

OPINION OF ADVOCATE GENERAL LÉGER

delivered on 16 December 1999 *

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* Original language: French.

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1. This Opinion concerns two related direct actions brought by the Hellenic Republic against the Commission of the European Communities under the first paragraph of

Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC).

2. In the first case (C-46/97), the Hellenic Republic requests the partial annulment of Commission Decision 96/701/EC of 20 November 1996 amending Decision 96/311/EEC 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 1993,¹ in so far as the Commission refused to charge to the EAGGF the sums of 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 and, finally, GRD 3 916 884 473 in respect of tobacco (production in excess of maximum guaranteed quantity).

3. In the second case (C-243/97), the Hellenic Republic seeks the partial annulment of Commission Decision 97/333/EEC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF),² in so far as the Commission refused to charge to the EAGGF the sums of GRD 10 007 973 085 in respect of production aid for olive oil, GRD 1 322 433 341 in respect of failure to observe the deadlines for making payments to recipients of olive oil production aid,

GRD 2 031 347 293 and GRD 2 413 383 890 in respect of exports of olive oil from Greece to non-member countries, GRD 2 002 118 984 in respect of tobacco (production in excess of maximum guaranteed quantity), GRD 246 543 179 in respect of wine (permanent abandonment of areas under vines), GRD 82 224 025, GRD 54 471 120 and GRD 97 597 184 in respect of the public storage of cereals and, finally, GRD 1 531 502 946 in respect of missing quantities of durum wheat.

4. It appears that, apart from the claim relating to the correction applied in respect of production aid for cotton, the claims of the Hellenic Republic in Case C-46/97 are identical to those submitted in Case C-243/97, as also are the pleas in law and arguments put forward by the parties. On the other hand, in Case C-243/97, the Hellenic Republic submits specific claims relating to the 'cereals' and 'olive oil' sectors.

5. In order to avoid unnecessary repetition, I propose, after first setting out the general legal framework common to Cases C-46/97 and C-243/97, to examine the two applications for annulment together, in so far as they coincide, and to then examine the two applications separately, in so far as they differ.

1 — OJ 1996 L 323, p. 26.

2 — OJ 1997 L 139, p. 30.

I — The general legal framework common to Cases C-46/97 and C-243/97

A — The Community regulations

6. Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy³ provides, in Articles 2 and 3 thereof, that the Guarantee Section of the EAGGF shall directly finance refunds on exports to third countries and intervention intended to stabilise the agricultural markets respectively granted to undertakings 'according to Community rules within the framework of the common organisation of agricultural markets'.

7. Under Article 4 of Regulation No 729/70, the Commission is to make available to Member States the necessary credits so that the competent national authorities and bodies may, in accordance with Community rules and national legislation, pay these refunds and intervention.

8. Under Article 5(2)(b) of Regulation No 729/70, the Commission, after consulting the EAGGF Committee, is, before the end of the following year, on the basis of

the annual accounts, accompanied by the documents required for making up the balance sheets, to make up the accounts of the authorities and bodies of the Member States authorised to pay refunds on exports to third countries and intervention intended to stabilise the agricultural markets.

9. Article 8(1) of Regulation No 729/70 provides that the Member States, in accordance with national provisions laid down by law, regulation or administrative action, is to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence.

10. Article 8(2) thereof states that, in the absence of total recovery, the financial consequences of irregularities or negligence are to be 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 are to be paid to the paying authorities or bodies and deducted by them from the expenditure financed by the EAGGF.

11. In accordance with Article 9(1) of Regulation No 729/70, Member States are to make available to the Commission all information required for the proper working of the EAGGF and are to take all suitable measures to facilitate the supervision which the Commission may consider

³ — OJ, English Special Edition 1970 (I), p. 218.

it necessary to undertake within the framework of the management of Community financing, including inspections on the spot. Member States are to communicate to the Commission provisions laid down by law, regulation or administrative action which they have adopted for the application of legal acts of the Community relating to the common agricultural policy in so far as those acts have financial consequences for the EAGGF.

12. According to Article 9(2), officials appointed by the Commission to carry out inspections on the spot are to have access to the books and all other documents relating to expenditure financed by the EAGGF. At the request of the Commission and with the agreement of the Member State, inspections or inquiries concerning the transactions referred to in Regulation No 729/70 are to be carried out by the competent authorities of that Member State. Officials of the Commission may also participate.

13. Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section,⁴ aims to set out the procedure whereby annual accounts are to be forwarded to the Commission.⁵

14. According to Article 8(a) of Regulation No 1723/72, the decision to make up the accounts is to cover the determination of the amount of expenditure incurred in each Member State during the year in question, recognised as chargeable to the EAGGF, Guarantee Section.

15. 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 283/72⁶ provides, in Article 3(1) thereof, that, during the two months following the end of each quarter, Member States are to communicate to the Commission a list of irregularities which have been the subject of primary administrative or judicial findings of fact.

16. Under Article 5(1) of Regulation No 595/91, during the two months following the end of each quarter, Member States are to inform the Commission of the procedures instituted following the irregularities notified under Article 3 and of all important changes resulting therefrom.

⁴ — OJ, English Special Edition, Second Series III, p. 109.

⁵ — First recital.

⁶ — OJ 1991 L 67, p. 11.

17. Article 5(2) thereof provides that, where a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it is to inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State. This information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8(2) of Regulation No 729/70.

18. According to Article 6(1) of Regulation No 595/91, where the Commission considers that irregularities have taken place in a Member State, it is to inform the Member State concerned thereof and that State shall, at the earliest opportunity, hold an inquiry in which officials of the Commission may take part.

19. Under Article 6(2) thereof, the Member State is, as soon as possible, to communicate to the Commission the inquiry findings. Where the inquiry shows that there has been an irregularity, the Member State is to inform the Commission thereof within the deadlines specified in the Regulation.

B — *The guidelines contained in Document No VI/216/93*

20. The financial consequences of making up the accounts of the Guarantee Section of the EAGGF, in the event of deficiencies in the supervision effected by the Member States, have been defined by a Commission interservice group and appear in Document No VI/216/93 of 1 June 1993 (hereinafter 'Document No VI/216/93'). This document establishes criteria which have been approved by the Commission and notified to all Member States within the EAGGF management committee, at which they were favourably received. These criteria provide for three categories of flat-rate corrections:

- 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 is minor;
- 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 is significant;

— 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 is a high risk of widespread loss to the EAGGF.

23. Whilst, according to Article 8(1) of Regulation No 729/70, the national authorities remain free to choose such measures as they consider appropriate to protect Community financial interests, 'their choice must not in any way hinder speedy, efficient and thorough performance of the necessary checks and inquiries'.⁸

21. Document No VI/216/93 points out that it is possible to refuse all expenditure and that, as a result, a higher correction rate may be deemed appropriate under exceptional circumstances.

24. In this context, it is for the Commission to prove an infringement of the rules on the common organisation of the agricultural markets.⁹ The Commission is therefore obliged 'to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question'.¹⁰

C — *The case-law of the Court*

The respective duties of the Commission and Member States as regards clearance of the EAGGF accounts

22. Within the framework of the common organisation of the agricultural markets, only intervention undertaken in accordance with the Community rules is to be financed by the EAGGF.⁷

25. The Member State, for its part, 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

⁷ — Case C-48/91 *Netherlands v Commission* [1993] ECR I-5611, at paragraph 14, and Case C-253/97 *Italy v Commission* [1999] ECR I-7529, at paragraph 6.

⁸ — Case C-240/97 *Spain v Commission* [1999] ECR I-6571, at paragraph 37.

⁹ — See, in particular, Case C-253/97, at paragraph 6, and the cases cited therein, or Case C-240/97, at paragraph 38.

¹⁰ — Case C-253/97, at paragraph 6, and the cases cited therein.

findings can give rise to serious doubts as to the existence of an adequate and effective series of supervisory measures and inspection procedures'.¹¹

II — The related claims submitted in Cases C-46/97 and C-243/97

A — The corrections applied in respect of production aid for olive oil

26. 'It follows that where the Commission has doubts concerning a transaction which it considers to be justified by the surrounding facts or circumstances it must withhold the sums corresponding to that transaction unless the Member State produces sufficient evidence to dispel those doubts'.¹²

1. The Community regulations on the 'olive oil' sector

28. Regulation No 136/66/EEC of the Council of 22 September 1966,¹⁴ as amended by Regulations (EEC) of the Council Nos 1562/78 of 29 June 1978¹⁵ and 2210/88 of 19 July 1988,¹⁶ established a common organisation of the market in oils and fats.

The nature of the dispute referred to the Court

27. It should be observed that, in an application for annulment based on Article 173 of the EC Treaty, the Court's only task is to consider whether the pleas in law raised in support of the application are well founded. It is not required to either increase or reduce any corrections which may prove to be inappropriate in the light, in particular, of the criteria laid down in Document No VI/216/93.¹³

29. The purpose of the organisation of the market in olive oil is 'to maintain the level of consumption of that product in the Community, having regard to the competition from other vegetable oils, and to ensure that producers receive a fair income for the quantity of olive oil actually produced'.¹⁷

¹¹ — Ibidem, at paragraph 7.

¹² — Case C-240/97, at paragraph 39.

¹³ — See, by analogy, Case 253/97, at paragraph 8.

¹⁴ — OJ, English Special Edition 1965-1966, p. 221.

¹⁵ — OJ 1978 L 185, p. 1.

¹⁶ — OJ 1988 L 197, p. 1.

