

OPINION OF ADVOCATE GENERAL
GEELHOED

delivered on 12 December 2002¹

I — Introduction

1. In these proceedings, the Hellenic Republic asks the Court to annul or, at least, to amend the Commission Decision of 5 February 2001² (hereinafter ‘the contested decision’) excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (hereinafter ‘EAGGF’).

ment of the additional levy but it does dispute the default interest for the period from February 1997.

II — Legal framework

2. The contested decision excludes from Community financing, in the milk and milk products sector, the sum of GRD 92 592 972. This sum is made up of GRD 20 568 862 by way of additional levy for exceeding the milk quota for the 1995/96 milk year, and GRD 72 024 110 by way of default interest due to late payment of the additional levy, calculated in relation to the period between September 1996 and December 2000. The Greek Government does not contest pay-

3. The system governing the additional levy on cows’ milk was introduced on 1 April 1984 by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68³ (hereinafter referred to as Regulation (EEC) No 804/68) on the common organisation of the market in milk and milk products.⁴ Pursuant to that regulation, every milk producer — who fulfilled certain requirements — was allocated a milk quota.⁵ Regulation No 3950/92 maintained that system —

1 — Original language: Dutch.

2 — Decision 2001/137/EC (OJ 2001 L 50, p. 9).

3 — OJ, English Special Edition, 1968 (I), p. 176.

4 — OJ 1984 L 90, p. 10.

5 — The regulation gives an individual reference quantity.

which was regarded as temporary — until 1 April 2000.⁶ The detailed rules for implementing that regulation were laid down in Regulation No 536/93.⁷

4. Article 1 of Regulation No 3950/92 imposes an additional levy 'on producers of cows' milk' in respect of 'quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined. The levy shall be 115% of the target price for milk'.

5. Article 2 of Regulation No 3950/92 provides that:

'1. The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3. It shall be shared between producers who contributed to the overrun.

In accordance with a decision of the Member State, the contribution of producers towards the levy payable shall be established, after the unused reference quantities have been reallocated or not, either at the level of the purchaser, in the light of the overrun remaining after unused reference quantities have been allocated in proportion to the reference quantities of each producer, or at national level, in the light of the overrun in the reference quantity of each individual producer.

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of the milk paid to producers who owe the levy or, failing this, collect by any appropriate means...

3. As regards direct sales, the producer shall pay the levy payable to the competent body of the Member State before a date and in accordance with rules to be laid down.'

6 — Council Regulation (EC) No 1256/1999 of 17 May 1999 amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector (OJ 1999 L 160, p. 73) extended that system until 1 April 2008.

7 — Commission Regulation of 9 March 1993 laying down detailed rules on the application of the additional levy in the milk and milk products sector (OJ 1993 L 57, p. 12).

6. Article 10 of Regulation No 3950/92 provides that the levy is to be considered as intervention to stabilise agricultural markets and is to be used to finance expenditure in the milk sector.

7. In Regulation No 536/93, the Commission laid down the detailed rules for applying Regulation No 3950/92. In the fifth recital in the preamble, the Commission states that ‘... experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy have prevented the arrangements from being fully effective;... therefore, lessons should be learned from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines, and providing for penalties where deadlines are not met.’

9. Under Article 4(4):

‘Before 1 September each year, the producer shall pay the amount due to the competent body in accordance with the rules laid down by the Member State.

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

8. Article 3(4) provides:

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

10. Finally, Article 5(2), provides:

‘Member States shall take any additional measures necessary to ensure payment of levies due to the Community within the time-limit laid down.

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

Where the set of documents referred to in Article 3(5) of Commission Regulation (EEC) No 2776/88, which the Member States must transmit to the Commission each month, shows that this time-limit has not been met, the Commission shall reduce advances on entry in the accounts of

agricultural expenditure in proportion to the amount due or an estimate thereof.

12. Article 4 of Regulation No 296/96 provides:

Interest paid pursuant to Article 3(4) and Article 4(4) shall be deducted by the Member States from expenditure on milk and milk products.’

‘1. On the basis of data sent in accordance with Article 3, the Commission shall adopt decisions and make the monthly advances against bookings of expenditure, without prejudice to the provisions of Article 13 of Decision 94/729/EC.

11. This brings me to Commission Regulation (EC) No 296/96,⁸ which repeals Regulation No 2776/88, to which I referred in the previous point. Article 1(1) of the former provides as follows:

2. Advances against booking shall be reduced for expenditure effected after the deadlines laid down as follows:

The reductions referred to in this Article shall be made in accordance with the rules laid down in Article 13 of Decision 94/729/EC.’

