed correctly the facts and that the penalty proposed is unsuitable in view of the nature, the gravity and the importance of the irregularity discovered.

In view of the rather imprecise nature of the criteria used by the Commission, I attach great importance to the conciliation procedure prescribed by system. This conciliation procedure provides the parties with the opportunity to proceed to a suitable exchange of arguments and information.

The scope of the dispute

29. Another essential feature of this case is that the Spanish Government does not deny having infringed the rules of the Common Agricultural Policy by conducting inadequate checks on expenditure in the beef and veal storage sector. Therefore, in principle, the Commission was entitled to take the measure of imposing a financial adjustment on the expenditure effected by the Spanish Government. Thus, only the extent of the reduction imposed by the Commission is disputed.

30. Since it is not in dispute that the Spanish Government failed to fulfil its obligations within the framework of the Common Agricultural Policy with regard to the carrying out of checks, it follows from the foregoing that the Commission has a wide discretion when it comes to imposing a penalty and that it is for the Member State in question to refute the Commission's findings and conclusions. With regard to the burden of proof, I refer to point 25 above. This dispute is confined to the matters referred to at (b) and (d) under that point. The Spanish Government questions the correctness of the information on which the Commission based its decision, claiming that the adjustment imposed under budget heading 2113 is unfair. In addition, the Spanish Government queries the manner in which the criteria were applied which, in its opinion, led to a 5% reduction being improperly imposed on Spain, while a deduction of only 2% was imposed on the Federal Republic of Germany and the United Kingdom.

The first complaint

31. Under its first complaint, the Spanish Government claims that the formal written notification of 12 June 1998 did not indicate the amount of the financial adjustment. It maintains that, as a consequence of this defect, Spain was unable to request intervention by the Conciliation Body.

32. That complaint relates, first of all, to the question whether the Commission was entitled to send a notification which failed to quantify precisely the amount to which the percentage reduction was to apply.

33. The Commission correctly refers in the defence to the wording of Article 8 of Regulation No 1663/95. According to that article, the Commission 'shall communicate to the Member State concerned its findings, the corrective measures to be taken to ensure future compliance, and an evaluation of any expenditure which it may propose to exclude pursuant to Article 5(2)(c) of Regulation (EEC) No 729/70.' Since Article 8 refers to an 'evaluation' of the expenditure, I, like the Commission, am of the opinion that an exact quantification is unnecessary.

34. I also find support in the Court's case-law for my view that the notification is not required to quantify the irregularity found. Thus, in *Netherlands* v *Commission*, [19] the Court stated that the Member State is best placed to collect and verify the information required for the clearance of the accounts of the EAGGF. Consequently, the Court places the burden of proving the figures on the Member State. Likewise, I feel it is important to point out that the Court accepts that the Commission should impose a flat-rate reduction where it is not possible to determine the amount of the loss suffered by the EAGGF. [20] This indicates that there is no requirement for the Commission to quantify the irregularity precisely. Additionally, in more general terms, the policy followed, as it has been analysed by the Court, amounts to requiring the Commission to adduce evidence of a breach of the rules of the common agricultural policy, [21] with the implication that the Member States must provide the remaining information.

35. This is all confirmed by the fact that, as it states in the defence, the Commission acted in accordance with customary practice in this case. Naturally, this would not exempt the Commission's notification from the requirement to set out in sufficient detail the matters to which the adjustment applies. In my opinion, the document of 12 June 1998 is sufficiently precise since it refers to the budget headings concerned and also indicates to which parts (quarters)

19 — Case C-48/91 [1993] ECR I-5611.

20 — See, *inter alia*, *Italy* v *Commission*, cited infootnote 12.

21 — In *Netherlands* v *Commission*, cited above, the Court observed that it is sufficient to prove serious and reasonable doubt. *Idem*, *Belgium* v *Commission*, cited at footnote 16.

of the stored beef and veal[22] the adjustments refer. As the Commission rightly states, the Spanish Government could have calculated the amount for itself.

36. Second, it must be ascertained whether the Spanish Government's right to due process was infringed as a result of the notification. I have indicated that, in the notification of 12 June 1998, the Commission expressly referred to the opportunity to request intervention by the Conciliation Body. I believe that, in the circumstances of this case, the Spanish Government holds sole responsibility for not having availed itself of this opportunity. First, had there been doubt as to admissibility, the Spanish Government could have made a provisional request for conciliation. Second, the Spanish Government could have dispelled any uncertainty by performing its own calculations of the amounts under the budget headings, since it possessed the information needed for the calculations or, at least, for making a reliable estimate of the amounts. Third, as the Commission states in the defence, it seems that the Conciliation Body does not rigidly apply the time-limits for admissibility of a request. It must be acknowledged that there is no record of whether the Spanish Government was aware of this Conciliation Body practice. Perhaps there was no reason why it should have been. However, it must be pointed out that it follows from the actual wording of Article 2(2) of the Commission Decision of 1 July 1994, setting up the Conciliation Body, that the Chairman of the Body has a certain degree of discretion to declare a request for conciliation to be admissible. In fact, on matters of principle, the Chairman may even declare to be admissible a request which does not meet the quantitative requirements laid down by the decision.