¹⁷ — First recital of Regulation No 1562/78.

30. Article 5 of Regulation No 136/66, as amended by Regulations Nos 1562/78 and 2210/88, therefore establishes a system of aid for the production of olive oil.

each grower as to the quantities of olives pressed and the quantities of oil obtained correspond to the quantities of olives and oil stated in the evidence of pressing.

31. Regulation (EEC) No 2261/84 of the Council of 17 July 1984¹⁸ lays down general rules on the granting of aid for the production of olive oil and of aid to the producer organisations indicated in the aforementioned Article 5.

33. According to the first indent of Article 10 of Regulation No 2261/84, as amended by Regulation No 3500/90, the associations of producers²⁰ shall coordinate the activities of the organisations of which they are composed and ensure that these activities accord with the regulation, particularly with regard to the checks specified in the aforementioned Article 8(1).

32. According to Article 8(1) of Regulation No 2261/84, as amended by Regulation (EEC) No 3500/90 of the Council,¹⁹ before submitting the aid application each producer organisation is to check:

34. 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.

- the compliance of the file submitted by each of its members with the obligations referred to in Article 3, and in particular the existence of evidence that the olives have been pressed in an approved mill;

35. Article 14(2) of Regulation No 2261/84, as amended by Regulation No 3500/90, provides that producer Member States are to verify the activities of each producer organisation and association and, in particular, the checking operations referred to in Article 8(1) and Article 10, first indent, of that regulation which must be carried out by these bodies.

- with regard to olive growers whose average production is at least 500 kilograms of olive oil per marketing year, that the particulars supplied by

¹⁸ — OJ 1984 L 208, p. 3.

¹⁹ — Of 27 November 1990 (OJ 1990 L 338, p. 3).

²⁰ — According to Article 9 of Regulation No 2261/84, 'an association ... comprises at least 10 producer organisations ... or a number of organisations accounting for at least 5% of the olive oil produced in the Member State concerned. However, the producer organisations comprising an association must be from two or more economic regions.'

36. Article 14(3a) of Regulation No 2261/84, as amended 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:

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 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.
- the correspondence between the quantity of olive 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.

38. Commission Regulation (EEC) No 3061/84 of 31 October 1984 lays down detailed rules for the application of the system of production aid for olive oil.²¹

39. Article 10(2) of Regulation No 3061/84, as amended by Commission Regulation (EEC) No 928/91 of 15 April 1991,²² states 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.

37. Article 14(4) of Regulation No 2261/84, as amended by Regulation No 3500/90, points out that, with regard to the olive oil produced by olive growers whose average production is less than 500

21 — OJ 1984 L 288, p. 52.

22 — OJ 1991 L 94, p. 5.

40. 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, producer Member States are to make use, in particular, of data in the register of olive cultivation and the computerised files, figures from on-the-spot checks made on the grower and yields of olives and oil set for the zone in which the holding or holdings are located.

41. Regulation (EEC) No 154/75 of the Council of 21 January 1975 on the establishment of a register of olive cultivation in the Member States producing olive oil²³ aims to allow the Community 'to obtain the information needed to determine the Community's potential production of olives and olive oil and to improve the operation of the Community aid system for the latter product'.²⁴

42. Article 1(1) of that regulation specifies that the Member States producing olive oil are to establish a register of olive cultivation to cover all olive-growing holdings within their territory.

43. Council Regulation (EEC) No 3453/80 of 22 December 1980 amending Regulation No 154/75²⁵ required the Hellenic Republic to establish this register by 31 October 1988.

44. Commission Regulation (EEC) No 2276/79 of 16 October 1979 laying down detailed rules for the drawing-up of a register of olive cultivation in the Member States producing olive oil,²⁶ as amended by Commission Regulation (EEC) No 586/88 of 2 March 1988,²⁷ provides, in Article 6b, for Member States which acceded to the Community after the entry into force of Regulation No 2276/79, the possibility of carrying out trials to determine which method of registration is best suited to olive cultivation as practised in these Member States and of giving particular consideration to the methods set out in Annex I to that regulation.²⁸ To that end, the Member States concerned were, by 31 December 1988 at the latest, to transmit a programme of trials to the Commission for approval.

45. In order to equip the Community with effective instruments for checking and managing the olive market, the establish-

²⁵ — OJ 1980 L 360, p. 15.

²⁶ — OJ 1979 L 262, p. 11.

²⁷ — OJ 1988 L 57, p. 18.

²⁸ — The methods set out in this annex consist in particular of preliminary operations involving the zoning of the olive-growing regions in order to obtain zones with homogeneous geopedological, morphological and agronomic conditions and the organisation and preparation of the whole aerial and ground survey by reference to the suitability of the various methods of data collection and analysis to the particular character of each zone.

²³ — OJ 1975 L 19, p. 1.

²⁴ — First recital.

ment of computerised files has been specified in addition to the register of olive cultivation.²⁹

46. Article 16(1) of Regulation No 2261/84 requires each Member State producing olive oil to draw up and keep up to date permanent computerised files of olive and olive-oil production data.

47. These files must contain all the elements required to facilitate checking and the prompt detection of irregularities (Article 16(2) of Regulation No 2261/84).

48. Article 14(5) of Regulation No 2261/84 invites Member States to use the computerised data files for the checks and verifications specified by the regulation.

49. Member States are to enter in those files the basic data contained in the register of olive cultivation [Article 11(1), second subparagraph, of Regulation No 3061/84, as amended by Commission Regulation (EEC) No 98/89 of 17 January 1989³⁰].

50. Article 11(2), first subparagraph, of Regulation No 3061/84, as amended by Regulation No 98/89, states that all the components of the computerised files must be operational before 31 October 1990. Moreover, Member States are to use the data for the checks as and when the specific files are established.

2. Facts

51. The specific reasons for the irregularities noted by the Commission and committed by the Hellenic Republic were 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 'Summary Report No 1'), and in two supplements dated 14 June and 23 September 1996, and in Summary Report No VI/5210/96 of 15 April 1997 'on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1993' (hereinafter 'Summary Report No 2').

52. Summary Reports Nos 1 and 2 describe serious deficiencies in fundamental elements of the system for managing and checking aid for the production of olive oil which, as a result, justify the flat-rate

²⁹ — Fifteenth recital of Regulation No 2261/84.

³⁰ — OJ 1989 L 14, p. 14.

corrections of 10% of the expenditure, applied during the clearance of the accounts for 1992 and 1993.

and the checking of aid applications for the production of olive oil. The following are noted:

53. The main complaints made by the Commission involve the absence of an olive cultivation register and usable computerised files (particularly due to the different types of software used; supply to a single file was thus prevented).

(a) absence of guidelines given to inspectors enabling them to verify that the quantities of olive oil produced actually correspond to the quantities declared;

54. In addition, Summary Reports Nos 1 and 2 describe in detail the inadequacy of the alternative controls put in place by the Greek authorities instead of those specified in the Community regulations [hereinafter the 'alternative control(s)']. According to the Commission, these alternative controls did not enable the risk of fraud to which the EAGGF is exposed to be effectively combatted.

(b) failure to notify the result of checks carried out to Didagep, the Greek paying body;

55. Thus, in Summary Report No 1, the list of defects and deficiencies noted in the alternative control system put in place by the Hellenic Republic consists of 18 points which can be grouped under four headings and summarised as follows:

(c) absence of sufficient staff both to ensure everyday management of applications for aid for the production of olive oil and to check on the spot that the amounts declared by the applicants for this aid actually exist;

(1) Lack of coordination between the competent local and national offices with regard to both the management

(d) prohibited combination of the duties of manager and inspector;³¹

³¹ — In other words, the staff granting financing after having verified the content of the aid application files are the same as those checking on the spot that the applications are real.

- (c) failure by the national authorities to implement decisions taken by the authority empowered by them.³²
- (2) Lack of communication by the national authorities with the Commission. The failure to notify the Commission of the absence of measures adopted by the Greek authorities with a view to putting in place the special control system for approved mills imposed by the Community regulations and the reasons for this situation are noted.
- (3) Lack of rigour in the physical checks carried out by the Greek authorities and inadequacy of the checks. The Greek competent authorities are therefore criticised:
 - (a) for having omitted to apply a classification of small and large producers;
 - (b) for having neglected to check producers who had declared unusual yields;
 - (c) for the lack of representativeness of the producers checked;
 - (d) for no use at all being made of the information from the checking of producers and mills;
 - (e) for lack of effective control instruments: in addition to the absence of an olive cultivation register and land register, there is, in particular, a total absence of alphanumeric references allowing the plots declared to be correctly located and preventing multiple declarations for the same plot, and there are differences between the types of software used thus preventing the supply of a single file.

56. Further to these verifications carried out over several years, on 12 February 1995 the EAGGF sent the Greek authorities a list of measures to be taken in order to check production. This list summarised the observations, recommendations and requirements for improvement already notified to the Greek authorities under the usual dialogue procedures for 1992.

57. On 13 July 1995, the Greek authorities informed the EAGGF that new procedures taking this list into account had been put in place for the 1995/96 marketing year.

32 — The withdrawals of approval proposed by the Olive Oil Agency, the body falling under the authority of the Greek Ministry of Agriculture and composed of public officials (hereinafter the 'Agency'), were not actually implemented.

58. For 1992, the EAGGF indicated that it was maintaining the proposed financial correction of 10% and stated that this would be revised downwards only if it were proven that the new system put in place was able to respond significantly to the requirements of protecting Community funds from risks of irregularity and fraud.