‘After approval of the advances, in accordance with the last subparagraph of Article 5(2)(a) of Regulation (EEC) No 729/70, the Commission shall place at the disposal of the Member States, within the framework of the budget appropriations, the funds needed to cover expenditure to be financed by the EAGGF Guarantee Section, on an account opened for that purpose by each Member State with its Treasury or any other financial institution.’

13. Article 13 of Decision 94/729/EC⁹ provides:

‘1. Payment of the monthly EAGGF Guarantee Section advances by the Commission shall be effected on the basis of the

⁸ — Regulation of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (OJ 1996 L 39, p. 5).

⁹ — Council Decision of 31 October 1994 on budgetary discipline (OJ 1994 L 293, p. 14).

information supplied by the Member States in regard to expenditure in each chapter.

The Member State shall make its position known within 10 days.

2. If the declarations of expenditure or the information submitted by a Member State do not enable the Commission to establish whether the commitment of funds is in conformity with the relevant Community rules, the Commission shall request the Member State to supply further information within a period which it shall determine according to the seriousness of the problem.

The Commission's decision, stating the reasons on which it is based, shall be taken after the EAGGF Committee has been consulted and must be in keeping with the principle of proportionality.'

14. Article 8(1) and (2) of Regulation No 729/70¹⁰ provides:

In the event of a reply which is deemed unsatisfactory or which indicates manifest non-compliance with the rules and a clear misuse of Community funds, the Commission may reduce or provisionally suspend the monthly advances to Member States.

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

- satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly,

Such reductions and suspensions shall be without prejudice to the decisions which will be taken in connection with the clearance of accounts.

- prevent and deal with irregularities;

- recover sums lost as a result of irregularities or negligence.

3. The Commission shall inform the Member State concerned before taking its decision.

¹⁰ — As amended by Council Regulation (EC) No 1287/95 of 22 May 1995 amending Regulation (EEC) No 729/70 on the financing of the common agricultural policy.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.

bilateral meeting between the Commission and the Greek Government on 4 May 2000. On 26 May 2000, the Commission forwarded the minutes of that meeting to the Greek Government.

2. In the absence of total recovery, the financial consequences of irregularities or negligence shall by borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

The sums recovered shall be paid to the accredited paying agencies and deducted by them from the expenditure financed by the Fund.'

16. The sums proposed were: GRD 20 568 862 by way of additional levy for exceeding the milk quota in the 1995/96 milk year and GRD 72 024 110 by way of default interest. These amounts were imposed on the basis of a check carried out by the Commission which showed that the quota for the 1995/96 milk year had been exceeded by 7 423 986 kg of milk. The majority of the sum imposed for that reason was paid to the EAGGF. An amount of GRD 20 568 862 was still payable. In view of the fact that this amount had not been paid by 1 September 1996, default interest was calculated as from that date.

III — Facts and procedure

15. In a letter of 2 August 2000, the Commission communicated its final position to the Greek authorities regarding the negative financial corrections that it intended to make with respect to the additional levy. Those corrections were due to be made within the framework of a clearance of accounts decision to be taken in December 2000. The letter of 2 August 2000 followed an earlier letter sent by the Commission on 11 April 2000 and a

17. In the minutes of 26 May 2000, the Commission explained its method of calculating the default interest. It was to be calculated for a period up to September 2000, with a possible reduction if the Greek authorities paid the amount of the additional levy and the interest before October 2000.

18. The Greek Government did not refer the matter to the Conciliation Body set up by Decision 94/442/EC.¹¹ Pursuant to that decision, in so far as it concerns us here, a request for conciliation will be admissible only if the financial adjustment recommended exceeds EUR 0.5 million. In this case, the financial correction was less.¹² For that reason, the Greek Government did not make a reference to the Conciliation Body.

19. In terms of the reduction applied, the contested decision reflects the amount proposed in the letter of 2 August 2000.

20. The Greek Government disputes a considerable proportion of the default interest imposed on it. It bases its position on the fact that the Commission had already decided back in January 1997 on the amount of the additional levy by means of Decision C(97) 605 final, adopted on 5 March 1997 in the context of the procedure described in Article 13(2) of Decision 94/729. By that decision of 5 March 1997, the Commission reduced the advance that the Hellenic Republic was due to receive in respect of expenditure in the milk sector for January 1997. The reduction relates to the fact that the Com-

mission had not received the full amount of the additional levy for the 1995/96 milk year by the due date. According to the Greek Government, as a result of the above, there were no late payments after February 1997. Therefore, default interest was payable only for the period between September 1996 and January 1997, the amount in question being GRD 24 027 489.