37. Finally, the Spanish Government claims that the principle of legal certainty has also been infringed. In Community law, this principle means that legislation must be certain and its application foreseeable by whoever is subject to it, in this case the Spanish Government. As the Court stated in *Denmark* v *Commission*,[23] '[T]hat requirement of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them.' On the question of breach of the principle of legal certainty, I will allow myself to be brief. Bearing in mind the observations I have already made, I must conclude that the Spanish Government was in a position to be aware of the extent of its obligations and rights.

38. I therefore conclude that the first complaint must be rejected.

22 — At issue are two forequarters since, according to the Commission's document, the intervention did not apply to the hindquarters.

23 — Case 348/85 [1987] ECR 5225, paragraph 19 of the judgment. The Court of Justice considers this to be settled case-law.

The second complaint

39. This complaint is closely related to the first. Again the Spanish Government asserts that its rights of defence and the principle of legal certainty have been infringed. I do not believe it is necessary to deal again with this question in the context of this complaint. However, there is one important difference between this complaint and the first. Whereas under the first the vagueness of the Commission's notification of 12 June 1998 is criticised, this complaint is concerned with the correctness of the notification and the Commission decision of 28 June 1999.

40. Specifically, it is concerned with the adjustment imposed in respect of expenditure included under heading 2113. The Court asked the Commission for a more detailed explanation with respect to this matter. I believe that the Commission has clarified sufficiently why the adjustment referred only to the purchase and storage of beef and veal and not to sales. As the Commission rightly states, at the time of the inspection it was not possible to take the sales into account. I also agree with the Commission that, for the purposes of imposing a penalty in respect of deficiencies in the checks made on the purchase and storage of beef and veal, there is no requirement to take the sale price into account. The fact that all the indications are that sales were taken into account for the purposes of heading 2111 is another matter. Since this is common ground between the parties, I will confine myself to making one observation for the sake of completeness. I feel it is clear that the Commission will compensate Spain for the — albeit meagre — difference even if the Court does not look into this matter.

41. In my view, the second complaint should also be rejected.

The third complaint

42. By its third complaint the Spanish Government accuses the Commission of treating several Member States unequally, thereby infringing the principle of equal treatment. A reduction of 2% rather than 5% was imposed on the Federal Republic of Germany and the United Kingdom, countries where similar deficiencies were detected.

43. First, I consider that the wide discretion enjoyed by the Commission for the purpose of imposing rates of reduction cannot be interpreted as meaning that comparable cases may be treated differently.

44. In *Belgium* v *Commission*,[24] the Court made the following observations regarding the principle of equal treatment:

'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. 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. It should next be borne in mind that the Court has consistently held that prohibited discrimination can arise only in cases 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).'

45. It is my view that, in the present case, application of these criteria means that the irregularities found in Spain must be compared with those detected in the United Kingdom and the Federal Republic of Germany and that the penalties imposed must then also be compared.

46. I believe that it follows indisputably from the summary report that it is not appropriate to make a comparison with the United Kingdom. The fact is that the United Kingdom was only accused of infringing a single aspect of the checking procedure, whereas the allegations made against Spain detail a whole series of matters (weight, classification, presentation and temperature).

47. As far as a comparison with Germany is concerned, I should like to make the following observation. The Commission, during the formal notification phase, proposed the same rate of reduction for Germany as it did for Spain, namely 5%. Subsequently, the German authorities — unlike the Spanish authorities — requested the intervention of the Conciliation Body. Finally, as a result of the investigations carried out by that body, a 2% rate of reduction was set. In this respect, I believe it to be crucial that, as is clear from the findings of the Conciliation Body, the German Government presented arguments which might reasonably justify lowering the rate of the reduction. By those arguments, it was established that, from the point of view of quality, a sufficiently organised inspection system existed in Germany. The Spanish Government, on the

24 — Cited in footnote 16, paragraph 129 et seq. of the judgment.

other hand, has never submitted comparable arguments, even in the case currently before the Court. Furthermore, I wish to add that, as is clear from the Commission's observations, the effect of the reduction does not vary greatly between Spain and Germany because, in the case of Germany, the 2% reduction applied to all expenditure effected in the sector, whereas, in the case of Spain, the 5% reduction applied only to certain budget headings.

48. I conclude that the third complaint must also fail.

Conclusion

49. In the light of the foregoing considerations, I propose that the Court should dismiss the application and order the Kingdom of Spain to pay the costs, pursuant to Article 69(2) of the Rules of Procedure.