62. Thus, although the 1992/93 and 1993/94 marketing years were years of reduced olive harvests, no instruction enabling the detection of producers with unusual yields was given by the competent Greek authorities to the inspectors. Consequently, it is apparent that all the applications made for production aid were accepted and paid.

59. Summary Report No 2 indicates that the analysis of the various documents and information supplied to the EAGGF, and the missions carried out by the latter from 20 to 24 May 1996 in respect of the 1993 and subsequent financial years, only served to confirm the defects in the management and alternative control system.

63. Likewise, the withdrawals of approval from mills at which irregularities had been detected, requested by the Agency, were not implemented. With regard to the 1994/1995 marketing year, from a total of 134 proposed withdrawals, only two were applied by the Ministry of Agriculture. Social or political reasons were put forward by the Greek authorities to justify the failure to implement the Agency's proposals.

60. Firstly, the same defects as those set out in detail in Summary Report No 1 were reported. Summary Report No 2 noted in particular the absence of an olive cultivation register and land register, the total absence of alphanumeric references, differences between the types of software used and no use at all being made of the information from the checking of producers and mills.

64. Finally, the new approach of physical and selective checks on producers, used by the Agency from 1995 following the EAGGF's observations, enabled the existence of fraud against the Community to be identified and showed the extent of the false tree declarations made by the producers checked. Although the demonstration of the irregularity of the expenditure incurred had been reported, the EAGGF noted that the improvements made to the Agency's work did not lead to any significant change in the Greek control system. Not only did the Hellenic Republic not consider it useful to put in place the Community control instruments recommended by

61. Secondly, new defects were noted.

amended Regulations Nos 154/75 and 2261/84 (olive cultivation register and single computerised file), but it also did not take effective alternative measures enabling these deficiencies to be overcome. The EAGGF therefore concluded that any effort by the Agency was being definitively blocked by the opposition of the Greek competent authorities.

65. On 3 June 1996, the EAGGF therefore warned the Greek authorities that this attitude was liable to lead to serious financial consequences and pointed out that, in exceptional circumstances, the refusal of all expenditure incurred by a Member State could constitute an appropriate measure.

66. However, for 1993, the EAGGF proposed only that a flat-rate correction of 10% should be applied to the expenditure declared by the Hellenic Republic, unless the latter brought an action before the conciliation body in this respect.

3. The actions

67. The Hellenic Republic disputes the corrections of 10% imposed by Decisions 96/701/EC and 97/333/EC in respect of aid for the production of olive oil and contends that the Commission made mistakes in

assessing the reported facts and exceeded the limits of its discretionary power.

68. It claims firstly that the Commission is essentially acting on the basis of the absence of an olive cultivation register and an operational single computerised file, the absence of which it does not contest. However, it maintains that, since the Court had already penalised it on these grounds,³³ the Commission could not impose further corrections for 1992 and 1993 based on the same objections.

69. Secondly, it maintains that it informed the Commission in good time of the objective reasons preventing it from putting in place the Community control instruments provided for by the aforementioned regulations and that, in so far as it collaborated in good faith with the Community authorities, the corrections which were applied to it should not have been applied.

70. Thirdly, it contends that the alternative control system does assure the legality of the payment of Community funds. It states to this end that the Commission announced in 1996 that the obligation to establish the olive cultivation register had been called into question and that, in accordance with this new policy, Member States had to carry

33 — Case C-50/94 *Greece v Commission* [1996] ECR I-3331.

out aerial surveys and map all the zones planted with olive trees.

71. Fourthly, it claims that it was absolutely impossible for it to meet the Community requirements in terms of checking the regularity of the expenditure incurred in respect of the EAGGF.

74. Likewise, Article 11(2) of Regulation No 3061/84, amended by Regulation No 98/89, requires Member States to ensure that all the components of the computerised files are operational before 31 October 1990.

75. These texts have not been repealed and it does not appear from the proceedings that the Community intends to do so, contrary to what the Hellenic Republic maintains.

4. Assessment

72. I consider that the pleas in law of the Hellenic Republic raised in support of its application concerning the corrections applied by the EAGGF to the expenditure incurred in respect of aid for the production of olive oil must be rejected. In my opinion, it is apparent from the documents in the case that the system put in place by the Greek authorities during 1992 and 1993 involves serious irregularities with regard to fundamental elements of the control system such that it could properly be concluded that there was a high risk of widespread loss for the EAGGF.

76. It is common ground, and in no way disputed by the Hellenic Republic, that these obligations have not been complied with to date.

77. As regards the first complaint, to the effect that, as the Hellenic Republic was found guilty in Case C-50/94 of having neglected to establish the Community control instruments, such as the olive cultivation register and the single computerised file, the Commission could not again put forward the same facts against the Hellenic Republic, I believe that this is unfounded.

73. It should be remembered that, in accordance with Regulation No 3453/80 amending Regulation No 154/75, the Hellenic Republic had to establish the olive cultivation register by 31 October 1988.

78. In Case C-50/94, the Court ruled on facts relating to irregularities committed during 1990. However, Cases C-46/97 and

C-243/97 concern irregularities noted during 1992 and 1993.

tion 'cannot ... prove that it was absolutely impossible'³⁶ to fulfil its obligations.

79. Consequently, as the Commission's complaints do not aim to challenge the force of *res judicata* of the judgment in Case C-50/94, the first plea in law of the Hellenic Republic must be rejected.

82. It must be noted, as the Court has already stressed in Case C-50/94,³⁷ that the Hellenic Republic did not notify the difficulties which it was encountering in establishing the Community control instruments until after the expiry of the periods imposed by Regulations Nos 154/75 and 3061/84, amended by Regulations Nos 3453/80 and 98/89.

80. As regards the second plea in law according to which the Hellenic Republic allegedly informed the Commission in good time of the difficulties which it was encountering in establishing the Community control instruments provided for by amended Regulations Nos 154/75 and 3061/84 and that, having collaborated in good faith with the Commission, the penalties should not have been imposed thereon, I consider this plea, too, to be unfounded.

83. In addition, the obligations laid down by the aforementioned regulations and their purpose were fully explained to the Hellenic Republic in Case C-50/94.³⁸

81. It is accepted that a Member State may raise the absolute impossibility of properly implementing a Community decision.³⁴ However, in this situation, the Member State must 'in any event submit the problems linked with such implementation in good time to the appropriate institution for consideration.'³⁵ A Member State which notifies difficulties after the expiry of the period laid down by a Community regula-

84. Since 31 October 1988, the date by which the olive cultivation register had to be established, and despite the judgment in Case C-50/94, no significant change has occurred in the system of checking aid for the production of olive oil implemented by the Hellenic Republic.

85. By failing to put in place the solutions prescribed by the Community regulations, the Hellenic Republic has demonstrated

34 — Case 213/85 *Commission v Netherlands* [1988] ECR 281, at paragraph 22.

35 — Case C-50/94, at paragraph 39.

36 — *Ibidem*, at paragraphs 40 to 42.

37 — *Ibidem*, at paragraphs 40 and 41.

38 — *Ibidem*, at paragraphs 30 to 39.

that it had no intention of abiding by the obligations to which it had, however, freely agreed. In these circumstances, it cannot reasonably claim to have collaborated in good faith with the Community.

existence of a reliable and operational control system.

86. It must therefore be concluded that the Hellenic Republic has not provided evidence that the delay in establishing the olive cultivation register and the computerised file was due to an absolute impossibility.

89. Finally, with regard to the reasons for the deficiencies or inadequacies in the control system put in place by the Hellenic Republic, the latter refers to reasons of a social or political character. In particular it claims that strikes in the public sector and the opposition of the Minister for National Defence to the overflying of the territory by foreign aircraft prevented the aerial and ground survey which would have enabled the plots of olive trees to be identified and, as a result, the land register and olive cultivation register to be established.

87. As regards the third complaint, according to which an effective alternative control was put in place in Greece, it should be noted that the Hellenic Republic does not dispute that the system which it established does not enable the plots to be identified at municipal level. It also does not deny having failed to implement the majority of the proposed withdrawals of approval from mills at which irregularities had been detected by the Agency. The absence of a system capable of locating the plots declared and of identifying their owner prevents the aid management and control authorities in question from verifying the accuracy of the declarations made and, as a result, from avoiding the risk of multiple declarations for the same plot. It cannot therefore be concluded that such a system is effective.

90. As I have already indicated, the Court has already accepted that a Member State may invoke an absolute impossibility of properly implementing a Community decision. However, in such a case it is the responsibility of the Member State invoking that impossibility to prove the existence of this type of circumstance before the expiry of the period laid down by the Community decision in question.³⁹

91. In this case, I have already indicated that the Hellenic Republic did not notify the difficulties which it was encountering in establishing the Community control instruments until after the expiry of the periods laid down by Regulations Nos 154/75 and

88. It follows that the Hellenic Republic has not provided any specific and significant evidence capable of establishing the

³⁹ — Case 213/85, at paragraph 22, and Case C-50/94, at paragraph 39.

3061/84, amended by Regulations Nos 3453/80 and 98/89.

regarding the expenditure in respect of aid for the production of olive oil must be rejected.

92. Moreover, it has been held that ‘apprehension of internal difficulties [of a political, economic or social nature] cannot justify a failure by a Member State to apply Community law correctly’⁴⁰ unless that State can show ‘that action on its part would have consequences for public order with which it could not cope by using the means at its disposal’.⁴¹ On this point, the Hellenic Republic has not in any way satisfied the requirements of this case-law.