21. The Commission maintains that the EAGGF reduced the special advances for January and February 1997 because the Hellenic Republic had not, prior to 1 September 1996, paid the full amount of the additional levy due.¹³ In those circumstances, the EAGGF reduces the amount of additional levy declared by the Hellenic Republic by means of monthly reductions. The reduction of advances has absolutely nothing to do with the interest that milk purchasers and producers still owe the EAGGF.

22. These facts gave rise to the current proceedings before the Court of Justice. In its application of 4 April 2001, the Greek Government claims that the Court should annul or, in the alternative, amend the contested decision. The Commission contends that the application should be dismissed. The German and Spanish Governments have both intervened in support of the Hellenic Republic.

11 — Commission Decision 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 Guarantee Section (OJ 1994 L 182, p. 45).

12 — GRD 92 592 972 is equivalent to EUR 272 412.39.

13 — Pursuant to Article 5(2) of Regulation No 536/93.

IV — Submissions of the parties

23. The Greek Government considers that a financial correction was imposed upon it in error, at least so far as concerns the default interest due for late payment of the additional levy in the milk and milk products sector. The Greek Government contends that the proposed correction should be annulled because the applicable legal provisions have been misinterpreted and the statement of reasons is insufficient.

24. Its objection relates only to the interest for the period from February 1997 since, in January 1997, it was decided to reduce the advances granted to the Hellenic Republic to cover the costs incurred in the milk and milk products sector because the Commission had not received within the specified time-limit the full amount of the additional levy for the 1995/96 milk year.

25. The Greek Government refers to the procedures laid down in Regulation No 536/93 for the proper application of Community rules. The purpose of Articles 3(4) and 5(2) of that regulation is to improve and speed up payment of the additional levy by the person liable, and also to ensure that the levy is paid over to the European Community within the specified time-limit. It is clear from these and other relevant provisions that if the person liable for the levy fails to comply with the

payment deadline, the Commission can impose a penalty on the Member State by reducing the monthly advances. Once the monthly advances have been reduced, there is no longer any delay in paying the additional levy nor any risk of financial loss for the Community.

26. Furthermore, default interest is only payable if the person liable for the levy is to blame for the late payment. When the principal debt has been paid, the obligation to pay interest subsequently is also extinguished. In this case, given that the monthly advances were reduced in January 1997, there is no culpable delay to account for. Moreover, once the Commission has reduced the advances, the levy is paid to the competent authority of the Member State and not to the EAGGF.

27. The Greek Government disputes the Commission's submission that its position would result in default interest no longer being payable by purchasers and producers.

28. The Greek Government also invokes Article 8(2) of Regulation No 729/70. That provision stipulates payment of interest only where irregularities or negligence are attributable to administrative authorities or other bodies of the Member States.

29. The German Government bases its position on a systematic analysis of the relevant provisions, in particular Articles 1 and 2 of Regulation No 3950/92 and Articles 3, 4 and 5 of Regulation No 536/93. Pursuant to those provisions, the EAGGF does not have any right of its own with respect to the Member States concerning the additional levy and the default interest payable in the case of late payment of the levy to the EAGGF. It is clear from Articles 3(4) and 4(4) of Regulation No 536/93 that the right to charge interest only arises in relations between national authorities and milk purchasers or producers and not in relations between a Member State and the Commission. Nor is Article 5(2) of that regulation a legal basis for demanding default interest.

31. The German Government submits, in the alternative, that the financial correction is not justified because the Commission did not find any failure to comply on the part of the Hellenic Republic. According to the settled case-law of the Court of Justice, in the case of a financial correction, it is for the Commission to establish the existence of an infringement of the rules on the common organisation of agricultural markets. In this case, the Commission has not only not provided evidence of any negligence, it expressly indicated — in a report of October 1997 — that the Hellenic Republic did not act negligently with respect to the additional levies in 1995 and 1996. Since the financial correction of the additional levy was incorrectly imposed by the EAGGF, there is no reason to charge interest for late payment.

30. According to the German Government, it follows from the judgment in *France v Commission*¹⁴ that Member States are required only to pursue the collection of supplementary levies diligently and to pay them over to the Community, and that the amount of the levy does not constitute a debt owed by the Member State itself. Given that, in the absence of a principal debt, no right exists to require Member States to pay the levy itself, it is also logical that no right to payment of default interest should arise. In this connection the German Government refers to the Opinion of Advocate General Jacobs in *Spain v Commission*.¹⁵

32. According to the Spanish Government, the Member States do not owe any debt to the Commission but are merely required to collect the additional levy from milk purchasers or producers, with the relevant interest where necessary. The Spanish Government does not share the Commission's view that the obligation to pay interest is independent of the reduction in advances. Unless it is shown that a Member State has failed to act with due diligence when collecting the amounts in question, that State does not owe any debt to the Commission. Member States are not required to pay the Commission amounts they have not yet received from those liable for payment of the levy solely for the purpose of reducing the financial consequences of late

14 — Case C-277/98 [2001] ECR I-8453, paragraphs 37, 38 and 43.