93. As a result, it is apparent that the Hellenic Republic has not provided evidence that it was absolutely impossible for it to meet its Community obligations.

94. It therefore follows that the Hellenic Republic has not provided any specific and significant evidence capable of rebutting the Commission’s statements and analysis or the consequences which have resulted therefrom.

95. In those circumstances, I ask you to hold that the claim of the Hellenic Republic

B — *The corrections applied in respect of aid for permanent abandonment of areas under vines*

1. The Community regulations on the ‘wine’ sector

96. Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas⁴² aims to encourage the abandonment of areas under vines by granting premiums, in order to bring production definitively back to the level of demand.⁴³ The amount of these premiums varies according to the productivity of the areas concerned, in order to take account of the cost of the grubbing-up operations and the loss of replanting rights and also the loss of future income.⁴⁴

97. According to Article 2(3) of Regulation No 1442/88, the yield per hectare of the areas referred to in Article 2(1)(b)⁴⁵ is to

40 — Case C-265/95 *Commission v France* [1997] ECR I-6959, at paragraph 55.

41 — *Ibidem*, at paragraph 56.

42 — OJ 1988 L 132, p. 3.

43 — First recital.

44 — Third recital.

45 — This involves areas of more than 25 ares cultivated with wine-grape varieties.

be calculated on the basis of the average yield declared for the recipient's holding and on an on-the-spot assessment, carried out by the competent body of the Member State concerned prior to grubbing up, of the productive capacity of the wine-growing area to be grubbed up.

98. Under Article 4(2) of Regulation No 1442/88, the grant of the premium is to be subject to a written declaration in which the applicant undertakes to grub up the vines on the areas in respect of which the premium has been applied for, or to have them grubbed up, before 15 May of the year following that in which the application is submitted.

99. Commission Regulation (EEC) No 2729/88 of 31 August 1988⁴⁶ lays down detailed rules for the application of Regulation No 1442/88. In the interests of ensuring that the system runs efficiently and can be supervised, the nature of the information to be entered on the application for a premium must be laid down and provision must be made for the checking of that information.⁴⁷ Before the premium is paid or, should an advance have been made, the security released, the production capacity of the areas to be grubbed up should be assessed and it should be verified that grubbing up of said areas has actually taken place.⁴⁸

100. Under Article 4(1)(a) of Regulation No 2729/88, applications for premiums are

to include the following information as regards the holding: the applicant's name and address; the area under vines, whether these be a specialised crop or grown in a mixed system; the area under vines, in hectares, ares and centiares, to be grubbed up; the age and method of training of the vines to be grubbed up; the varieties concerned; the date of the scheduled grubbing up, and the request for an advance, if applicable. In this case, proof that the security has been furnished is to accompany the request.

101. According to Article 4(2) of Regulation No 2729/88, the competent body of the Member State is to verify the information mentioned in paragraph 1, register the declaration provided for in Article 4(2) of Regulation No 1442/88, determine the production capacity of the wine-growing areas to be grubbed up on the basis of their age, state of upkeep and the proportion of missing vines, among other considerations, calculate the yield per hectare of the areas concerned, in accordance with Article 2(3) of Regulation No 1442/88, and notify the applicant of the level of premium granted, after allowing him to submit his own observations.

102. Under Article 6(1) of Regulation No 2729/88, the competent body is, at the applicant's request and within two months of the complete grubbing up of the vines located on the plots identified, to

⁴⁶ — OJ 1988 L 241, p. 108.

⁴⁷ — Fourth recital.

⁴⁸ — Sixth recital.

verify that the operation has taken place and certify when it took place.

103. Council Regulation (EEC) No 2048/89 of 19 June 1989 lays down general rules on controls in the wine sector.⁴⁹

104. Article 3(1) of that regulation provides 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, including the grubbing up of vines.

105. Article 3(2) thereof provides that 'The controls in [these] areas ... shall be carried out either systematically or by sampling. In the case of sampling, Member States shall ensure by their number, nature and frequency that controls are representative of the whole of their territory and correspond to the scale of the wine-sector products marketed or held with a view to their marketing'.

106. Council Regulation (EEC) No 2392/86 of 24 July 1986 establishing

a Community vineyard register⁵⁰ aims to enable the Community to obtain the vital information on production potential and trends in order to ensure the proper functioning of the common organisation of the market in wine and, in particular, of the Community arrangements on intervention and planting, and monitoring measures.⁵¹ According to the eleventh recital, by virtue of the information which it contains, the register constitutes a vital instrument for management and monitoring. The competent authorities assigned to management and those responsible for monitoring must accordingly have access thereto.

107. Article 4(1) of Regulation No 2392/86 initially set the deadline for establishing the vineyard register in its entirety at 27 July 1992. However, considering that some Member States encountered technical difficulties in complying with that deadline, the Council extended this to 31 December 1996 by Regulation (EC) No 1549/95 of 29 June 1995.⁵²

108. Likewise, Article 4(4) of Regulation No 2392/86, as added by Regulation No 1549/95 and amended by Council Regulation (EC) No 1596/96 of 30 July 1996,⁵³ states that Member States which, on 1 July 1995, have not yet established a vineyard register or which have only estab-

50 — OJ 1986 L 208, p. 1.

51 — Second recital.

52 — OJ 1995 L 148, p. 37.

53 — OJ 1997 L 206, p. 38.

49 — OJ 1989 L 202, p. 32.

lished a partial register are, before 31 December 1998, to establish reference charts covering the entire area under vines.

3. The actions

111. According to the Hellenic Republic, the flat-rate corrections of 2% imposed by the Commission in respect of aid for permanent abandonment of areas under vines are based on a misassessment of the facts.

2. Facts

109. Summary Reports No 1, amended by the supplement of 14 June 1996, and No 2 state that the Hellenic Republic has failed to apply the recommendations, communicated by official letters and referred to in the summary reports for 1990 and 1991, indicating that the persons assigned to check the premium application documents must not be the same as those assigned to carry out on-site physical checks that the information appearing in these applications is truthful.

112. It does not dispute the absence of either a vineyard register or a land register but claims that the many checks carried out both on documents and on the spot by specific persons with good knowledge of the local situation constitute efficient ways of validly combatting the risks of fraud against Community interests. It also does not dispute the difficulties in identifying plots but declares that it has full confidence that the responsible officers of the municipalities can overcome this problem. It claims that the EAGGF does not put forward any specific fact confirming the existence of fraud or incorrect declarations.

110. It is stated in these two summary reports that this situation is the result of the absence of a vineyard register and land register in this Member State, thereby necessitating recourse to specific persons with good knowledge of the regions being inspected and who are the only ones able to verify the accuracy of the information appearing in the applications submitted by the producers declaring that they have grubbed up the vines and applying for the related premiums.

113. The Commission, for its part, maintains its complaints. It also refers to inspections carried out by the EAGGF services in 1995 which identified irregularities leading to serious doubts about the efficiency of the national checks. The national inspectors were therefore not in a position to justify the areas admitted in the context of the administrative procedures for the control and approval of aid applications. This situation therefore revealed the total absence of any assurance that the informa-

tion provided by the aid applicants was truthful with regard to the location of plots, their precise area and the identity of the owner.

granting premiums for grubbing up vines to wine-growers agreeing to this. Its main aim is therefore the regulation of the common market in wine.

114. The Commission notes the risks of fraud inherent in an empirical system which is based entirely and solely on the reliability of certain officials. It stresses the urgency of putting in place a reliable and objective system enabling the EAGGF services to carry out all the verifications needed for the proper management and administration of Community funds and to check that the premiums intended to compensate wine-growers who permanently abandon wine-growing areas have been duly granted by the competent Greek authorities.

117. Regulation No 2729/88 which lays down detailed rules for the application of the system put in place by Regulation No 1442/88 requires Member States to devise a system enabling the truthfulness of the declarations on the location, area and characteristics of the vines grubbed up, and their owner, to be checked. Member States are therefore required to establish accurate, reliable and unquestionable control instruments which may be used both by the national authorities assigned to monitoring and management operations and by the outside services assigned to ensure the regularity of the expenditure incurred by the Guarantee Section of the EAGGF.

4. Assessment

115. I consider that the objections of the Hellenic Republic regarding the corrections applied by the EAGGF in respect of aid for permanent abandonment of areas under vines for 1992 and 1993 must be rejected.

118. The Community control instruments recommended by Regulation No 2392/86, as amended, are the establishment of a vineyard register and a land register. These are compulsory from 31 December 1996.⁵⁴

116. It should be noted that Regulation No 1442/88 aims to encourage the abandonment of wine-growing areas in order to bring wine production in the Community definitively back to the level of demand by

119. These Community instruments have a dual objective. First, they are intended to ensure effective control of the regularity of aid for permanent abandonment of areas under vines granted by Member States. Second, they enable the common agricul-

⁵⁴ — Article 4(1) of Regulation No 2392/86, amended by Regulation No 1549/95.

tural policy for the market in wine to be administered effectively.⁵⁵ They are also intended to be tools for managing the market in 'wine' and are therefore meant to help the Community legislature develop the common agricultural policy and provide for and anticipate the measures to be taken to meet the needs of wine-growers, professionals operating in this market and consumers. The introduction of a control system, based on objective and unquestionable elements and usable not only by the national authorities but also by the Community authorities, is therefore essential to the proper functioning of the common agricultural policy for the market in wine.

120. It is undeniable, and in no way disputed by the Hellenic Republic, that the system put in place in Greece relies exclusively on the competence, reliability and rigour of certain officials who alone are able to verify the accuracy of premium applications. Such a system does not meet the requirements of the Community regulations. The information supplied by the Hellenic Republic cannot be effectively verified by either national or Community outside services. Consequently, the system put in place does not enable the objectives of Regulations Nos 1442/88 and 2392/86 to be achieved. It must accordingly be concluded that, by maintaining such a system, the Hellenic Republic is infringing the aforementioned Community regulations.

121. Moreover, it should be noted that Article 4(4) of Regulation No 2392/86, as inserted by Regulation No 1549/95 and amended by Regulation No 1596/96, requires Member States which, on 1 July 1995, have not yet established a vineyard register to establish, before 31 December 1998, reference charts covering the entire area under vines.

122. Given that the Hellenic Republic has acknowledged in the course of these proceedings that the control and management system put in place in Greece does not enable the plots, areas and owners of the vines to be identified, and in view of its claim that this problem can be overcome by on-the-spot checks carried out by communal officials, I doubt that the Hellenic Republic is in any position to comply with the aforementioned obligations by the specified deadlines.

123. Under Article 8(1) of Regulation No 729/70,⁵⁶ the proper functioning of the common agricultural policy also requires that Member States take all the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly and also to *prevent* irregularities.

⁵⁵ — Second recital of Regulation No 2392/86.

⁵⁶ — Point 9 of this Opinion.

124. I therefore conclude that it is essential in order both to respect the financial interests of the Community and to define a coherent common agricultural policy for the market in wine that the Hellenic Republic should accept the EAGGF recommendations by ensuring that the persons assigned to management and those assigned to monitoring aid applications for permanent abandonment of areas under vines are not the same and by establishing accurate records of plot areas, their location and characteristics and the owners of those plots.

126. Regulation (EEC) No 727/70 of the Council of 21 April 1970⁵⁷ established a common organisation of the market in raw tobacco.

127. The aim of the common organisation of the market in raw tobacco is 'to introduce common provisions of such a kind as will provide Community producers with guarantees equivalent, as regards employment and living standards, to those afforded under national marketing arrangements.'⁵⁸

125. It therefore follows that the Hellenic Republic has not provided any significant evidence capable of rebutting the Commission's analysis or the consequences which have resulted therefrom. Under these circumstances, I ask you to find that the pleas in law regarding the expenditure in respect of aid for permanent abandonment of areas under vines for 1992 and 1993 must be rejected.

128. To attain these objectives, 'an intervention policy based on a system of norm and intervention prices, which includes the obligation to buy in at the intervention price and the granting of premiums to users who purchase leaf tobacco direct from Community producers',⁵⁹ is established.

C — The corrections applied in respect of tobacco (production in excess of maximum guaranteed quantity)

129. That regulation provides for a system of maximum guaranteed quantities under which, if the quantities fixed for a variety or group of varieties are exceeded, the prices and premiums relating thereto are to be reduced by applying the provisions laid down in Article 4(5) of Regulation No 727/70, amended by Council Regula-

1. The Community regulations on the 'tobacco' sector

⁵⁷ — OJ, English Special Edition 1970 (I), p. 206.

⁵⁸ — Fifth recital.

⁵⁹ — Sixth recital.

tions (EEC) Nos 1114/88 of 25 April 1988,⁶⁰ 1251/89 of 3 May 1989,⁶¹ 1329/90 of 14 May 1990,⁶² 3577/90 of 4 December 1990⁶³ and 860/92 of 30 March 1992.⁶⁴

130. Article 7a(1) of Regulation No 727/70, inserted by Council Regulation (EEC) No 2267/88 of 19 July 1988,⁶⁵ provides that, notwithstanding Articles 2, 4 and 6, 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.

131. However, Article 7a(2) thereof states that the Council may 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.

132. Annex III to Council Regulations (EEC) Nos 1738/91 of 13 June 1991⁶⁶ and 2062/92 of 30 June 1992⁶⁷ fixing, for the 1991 and 1992 harvests, 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, defines the recognised production areas for each Community-produced tobacco variety.

133. Commission Regulation (EEC) No 2824/88 of 13 September 1988⁶⁸ lays down detailed rules for the application of the system of maximum guaranteed quantities in the tobacco sector 'in particular as regards the determination of the quantity actually produced during a given harvest, the calculation of any reduction in prices and premiums, the granting of the advance and the payment of prices and premiums before determination of actual production'.⁶⁹

134. According to Article 1 of that regulation, 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.

135. Article 3(1) of Regulation No 2824/88, as amended by Commission Regulation

60 — OJ 1988 L 110, p. 35.

61 — OJ 1989 L 129, p. 16.

62 — OJ 1990 L 132, p. 25.

63 — OJ 1990 L 353, p. 23.

64 — OJ 1992 L 91, p. 1.

65 — OJ 1988 L 199, p. 18.

66 — OJ 1991 L 163, p. 13.

67 — OJ 1992 L 215, p. 22.

68 — OJ 1988 L 254, p. 9.

69 — First recital.

(EEC) No 2907/92 of 6 October 1992,⁷⁰ provides 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.

2046/90 of 18 July 1990,⁷¹ 2267/91 of 29 July 1991,⁷² 2178/92 of 30 July 1992⁷³ and 2065/93 of 27 July 1993.⁷⁴ Article 2 of these Regulations fixes the date of entry into force of these limits as the third day following their publication in the *Official Journal of the European Communities*.

136. Article 3(2) of Regulation No 2824/88 provides that any balance is to be paid and the security shall be released or forfeited after actual production is determined in accordance with Article 1.

139. In accordance with Article 15 of Regulation No 727/70, Regulation (EEC) No 1726/70 of the Commission of 25 August 1970 fixes the procedure for granting the premium for leaf tobacco⁷⁵ which, under Article 3 of Regulation No 727/70, is granted to natural or legal persons who purchase leaf tobacco direct from Community producers.

137. The actual production of each variety or each group of varieties of tobacco, the prices and premiums to be paid in application of the system of maximum guaranteed quantities and the overrun of the maximum guaranteed quantities shall be fixed by the Commission by regulation.

140. Article 6(1) of Regulation No 1726/70 provides that the right to the premium is to accrue as soon as the tobacco leaves the place in which it was under supervision.

138. This information, relating to the tobacco harvests for 1989 to 1992, is set out in Commission Regulations (EEC) Nos

141. Article 7(1) thereof states that the premium is to be due as soon as the right to the premium accrues.

70 — OJ 1992 L 291, p. 6.

71 — OJ 1990 L 187, p. 23.

72 — OJ 1991 L 208, p. 26.

73 — OJ 1992 L 217, p. 75.

74 — OJ 1993 L 187, p. 26.

75 — OJ, English Special Edition 1970 (II), p. 587.

142. Regulation No 1726/70 lays down a system of checking declarations made in order to obtain the premium. Thus, with regard to checking cultivation contracts in order to ensure that the variety of tobacco indicated is actually cultivated on the areas declared, Article 2c(1) of that regulation, inserted by Commission Regulation (EEC) No 1197/92 of 8 May 1992,⁷⁶ provides that the 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 enterprise.

consolidated and, in some cases, adjusted in the light of the experience gained'.⁷⁸

145. Article 47(2) of Regulation No 3665/87 states that the documents relating to payment of the refund or release of the security must be submitted, except in cases of *force majeure*, within twelve months following the date on which the export declaration was accepted. Article 48(3)(b) provides that, where a refund has been paid in advance in accordance with Article 22 and proof that all the requirements laid down by Community rules have been complied with is furnished within six months of expiry of the periods set in Article 47(2), (4) and (5), the amount to be reimbursed is to be 85% of the security.

143. Article 2c(4) of Regulation No 1726/70, amended by Regulation No 1197/92, states that the Member States are to take any further measures necessary for the application of this regulation.

2. Facts

144. In addition, 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 products⁷⁷ states that, for reasons of clarity and administrative efficiency, 'the rules concerned should be

146. The first complaint made by the Commission against the Hellenic Republic in Summary Reports Nos 1 and 2 is that the latter delayed in recovering the overpaid premiums after the maximum guaranteed quantities of tobacco were exceeded.

147. According to the Commission, it is apparent both from the spirit and the letter

⁷⁶ — OJ 1992 L 124, p. 31.

⁷⁷ — OJ 1987 L 351, p. 1.

⁷⁸ — First recital.

of Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93 that, in order to force economic operators to comply with the new maximum guaranteed quantities, Member States are to recover the amount of those premiums even before the new tobacco harvest starts.

be recovered. Noting that these recoveries which should have occurred by September 1993 were spread over 31 months, the Commission proposed, by analogy with the result of the conciliation procedure for 1992, calculating a rate of interest of 10% over an average of 15.5 months on the total amount recovered late, or a correction of GRD 1 950 445 999, to which should be added the unrecovered amount. The total amount of the proposed correction was therefore GRD 2 002 118 984.

148. Summary Report No 1 points out that the Hellenic Republic spread this recovery over 41 months, whereas it should have seized in September 1992 the securities lodged for that purpose. According to the Commission, this action rendered the relevant rules ineffective from a financial point of view. This situation was also aggravated by the depreciation in the national currency in question.

151. *In addition*, Summary Report No 1 sets out three other types of irregularity which also had the result of causing the maximum guaranteed quantities of tobacco to be exceeded. The Hellenic Republic is therefore criticised firstly for the failure to check the cultivated areas, secondly for the cultivation of the Virginia tobacco variety in ineligible communes and thirdly for the failure to release within the periods set the securities lodged.