15 — Case C-130/99 [2002] ECR I-3005.

payment for the Community budget. The argument that Member States should be urged to collect the due amounts quickly is relevant only where the delay is attributable to the Member State concerned. In support of its position, the Spanish Government also refers to paragraphs from the judgment in *France v Commission* and points made by Advocate General Jacobs in his Opinion in *Spain v Commission*, cited by the German Government.¹⁶

The two measures can be applied separately. The reduction of advances is borne by the Member State and is intended to reduce the consequences for the Community budget of late payment and to encourage Member States to pay within the time-limit. On the other hand, default interest is borne by milk purchasers or producers and is intended to ensure that they comply with deadlines for the forwarding of documentation and to pay over the additional levy to the competent national authority.

33. The Spanish Government contends, in response to the position adopted by the Commission in proceedings still pending between Spain and the Commission in Case C-153/01, that Regulations Nos 3950/92 and 536/93 do not amend the system previously applicable, at least as far as this case is concerned. The Member States are not required to pay interest on the additional levies that they have not yet collected. Articles 3 and 4 of Regulation No 536/93 introduce a system which should ensure payment of the additional levy by the stated deadline, including any penalties. However, those provisions are directed at milk purchasers (or producers).

34. The Commission opposed the application and the submissions of the three governments in question. The Commission's basic argument is that reduction of advances and payment of default interest are two independent and distinct measures which derive from different obligations.

35. Thus, the Member States have two obligations. In the first place, they have to ensure that those liable for payment of the additional levy pay it within the time-limit laid down, failure to do so entailing a penalty in the form of default interest. Secondly, they have to pay the additional levy over to the Community, also acting promptly. The reduction of advances, which therefore relates to the second obligation, does not extinguish the Member States' first obligation. Nor does that reduction imply clearance of accounts. The latter is based on amounts already paid over and any reduction of advances, plus default interest. Furthermore, in the Commission's view, the reduction of advances does not relate to the whole of the additional levy but only to 96% of the outstanding amount.

36. In general terms, the Commission observes that, due to the poor operation of the additional levy system, it decided to

¹⁶ — See point 30 above.

apply the time-limits very strictly, and to make them subject to penalties. Hence the adoption of Articles 3, 4 and 5 of Regulation No 536/93. On the basis of Article 5, the EAGGF proceeded to reduce the advances, in February 1997. Article 5(2) also requires interest to be deducted from declared expenditure.

37. According to the Commission, default interest will be deducted from Community expenditure in the milk and milk products sector. Such interest is used to reduce Community expenditure.

38. Furthermore, the Commission points out that, if default interest were not applied by way of penalty, both the milk purchasers and producers concerned and the Member States would be in a more favourable position.

39. The Commission considers that Article 8(2) of Regulation No 729/70 is not relevant in this case since the specific rules contained in Regulation No 536/93 have been applied. The reasons underlying the financial correction in this case are different from those forming the basis of the judgments in *France v Commission* and *Spain v Commission* to which the German and Spanish Governments both refer.¹⁷

Firstly, the legal basis for the various corrections is different. In this case, the legal basis is Article 5(2) of Regulation No 536/93. Secondly, in these proceedings — unlike in the other two cases — the obligation to pay the additional levy is not in dispute. Thirdly, in the two cases cited, the Commission was unable to prove negligence on the part of the Member States, whereas in this case the question whether the Member State has acted negligently has not been raised. As pointed out above, the Greek authorities recognise their obligation to pay the additional levies and accept the Commission's view that they did not take all necessary measures to ensure that the levy was collected.

V — Assessment

A — Introduction

40. In the first place it is necessary to establish the scope of the dispute. In its application, the Greek Government does not contest the decision in its entirety, but only in so far as it imposes default interest in respect of the period commencing in

¹⁷ — See points 30 and 32 above.

February 1997. Thus the dispute does not relate to the following amounts:

- GRD 20 568 862 by way of additional levy for exceeding the milk quota in the 1995/96 milk year
- GRD 24 027 489 by way of default interest for the period between September 1996 and January 1997.

The amount in dispute is GRD 47 996 621.

ately. The first is this: what is the nature of the reduction of advances in the context of the EAGGF clearance of accounts procedure? Does that reduction imply that a Member State's non-compliance is a closed matter? If one takes the view that the reduction of advances does not completely or only partially releases the Member State from its payment obligation, then we must ask the second part of the question: to what extent do the reduction of advances and the imposition of default interest constitute two different measures, capable of independent application, as claimed by the Commission? When assessing this part of the question, I shall examine the nature of the penalties and the power of the Commission to impose them. Finally, after dealing with the two parts of the question, I shall assess whether sufficient reasons are stated for the decision.