149. Following the conciliation procedure, the Commission proposed 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.

3. The actions

150. With regard to 1993, Summary Report No 2 points out that, on 31 March 1996, the Hellenic Republic had recovered only part of the overpaid premiums. The sum of GRD 51 672 958 still remained to

152. The Hellenic Republic disputes all the corrections applied in respect of tobacco (production in excess of the maximum guaranteed quantity).

153. *On the first complaint*, the Hellenic Republic acknowledges the facts but contends that the Commission was unfounded in demanding the immediate recovery of the premiums unduly granted. It maintains that it follows from Articles 6 and 7 of Regulation No 1726/70 that the amounts by which the premium is reduced because the maximum guaranteed quantities have been exceeded must be reimbursed when the tobacco is released from supervision, that is when the end recipient, the tobacco processor, accrues the right to the premium.

154. According to the Hellenic Republic, the legal system described by the Commission assumes that a specific and fixed date for the recovery of the amounts unduly received was set by regulation so that all Member States could use the same method and so that competition could develop under equal conditions for all.

155. Moreover, contrary to the Commission's arguments, its interpretation would not have any dissuasive effect on potential defrauders as the regulations fixing the maximum guaranteed quantities are always adopted at the end of July, that is to say, at a time when it is too late for processors and producers to be required to comply with the maximum guaranteed quantities thus defined.

156. In the alternative, if the Court were to agree with the Commission's analysis, the Hellenic Republic requests that it be allowed to benefit from the deduction of the sums granted to the companies required to reimburse premiums unduly received which have initiated legal proceedings and been granted interim relief in the form of a protection order.

157. The Commission maintains this complaint based on Article 2 of Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93.

158. In its opinion, any late recovery, in this case aggravated by the depreciation of the Greek drachma in relation to the ecu, threatens the objective of the aforementioned regulations which consists in subsidising only tobacco production not exceeding the maximum guaranteed quantities. In addition, any delay in recovering unduly paid premiums could only create inequalities between Greek processors and those of other Member States with the risk of disrupting the functioning of the common organisation of the market.

159. Finally, on the alternative claim made by the Hellenic Republic, the Commission considers that the interim stays of execution granted by the Greek courts are a matter of internal relations between the Greek authorities and the parties concerned and do not affect the obligations of the

Member States arising from the Community regulations.

160. *On the second complaint*, the Hellenic Republic contends that, immediately after the adoption and publication of Regulation No 1197/92 in May 1992, the Greek Tobacco Board (hereinafter the 'EOK') adopted the first instructions for its application, while Ministerial Decree No 27988/92, which provided a legal basis for the penalties in cases of irregularities detected during checks on cultivated areas, was adopted on 3 September 1992.

161. It does not admit having either acknowledged or committed the irregularities complained of by the Commission, particularly in the Nafplion Region, and claims that it provided all the evidence in this respect. It adds that the checks carried out by the competent Greek services on processing companies involved a proportion of 5% of the cultivation contracts and declarations registered per variety or group of varieties. On the other hand, it maintains that the Commission has not submitted any evidence in support of its allegations. It claims that the majority of the checks were carried out in time and that, although delays may have occurred, with checks being carried out after the harvest, this did not prejudice the Community finances as an alternative control system of proven reliability had been put in place.

162. With specific regard to the Nafplion Region, the Hellenic Republic contends that, although the records bear dates between 10 and 26 September 1992, the checks were in fact properly carried out before those dates. It states that those documents were postdated in order to comply with the ministerial decree adopted on 3 September 1992 and to provide a legal basis for any liabilities arising out of the checks. It therefore maintains that the corrections are unlawful and unjustified.

163. The Commission maintains its second complaint and contends that the late publication, on 3 September 1992, of the ministerial decree on on-the-spot checks of cultivated areas, whereas Regulation No 1197/92 was in force from 12 May 1992, created serious doubts as to whether the checks had actually been carried out when the tobacco was still in the fields, given that the harvest started in July and ended in August and September.

164. These doubts were reinforced by the fact that, when checks were carried out in Greece, particularly in the Nafplion Region, fundamental deficiencies were noted in the control system. With regard to the records drawn up, it was accordingly noted that these were all drawn up by the same person (same handwriting, same signature, same pen) and that the dates appearing on these records were between 10 and 26 September 1993. The managers of the local EOK acknowledged the theoretical nature of these records while maintaining that the actual checks had taken place previously. However, they were unable to prove this either during the visit

by the EAGGF officers or subsequently. Furthermore, they also admitted that the percentage of checks was no more than than 3%.

165. The Commission points out that, although the Greek authorities claimed that the checks carried out in other regions were properly executed, they could not prove this despite repeated requests by the Commission. In those circumstances, the Commission set 28 February 1995 at the latest as the deadline for forwarding further information in connection with the clearance of accounts for 1992. It was not until a year after this deadline had passed that the Hellenic Republic submitted various documents from which it emerged that the checks had been carried out between October and November 1992, that is at a time when the tobacco was no longer in the fields. These documents also proved that the checks involved a percentage of only 4.88%.

166. The Commission essentially concluded, because of the late adoption of the measures for checking the tobacco in the fields, but also for all the above reasons, that the checks laid down by Regulation No 1197/92 had not been carried out.

167. *On the third complaint* involving the corrections applied following irregular declarations on the cultivation of the Virginia tobacco variety in ineligible communes, the Hellenic Republic puts forward several arguments. First, it maintains that the allegedly ineligible municipalities are situated in regions in which tobacco is traditionally cultivated and that, given the homogenous nature of these communes, they must be regarded as eligible by the Commission.

168. Second, it contends that the premiums granted for the cultivation of the Virginia tobacco variety, judged to be irregular on the basis of Regulation No 727/90, were granted in application of a structural programme and that it was normal for farmers making major investments to put in place the infrastructure essential to the cultivation of this variety, in particular drying rooms, to be compensated. Thus, to impose on them a correction for an activity encouraged by the Community would not only be unfair but also odd.

169. Finally, it states that the Virginia and Basmas varieties were exempt from the application of Article 7a of Regulation No 727/70.

170. The Commission maintains its third complaint. It claims that the Member States cannot decide arbitrarily on whether or not to apply the conditions fixed by the Com-

munity regulations on premiums and that it is solely for the Council to decide on the eligible municipalities and the tobacco varieties to benefit from the intervention prices and premiums relating thereto.

171. It also states that, as the regulations on the common organisation of the market in tobacco and the measures adopted under the structural programmes have different aims, the Hellenic Republic cannot invoke the application of rules in respect of structural programmes in order to escape the provisions on the common organisation of the market in tobacco.

172. *On the fourth complaint*, alleging failure to release securities within the periods set by the Community regulations, the Hellenic Republic maintains that the Commission committed a manifest error in assessing the facts.

173. The Hellenic Republic claims that it can show, with the support of factual evidence, that the securities were actually released in time.

174. The Commission points out that, with regard to the clearance of accounts for 1992, the deadline for forwarding further information was set at 28 February 1995. It states that this evidence had not been provided by the Hellenic Republic by 12 January 1996, the date of the meeting with the conciliation body. As this evidence was communicated for the first time during the present action, it considers that it has not had a chance to verify, within the prescribed periods, whether those facts are true. It therefore concludes that this claim must be rejected.

4. Assessment

175. I consider that the pleas in law put forward by the Hellenic Republic regarding the corrections applied by the EAGGF in respect of tobacco (production in excess of maximum guaranteed quantity) must be rejected.

176. *On the first plea*, relating to the late recovery of overpaid premiums, I maintain that the interpretation proposed by the Hellenic Republic, to the effect that the recovery of the premiums unduly paid because the maximum guaranteed quantities have been exceeded must take place when the end processor has acquired his right to the premium, that is when the tobacco is released from supervision, cannot be accepted essentially for four reasons.

177. *First*, it is settled case-law⁷⁹ that only intervention undertaken in accordance with the Community rules is to be financed by the EAGGF and that, where the Commission has doubts concerning a transaction which it considers to be justified by the surrounding facts or circumstances, it must withhold the sums corresponding to that transaction unless the Member State produces sufficient evidence to dispel those doubts.⁸⁰

No 727/70, inserted by Regulation No 2267/88, which expressly provides that the prices and premiums are to apply only to varieties of tobacco from communes where that variety has already been grown. It must accordingly be concluded that the right of subsequent economic operators is conditional on the right of prior operators.

179. *Second*, both the aim and general scheme of Regulations Nos 727/70, 2046/90, 2267/91, 2178/92 and 2065/93 confirm this interpretation.

178. The correction applied by the Commission is explained by the fact that the Hellenic Republic did not check, under the conditions laid down by the Community regulations, the accuracy of the declarations made by the tobacco producers. The Hellenic Republic does not dispute the facts. It should therefore have refused to finance those measures as soon as it realised that they were of a doubtful nature and should not have claimed that it was entitled to wait for the end processor's right to the premium to accrue before recovering the premiums unduly paid, as that processor could no longer invoke a right to the premium laid down by the Community regulations in this respect. It should be noted that the end processor is entitled to the premium only as a result of the tobacco producer being entitled to this. That follows from Article 7a(1) of Regulation

180. The recitals in the preambles to Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93 expressly state that, where production in excess of the maximum guaranteed quantity is detected, the recovery of the overpaid premiums must occur immediately. The first recital in those regulations therefore states that, where the quantities fixed for a variety or a group of varieties are exceeded, the system put in place by Regulation No 727/70 requires that 'the prices and premiums concerned must be reduced'. The second recital in those same regulations states that 'Regulation No 2824/88 lays down that, before 31 July of the year following that of harvest, the Commission must, for each of the varieties or groups of varieties of tobacco for which a maximum guaranteed quantity has been fixed, determine in particular on the basis of the figures notified by the Member States, the quantity actually produced which, if exceeded, causes the prices and premiums for the variety or group of varieties concerned to be reduced by 1% for each 1% by which the maximum guaranteed quantity is excee-

⁷⁹ — Case C-48/91, at paragraph 14, and Case C-253/97, at paragraph 6 (referred to in footnote 7 of this opinion).

⁸⁰ — Case C-240/97, at paragraph 39.

ded'. Under Article 2 of those regulations, their date of entry into force is set as the third day following their publication in the *Official Journal of the European Communities*.

vention prices; and those carried out on tobacco processors who receive the premiums. The checks carried out on tobacco producers must necessarily, in order to be effective, be carried out before the tobacco harvest and, therefore, before the checks carried out on the tobacco processors which necessarily occur at a later date.

181. It must accordingly be concluded that, on the entry into force of Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93, the Member States were required to demand the immediate reimbursement of premiums paid over and above the maximum guaranteed quantities, that is before the start of the following harvest.

182. The general scheme of Regulations Nos 727/70 and 2824/88 also confirms this analysis.

183. In this respect it should be noted that Regulation No 727/70 establishes two types of measure: first, the obligation to buy in tobacco produced by Community producers in accordance with the quantities and intervention prices fixed annually; and, second, the granting of premiums to processors who purchase leaf tobacco direct from these producers. At the same time, Regulation No 2824/88, which lays down detailed rules for the application of the system of maximum guaranteed quantities in the tobacco sector, distinguishes between two types of check: those carried out on tobacco producers who receive the inter-

184. In this case, in so far as the correction applied by the Commission was due to the lack of monitoring of the accuracy of the declarations made by tobacco producers, it was for the Hellenic Republic to recover the premiums unduly paid without waiting for the tobacco to be released from supervision, that is at the moment when the end processor's right to the premium accrued. I have already shown that, in this type of situation, that operator cannot claim such a right.

185. It follows that, first, when checks carried out on tobacco producers reveal that irregularities have been committed, the right to the premiums concerned is unfounded and, second, on the entry into force of Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93, the Member States were required to demand the immediate reimbursement of the premiums paid over and above the maximum guaranteed quantities, that is before the start of the following harvest. It is clear that, when irregularities are detected among tobacco producers, the rights to the prices and premiums concerned lapse. Therefore, Articles 6 and 7 of Regulation No 1726/70, which lay down the conditions for granting the pre-

mium, are not applicable. Any other interpretation would result in permitting unguaranteed quantities of tobacco to be financed.

nearly four years after the irregularities were detected.

186. *Third*, the Hellenic Republic's argument that the Commission's analysis was not valid owing to the failure to set by regulation a specific and fixed date for the recovery of the amounts received unduly, so that all the Member States could use the same method and so that competition could develop under equal conditions for all, ignores the fact that the interpretation proposed by the Hellenic Republic has the same disadvantages as the interpretation which it disputes. In addition, it does not take account of the fact that the main objective of the abovementioned Community regulations in the tobacco sector is to subsidise production of tobacco complying with the maximum quantities and not to equalise the conditions of competition between the various producers.

187. *Fourth*, the system put in place in Greece cannot be claimed to have any dissuasive effect and therefore does not have any practical effect in that the economic operators involved in doubtful transactions are penalised only after these irregularities have been committed. Thus, the Hellenic Republic does not dispute that the amounts at issue were in this case recovered

188. As for the alternative claim of the Hellenic Republic, it should be noted that internal relations between the Greek authorities and the parties concerned, particularly following decisions issued by national courts, do not affect the obligations of Member States arising from the Community regulations.⁸¹ This is why the claim made by the applicant must also be rejected.

189. *On the second plea*, relating to the absence of checks on the areas and the Virginia variety cultivated in ineligible communes, it should be noted that, in accordance with settled case-law, the Member State in respect of which the Commission has given reasons for its decision finding an absence of, or defects in, inspection procedures carried out in application of the operating rules of the Guarantee Section of the EAGGF 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'.⁸²

81 — See, for example, by analogy, Case C-263/96 *Commission v Belgium* [1997] ECR I-7453, at paragraph 27.

82 — Case C-253/97, at paragraph 7.

190. It is clear and in no way disputed by the Hellenic Republic that the measures needed to implement the checks imposed by Regulation No 1197/92, which entered into force on 12 May 1992, were not adopted until September 1992. As a result, the unannounced on-the-spot checks on the cultivated tobacco and on the declared areas established by Article 2c(1) of that regulation could not have been effectively carried out. The explanations and information given by the Hellenic Republic do not enable the findings of the EAGGF to be rebutted.

191. It follows that the Hellenic Republic has not provided any specific and significant evidence capable of establishing the existence of a reliable and operational control system.

192. *On the third plea*, relating to the corrections applied following irregular declarations of the cultivation of tobacco of the Virginia variety in ineligible communes, I would ask the Court to find that the Hellenic Republic has no basis for maintaining that the Commission should have regarded as eligible the communes situated in regions in which the cultivation of tobacco is traditionally practised.

193. It should be noted that, although, under Article 7a(1) of Regulation No 727/70, inserted by Regulation No 2267/88, the prices and premiums 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, Article 7a(2) states that the Council may determine, at the same time as the prices and premiums, the varieties to which paragraph 1 does not apply.

194. As the Commission has very properly pointed out, the Member States are not competent unilaterally to change the conditions of application of the Community regulations on premiums for tobacco production. As Article 7a(1) and (2) of Regulation No 727/70, inserted by Regulation No 2267/88, expressly states that only the communes in which a specifically indicated variety of tobacco is grown are able to benefit from the prices and premiums of Regulations Nos 2046/90, 2267/91, 2178/92 and 2065/93, it is not for the Hellenic Republic to extend the effects of the aforementioned Community regulations to other communes.

195. Moreover, it cannot be maintained that the concept of 'communes' within the meaning of the aforementioned provisions

extends to all communes in a given production area. It should be observed that the Council makes a distinction between these two concepts and that, where it wishes a measure to be applied to a production area and not to a commune, it expressly indicates this.⁸³

the provisions of Article 7a of Regulation No 727/70, inserted by Regulation No 2267/88, that the Virginia and Basmas tobacco varieties are exempt from the conditions of application of the intervention prices and premiums laid down by these regulations.

196. In addition, as the Commission very rightly pointed out, the premiums granted to tobacco *processors* in application of the common organisation of the market in raw tobacco defined by Regulation No 727/70 and the premiums granted to tobacco *producers* in the context of financing structural programmes with a view to testing certain tobacco crops have different aims. Regulation No 727/70 does not aim to finance investments by tobacco producers who agree to switch to experimental crops but rather, as already pointed out, to introduce common provisions of such a kind as will provide Community producers with guarantees equivalent, as regards employment and living standards, to those afforded under national marketing arrangements.

198. It follows that the Hellenic Republic has not proved any valid justification for the failures to comply with the obligations arising from Article 7a of Regulation No 727/70.

199. *On the fourth and last plea* put forward by the Hellenic Republic in support of its application for annulment of the correction applied by the Commission with regard to the release of securities within the periods set by the Community regulations, it should be noted that this Member State does not dispute the interpretation of the rules of law put forward by the Commission, but confines itself to claiming that the Commission committed a manifest error in assessing the facts submitted to it.

197. Finally, contrary to what the Hellenic Republic maintains, it is not apparent from

200. The Commission, without being contradicted on this point by the Hellenic Republic, states that it received belatedly, in fact during the present action, the evidence which that Member State claims to have and that, because it was produced

83 — See, in particular, Article 1 of Regulation No 1738/91 which states: 'For the 1991 harvest, the reference qualities and recognised production areas for each of the varieties of Community-produced leaf tobacco referred to in Article 2(3)(b) and (c) of Regulation (EEC) No 727/70, shall be as set out respectively in Annexes I and III to this regulation.'

so late, it has not been able to decide on its relevance.

applied by the Commission in respect of the securities lodged and not released within the periods set must be rejected.

201. It should be recalled that, in accordance with settled case-law, the Member State against which the Commission has given reasons for its decision finding an absence of, or defects in, inspection procedures carried out in application of the operating rules of the Guarantee Section of the EAGGF 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'.⁸⁴

III — The claim specific to Case C-46/97

A — The correction applied in respect of production aid for cotton

1. The Community regulations on the 'cotton' sector

202. As the Member State did not consider it useful to submit this evidence in sufficient time to enable the Commission to carry out all the checks that might prove to be necessary, in particular any checks on the spot or hearings, and as I am also unable to carry out these checks, it must therefore be considered that the Hellenic Republic has not provided any significant evidence capable of rebutting the Commission's analysis or the inferences which it has drawn from it and that the plea regarding the corrections

203. The Council adopted Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton.⁸⁵

204. Article 10 of that regulation provides that the producer Member States are to set up a system of controls to, in particular:

⁸⁴ — Case C-253/97, at paragraph 6.

⁸⁵ — OJ 1981 L 211, p. 2.

- ascertain the quantity of unginned Community cotton which has entered each cotton ginning undertaking; 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.
- ascertain the quantity of unginned Community cotton which has been ginned;
- ensure that the minimum price is complied with.