B — *First part of the question*

41. The parties agree that the Greek Government paid too little to the EAGGF by way of additional levies for the 1995/96 milk year. It is also a fact that the advances granted to the Hellenic Republic were reduced as a result. This dispute is concerned essentially with whether the Commission has the power in those circumstances to impose default interest on a Member State.

43. The answer to this part of the question must be based on the purpose and content of the additional levy system and, in particular, on the role played by the Member States in collecting that levy.

42. In my opinion, this question falls into two parts with which I shall deal separ-

44. The additional levy system was introduced on 1 April 1984 with the aim of controlling milk production in the European Community. The introduction of milk

quotas was intended to contain the production of existing dairy farms and to make the entry onto the market of new farms more difficult. The individual milk quotas determine the amount of milk that a dairy farmer can produce without incurring a — prohibitive — additional levy. This system was initially due to last for a few years but was extended on several occasions and will continue in force until April 2008. The system is part of the common organisation of markets in the milk and milk products sector.

45. It is a Community system covered by various regulations and financed by Community funds from the EAGGF. Nevertheless, the Member States play an important role in applying the system and this role is assigned to them by the regulations. In particular, Member States must allocate the quota and collect the levy.

46. These features of the system mean that production relations in dairy farming are established for a lengthy period of time. This applies both to relations between producers in a particular Member State and to relations between the various Member States themselves.

47. Clearly, a system of this type needs to be applied strictly. Milk producers are

required to limit production and the authorities in the Member States need to ensure that milk producers do not receive undue benefits, in terms of competition, in relation to producers in other Member States, from an excessively broad interpretation of the rules on the additional levy. Thus, both milk producers and the authorities of the Member States are required to put the general (European) interest before their own (national) interest. Their conduct in this respect depends to a large extent on how confident they are that the other members of the European Union are also complying properly with the regulations. Payment of the additional levy within the time-limit — that is by the deadline laid down in the regulation — is also part of compliance. I think that it is completely in line with the purpose and content of the system that the Commission adopted the legislation and provided, in Regulation No 536/93, for penalties in the case of non-compliance with time-limits.

48. A lack of penalties — and here I would agree with the Commission — could mean that both the Member State and milk producers in that State could obtain economic advantages from failure to comply with deadlines. If the additional levy system entailed an incentive of this kind, it would undermine the effectiveness of the system itself. Therefore, the Commission must also exercise strictly the powers to impose penalties that have been conferred upon it.

49. However, it should be noted that these powers are not the only instrument the Commission possesses for the purpose of ensuring that Member States collect the additional levies within the time-limit. Where the powers to impose penalties cannot be exercised or those powers are inadequate, the Commission can also initiate at any time the procedure for failure to comply provided for in Article 226 EC.

excess milk production and on the other hand they are required to pay over those levies to the EAGGF. Both obligations must be fulfilled within the specified time-limits. If milk producers are late in making their payments, they can obtain an advantage, in terms of interest, which can unduly affect conditions of competition in the milk and milk products sector; if Member States are late in making payments to the European Community, this is detrimental to the Community budget.

50. This is the standpoint from which I am considering this case. The dispute is between the Hellenic Republic and the Commission and focuses on payment by the Hellenic Republic to the EAGGF. The parties agree that insufficient additional levy was paid in the 1995/96 milk year. However, on closer examination, this case does not turn on the financial relationship between the Commission and a Member State. In essence, we are dealing with the obligation on the part of a milk purchaser or producer, under Article 1 of Regulation No 3950/92, to pay the additional levy. Nevertheless, that payment is not made directly to the European Community but to the Member State, which must therefore be regarded as an intermediary.

52. In this case, the existence of these two different obligations is vitally important.

53. By a decision of 5 March 1997, the Commission decided to reduce the advances payable to the Hellenic Republic¹⁸ for exceeding the milk quota for the 1995/96 milk year. In this way the Commission offset the outstanding amount still payable by the Hellenic Republic. From the time that offset was made, the Hellenic Republic had fulfilled its obligation to make payment to the EAGGF.

51. In the context of the additional levy system, that intermediary is the prime collector of the levy. As the Commission rightly pointed out, there are two aspects to that obligation. On the one hand, the Member States need to ensure that milk producers pay the additional levies on

54. However, we have not yet said anything about the second obligation. As I said

18 — See in more detail point 20 above.

earlier, the Member State not only needs to ensure that the amount of the levy is paid into Community funds but also that the levy is paid by milk producers who overran the milk quota allocated to them. The Member State is not required to pay the levy from its own resources.

to answer it, it is necessary to examine the relevant legal provisions. First, I shall examine the obligations themselves. In this context, I shall deal with the payment obligation incumbent on milk producers and the two obligations incumbent on the Member States, as mentioned above.

55. This means that, despite the fact that the Greek Government has fulfilled its obligation to pay the EAGGF, it has still not fulfilled all its obligations under the additional levy regulations. However, the question that arises is whether fulfilment of the remaining obligation can be imposed in the form of default interest payable to the EAGGF. This is the essence of the second part of the question.

58. The payment obligation incumbent on milk producers — I shall exclude direct sales from producers to consumers — derives from Article 2(2) of Regulation No 3950/92. That paragraph provides for payment before a date and in accordance with detailed rules to be laid down. Commission Regulation No 536/93 lays down that date. Pursuant to Article 3(4)¹⁹ of the latter regulation, the amount due must be paid before 1 September each year. The regulation also lays down a number of conditions in that connection but gives the Member States the power to determine the remaining conditions. Under Article 3(4), the Member States must adopt more detailed rules regarding payment to the competent national authority.

C — Second part of the question

56. It is necessary to determine whether it is possible to demand payment of the additional levy from milk producers — and not from the Hellenic Republic — by charging the Hellenic Republic default interest when the principal amount has already been paid to the EAGGF.

59. All in all, we are talking about an obligation on the part of milk purchasers with respect to the Member State. For this reason, Community law establishes an unconditional payment obligation, without creating a right for the EAGGF with respect to milk producers.

57. This second part of the question is much more technical. Therefore, in order

¹⁹ — With regard to direct payment, see Article 4(4) of Regulation No 536/93.

60. It is for the Member States to ensure effective and prompt payment by milk purchasers. That obligation incumbent on the Member States also includes the measures to be adopted pursuant to Article 8(1) of Regulation No 729/70 for the purpose of recovering amounts lost due to irregularities or negligence.

61. In addition, it is for the Member State to pay the amounts collected to the Community within the time-limit. Article 5(2) of Regulation No 536/93 requires Member States to adopt additional measures to ensure that the Community is paid by the stated deadline. Furthermore, Member States have a series of obligations directed towards ensuring trouble-free compliance with the above. In this context, I would refer, by way of example, to Article 13 of Decision 94/729.

62. All of which leads me to the penalties which may be imposed by the Commission in the case of non-compliance with the above obligations. Community legislation provides for an effective system of penalties made possible by the fact that the Member States not only act as intermediaries in the collection of levies but also make payments to farmers on behalf of the Community. To that end, the Member States receive

monthly advances. As a result, the most onerous penalty that the Commission can apply is a reduction of those advances.

63. Reduction of advances in the case of late payment of the additional levy is governed by Article 5(2) of Regulation No 536/93. Article 4 of Regulation No 296/96, in combination with Article 13 of Decision 94/729, also provides for a reduction of this type where the data supplied by the Member State indicates manifest non-compliance with Community rules.

64. In my opinion, the reduction of advances is, by its very nature, a temporary penalty. At the time of the reduction, the extent of non-compliance with obligations under Community law has not yet been established definitively. The final determination occurs later with the clearance of the accounts for expenditure financed by the EAGGF submitted by Member States for the budget year. Article 13 of Decision 94/729 also states that the reductions or suspensions are to be without prejudice to the decisions which will be taken in connection with the clearance of accounts.

65. Therefore, I consider that it is sufficiently clear that the Commission has the power to impose penalties in the context of

clearance of accounts, even after advances have been reduced, although, when applying such penalties, it must bear in mind that it has previously made a reduction. In other words, the Commission cannot require payment of an amount already paid.

discharged, in so far as it referred to the principal sum (the additional levy itself).

66. Another penalty under the system is default interest, provided for in Articles 3(4) and 4(4) of Regulation No 536/93. Payment of default interest is an obligation incumbent upon milk purchasers or producers. Both are required to pay that interest to the Member States. Under Article 5(2) of that regulation, interest paid is to be deducted from expenditure on the milk sector.

69. However, the milk purchasers did not thereby discharge their debt. After all, they did not pay their debt promptly. Pursuant to Regulation No 536/93, failure to comply with the time-limit for payment incurs default interest. In this case, the period begins to run on 1 September 1996 — the date fixed by the regulation — and does not end until the milk purchasers have paid the competent national authorities. The fact that the Greek Government has paid the principal sum through the reduction of advances is irrelevant as far as the default interest is concerned.

67. This is where I get to the heart of this dispute. First, as I have just said, the Commission cannot demand payment of an amount already paid. However, that is not the issue in these proceedings. As the Commission rightly states, the penalties are imposed in relation to two different obligations.

70. To summarise, under Community law, default interest is payable by milk purchasers. It is for the national authorities to collect that interest. However, the question arises whether the Commission can charge the uncollected interest to the Greek Government. In this respect, the fact that the Greek authorities have not collected the default interest payable is not in dispute.

68. In this connection, we can say the following: when the advance was reduced by means of the decision of 5 March 1997, the debt of the Hellenic Republic at the time with respect to the EAGGF was

71. The Commission claims that Article 5(2) of Regulation No 536/93 constitutes the legal basis for the correction.

However, that provision refers to the off-setting of interest *that has been paid*. In this case, interest is payable but has not been paid. In its judgment in *Spain v Commission*, the Court of Justice held, in similar circumstances, 'that the fact that certain sums remain unpaid or have been paid belatedly does not of itself constitute a failure to fulfil obligations laid upon the Member States by Community law'.²⁰ In that judgment, the Court of Justice followed the line adopted in *France v Commission*, which concerned Regulation (EEC) No 1546/88.²¹ In the latter judgment, the Court of Justice held that, whilst the Member State is required to pay over the amounts collected by it to the Commission, it is not itself liable to pay the supplementary levy.²² Although that regulation has indeed been repealed and — as the Commission rightly said — the system has been reinforced subsequently, this does not mean that Article 5(2) of Regulation No 536/93 constitutes the legal basis for the correction at issue. I share the view of the German and Spanish Governments in this regard. Article 5(2) of that regulation merely places an obligation on the Member State not to hang on to amounts collected and to pay them over to the EAGGF.

the legal provisions concerning the financial consequences of irregularities or negligence in connection with the common organisation of the market in the milk sector (Article 8(2) of Regulation No 729/70). The Commission expressly submits before the Court that Article 8(2) is not applicable and that it is taking Article 5(2) of Regulation No 536/93 as the legal basis. I shall discuss that assertion by the Commission later, along with the statement of reasons for the contested decision. I intend, first, to consider the extent to which Article 8(2) of Regulation No 729/70 is applicable. In short, has it been sufficiently demonstrated that the economic consequences of failure to collect the sums owed are due to irregularities or negligence on the part of the national authorities?

72. I shall now examine the question whether the correction can be based on

73. According to the Court's settled case-law,²³ Article 8(2) of Regulation No 729/70 is a consequence, in relation to the financing of the common agricultural policy, of the obligation of general diligence enshrined in Article 10 EC. The obligation in Article 8(2) of Regulation No 729/70 means that the Member States must take steps to rectify irregularities promptly. After a certain time has elapsed,

20 — Cited in footnote 14 above, paragraph 101.

21 — Commission Regulation of 3 June 1988 laying down detailed rules on the application of the additional levy referred to in Article 5(c) of Regulation (EEC) No 804/68 [OJ 1988 L 139, p.12].

22 — Cited in footnote 14 above, paragraph 37.

23 — See *France v Commission*, cited in footnote 14 above, paragraph 40, and Case C-54/95 *Germany v Commission* [1999] ECR I-35, paragraph 177.

there is a risk that recovery of amounts unduly paid could become complicated or impossible, due to certain circumstances: for example, the undertaking could have ceased trading or accounting documents could have been lost.

74. In general, the Commission must supply specific evidence of negligence on the part of the Member State. This can be inferred from the general obligation to give a statement of reasons. In this case, the burden of proof on the Commission is not subject to very strict requirements. The circumstances of the case indicate that negligence is proven. When all is said and done it is a fact that the additional levy has not been collected. The Greek Government does not dispute this nor does it adduce any reasons to justify its negligence.

75. I therefore consider that Article 8(2) of Regulation No 729/70 can constitute the legal basis for the correction.

D — *Statement of reasons*

76. However, the question is whether that provision actually formed the legal basis in

this case. I shall examine that question in the light of the obligation to give reasons flowing from Article 253 EC. According to the case-law of the Court of Justice, the Commission is obliged to give reasons for each decision finding that negligence is attributable to the Member State concerned.²⁴ This means, in particular, that the Commission's statement of reasons must be clear and unequivocal so as to inform the persons concerned of the justification for the measure adopted and to enable the Court of Justice to exercise its powers of review. Furthermore, the statement of reasons is not required to specify all the matters of fact or of law dealt with.²⁵

77. In the specific context of clearance of accounts decisions, the Court of Justice considers that the obligation to state reasons is not an onerous one. The decision does not have to give exhaustive reasons. The Court has held that the reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was closely involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the EAGGF.²⁶ The light nature of this obligation to state reasons is due to the fact that the Member

24 — See, *inter alia*, *France v Commission* cited above in footnote 14, paragraph 41.

25 — See, in particular, Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 74, and Case C-244/95 *Moskof* [1997] ECR I-6441, paragraph 57.

26 — See, *inter alia*, Case C-27/94 *Netherlands v Commission* [1998] ECR I-5581, paragraph 36.

Sates and the Commission cooperate closely in decisions relating to clearance of accounts. Right up until the decision is taken, the Member State can apply to the relevant conciliation body.²⁷

more detailed reasons are needed.²⁸ A detailed statement of reasons can certainly be required in the case of a decision such as the one at issue, which was taken in the context of the EAGGF clearance of accounts procedure. That clearance takes place long after the expenditure is incurred. Therefore the Commission has sufficient time to prepare its decision diligently.

78. In my view, the light nature of the obligation to state reasons, to which I have just referred, relates only to the way in which the reasons are to be expressed and not to the communication of the actual reasons or their content. An integral part of the obligation to state reasons is the Commission's duty to inform the Member State of the legal basis for its decision. That legal basis must be appropriate for the purposes of supporting the decision. It is only when the Commission fulfils its obligation to state its reasons that the Member State can be made aware of its rights and the Court of Justice can exercise its power of review.

79. In this connection, I would also add that, in the context of reviewing the implementation of the common agricultural policy by the Member State, the obligation to state reasons is of limited significance to the extent that decisions are adopted according to normal practice and the Member State is aware of that practice. The same applies as far as the Court of Justice is concerned. However, when a decision does not follow normal practice,

80. Applying these considerations to this case, I consider that the Commission can be expected to give more detailed reasons. In this case, two cumulative penalties are applied to the same fact — the failure to collect the additional levy from milk purchasers and producers in the Hellenic Republic during a specific period. I have already explained that Community law does not preclude such a practice. However, this does not mean that the dual penalty is normal practice, or that the Commission has a clear power to adopt such a practice. Regarding the first point, this has not been raised during the proceedings nor can it be otherwise inferred. Regarding the second point, I consider that the Commission has the power, but that it is not clear. I have been able to infer this power only by examining the relevant provisions of Community law.

27 — See point 18 above.

28 — See, in this connection, point 41 of my opinion in Case C-228/99 *Silos* [2001] ECR I-8401.

81. The above considerations lead me to the statement of reasons for the contested decision. In the first place, I take the view that the decision itself was justified in very summary fashion. This is a decision containing a series of corrections to various parts of the common agricultural policy which is addressed to a large number of Member States. The recitals refer in general to Regulation No 729/70 and the decision also lists a series of specific provisions which are intended to serve as a basis for its adoption. Article 8(2) of Regulation No 729/70 is not mentioned in the recitals. The same applies in relation to Article 5(2) of Regulation No 536/93. That omission does not in itself constitute a failure to state reasons. Indeed, the Court of Justice accepts that a Member State may find out by other means the reasons why the Commission took the view that a particular amount could not be charged to the EAGGF.

states to the Court of Justice that Article 8(2) does not form the basis for the penalty.

83. To sum up, the statement of reasons indicates that the decision, in so far as it imposes default interest on the Hellenic Republic, is based on Article 5(2) of Regulation No 536/93. That particular provision cannot form the legal basis for the decision, as I indicated earlier.

82. The minutes of the meeting between the Hellenic Republic and the Commission indicate that the Commission was basing its decision on Article 5(2) of Regulation No 536/93. The report mentions Article 8(2) of Regulation No 729/70 but, in the Commission's view, that is clearly not the basis for the penalties. Nor can it be inferred from other documents that the Commission was, in part, taking Article 8(2) of Regulation No 729/70 as a basis. Moreover, the Commission expressly

84. In the light of the foregoing, I suggest that the Court of Justice should partially annul the contested decision on the ground that the statement of reasons is inadequate. In reaching this opinion, I consider it important that the default interest imposed by the Commission is a penalty which does not accord with normal practice and that its right to impose the penalty is not self-evident. Therefore, the Greek Government could not reasonably have been aware of the correct legal basis either.

VI — Conclusion

85. On the basis of the above considerations, I suggest that the Court of Justice should:

- (1) annul the Commission Decision of 5 February 2001 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, in so far as it refers to the default interest imposed on the Hellenic Republic in respect of expenditure in the milk and milk products sector from February 1997;
- (2) order the Commission to pay the costs;
- (3) declare that the Federal Republic of Germany and the Kingdom of Spain are to pay their own costs.