207. Under Article 8(2) of Regulation No 1201/89, 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. They shall take such adjustments into account in determining the total area declared.

208. According to Article 12(1) of Regulation No 1201/89, the agency appointed by the producer Member State for this purpose is to verify in particular:

205. According to Article 12 of the regulation, the provisions of Regulation No 729/70, on the financing of the common agricultural policy,⁸⁶ are to apply by analogy to the matters dealt with in Regulation No 2169/81.

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

206. 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,⁸⁷ all cotton

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

⁸⁶ — See points 6 to 9 of this Opinion.

⁸⁷ — OJ 1989 L 123, p. 23.

(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.

209. 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.

210. According to Article 13 of Regulation No 1201/89, the stock records provided for in Article 6(2) of Regulation No 2169/81 are to contain information on (separately in respect of unginned cotton harvested inside the Community and unginned cotton harvested outside the Community) the quantities of unginned cotton, ginned cotton, seed, oil and cotton linters in stock on the first day of each month.

2. Facts

211. Summary Report No 1 points to serious deficiencies in fundamental elements of the system of management and control of production aid for cotton. These deficiencies consequently justify the flat-rate corrections of 10% of expenditure applied during the clearance of accounts for 1992 of the Guarantee Section of the EAGGF and in respect of certain expenditure for 1993.

212. The Commission states that, having noted for the 1991/92 marketing year a significant and unexplained gap between the Greek authorities' production estimate and the volume for which aid was claimed, and in view also of the previous history of this product,⁸⁸ it found it necessary to call on the Hellenic Republic, on 10 July 1992, to carry out an investigation on the basis of Article 6 of Regulation No 595/91 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.⁸⁹

213. The first stage of the investigation, conducted jointly by the Commission, the

⁸⁸ — Summary reports for 1989 and 1990.

⁸⁹ — See points 15 to 19 of this Opinion.

competent Greek authorities and an external firm of auditors, from 26 October 1992 to 4 December 1992, found irregularities and serious deficiencies in the Greek Cotton Board's control arrangements. In particular it identified the lack of real instruments for checking areas declared by producers.

214. Despite repeated demands from the EAGGF, the second stage of the investigation, scheduled for January to June 1993 and intended to involve checks to be carried out at ginning undertakings, was never undertaken by the Greek authorities, as the Minister for Agriculture acknowledged in a letter of 14 June 1994.

215. Although the competent Greek authorities, on the one hand, initiated legal proceedings and imposed administrative penalties in relation to the 1991/92 marketing year and, on the other hand, adopted new measures to improve the quality of the national control system and issued new national instructions to be followed in the 1992/93 and 1993/94 marketing years, the EAGGF drew the attention of those authorities to the inadequate nature of those measures. They specifically asked the Hellenic Republic to complete the investigation in progress and, in accordance with Article 6 of Regulation No 595/91, to communicate to the EAGGF the final conclusions of the investigation and a precise evalua-

tion of the financial implications of the irregularities uncovered.

216. As those requests were never satisfied, the Commission concluded that, with regard to 1991, the Hellenic Republic had failed to fulfil its obligations under Article 8 of Regulation No 729/70 which provides that Member States are to take the measures necessary to prevent and deal with irregularities and to recover sums lost as a result of irregularities detected.⁹⁰ A financial correction of 25% of expenditure was therefore proposed for the EAGGF financial year of 1991.

217. Subsequent checks carried out by the EAGGF revealed that the competent Greek authorities had still not communicated information on the progress of the investigation requested in 1992 under the provisions of Regulation No 595/91, that they were still using in 1992 the same management and control system for sums paid in respect of production aid for cotton as in 1991 and that they had not applied the new instructions adopted until after the 1993/94 marketing year. As a result of those persistent deficiencies and irregularities, while

⁹⁰ — Ibidem, points 9 and 10.

acknowledging the progress made in the quality of cooperation, owing to the efforts of the joint working party, the EAGGF proposed a correction of 25% of the expenditure declared by Greece for the 1992 financial year in respect of cotton.

3. The action

220. The Hellenic Republic claims that the correction of 10% imposed by Decision 96/701/EC 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.

218. In addition, Summary Report No 1 stated that, with regard to the additional aid for small producers, the results of various investigations carried out in the sector showed the inefficiency of the management and controls relating thereto and proposed applying the same rate of correction to this expenditure declared by the Hellenic Republic. However, it was pointed out that this rate could be reduced if improvements were observed.

221. While acknowledging that irregularities were committed and detected with regard to a number of economic operators, the Hellenic Republic maintains that these irregularities were neither encouraged by, nor the result of, the absence or negligence of the competent national departments in the management and control arrangements. It maintains that these arrangements were satisfactory as they enabled the perpetrators of this fraud to be detected and the competent national courts to impose fines and administrative penalties, so that nearly all the sums wrongly paid were recovered.

219. The supplement to Summary Report No 1, of 23 September 1996, pointed out that the EAGGF investigations carried out in 1995 and 1996 had confirmed the improvement of the situation. Thus it was noted that adequate measures had been adopted by the Greek authorities to restore cooperation with the Commission and to ensure, as from the 1995/96 marketing year, that checks on cotton production aid and aid to small producers were in conformity with the rules. The EAGGF, with regard to the 1992 financial year, therefore proposed reducing the correction of 25% originally notified to the Hellenic Republic to a flat rate of 10% and to refund the difference.

222. According to the Hellenic Republic, in the absence of negligence or lack of diligence on the part of the competent Greek authorities, the flat-rate correction of 10% is not justified.

223. The Commission maintains its complaints and claims that the applicant has not provided any evidence showing that the findings on the basis of which it acted in the

clearance of the accounts for 1991 and 1992 were incorrect. It observes in this respect that the investigation which was 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 control missions by the EAGGF 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.

224. The purpose of those controls 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.

225. In the course of those controls many irregularities were detected. The EAGGF thus pointed out that in no nome⁹¹ had the data collected in order to determine the land been either computerised for the purpose of setting up the equivalent of a land register or used to check the accuracy of the declarations of cultivation and to determine the areas declared by more than one producer.

226. In addition, it pointed out that the plots and land cultivated had not been delimited in an objective manner.

227. It also made it clear that the provisions of Article 13 of Regulation No 1201/89 had not been complied with as the ginning undertakings were unable to compare the quantities of cotton entered with the corresponding production of ginned cotton. This was due to the fact that the raw product was stored according to the quality and type of harvest and not in chronological order of entry and that the procedure used by the Greek authorities to determine the weight of a batch of ginned cotton did not meet the conditions fixed in Annex B to Regulation No 1201/89.

228. Finally, it was observed that the records which should have been made of the unannounced checks were either unusable or unsatisfactory. Reading these very brief documents did not enable the significance and extent of these checks to be determined, which proved the formal nature of these documents. During the on-the-spot checks, the absence of any 'plausibility' control in terms of the undertaking's energy consumption, staff and ginning capacity was noted. This situation was a result of the lack of the computer equipment necessary to monitor 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. As a result, it was impossible to apply correctly and verify the application of the percentage of aid to the various quantities processed.

229. The Commission points out that these findings correspond to the criteria defined

⁹¹ — Administrative district under Greek law which corresponds to the second degree of decentralisation in Greece.

in Document No VI/216/93⁹² to which the Greek authorities refer. The failures on the part of those authorities involved checks which are essential for guaranteeing the regularity of EAGGF expenditure and were not limited solely to fraud committed by certain parties.

230. The Commission does not dispute that the Hellenic Republic took action against the persons who committed irregularities. However, it points out that that action in individual cases does not remedy the previously detected deficiencies and defects of the control system.

231. The Commission also acknowledges that the Greek authorities made genuine efforts to improve the control system, and this, moreover, was the reason for the reduction of the correction from 25 to 10%. However, for 1992, it states that it would not be permissible to disregard the fact that the expenditure in question was incurred in the almost total absence of effective controls.

4. Assessment

232. In a line of decisions the Court has held that the Member State against which the Commission has given reasons for its decision finding an absence of, or defects in, inspection procedures carried out in application of the rules of operation of the Guarantee Section of the EAGGF 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'.⁹³

233. It is clear, first, that the substantiated account of the facts produced by the Commission⁹⁴ reveals serious deficiencies and negligence in regard to fundamental elements of the control system and the conduct of controls intended to guarantee the regularity of expenditure. This logically justified the conclusion that there was a high risk of widespread loss to the EAGGF. Second, it is clear that the irregularities acknowledged by the Hellenic Republic in respect of 1992 are the direct consequence of the absence of an effective, reliable and objective control system adopted by that

92 — See points 20 and 21 of this Opinion.

93 — Case C-253/97, at paragraph 7.

94 — See points 223 to 229 of this Opinion.

State. Moreover, the Hellenic Republic seems to acknowledge this implicitly in so far as it agreed to adopt new control measures and to ensure compliance with them, particularly by issuing new instructions applicable as from the 1995/96 marketing year.

237. Accordingly, I would ask the Court to find that the pleas relating to the expenditure in respect of production aid for cotton for 1992 must be rejected.

234. In addition, it should be noted that the Hellenic Republic does no more than reject the evidence submitted by the Commission without, however, adducing the slightest evidence in rebuttal capable of invalidating the Commission's analysis or its inferences from that analysis.

IV — The claims specific to Case C-243/97

A — The correction applied in respect of failure to observe the deadlines for making payments to recipients of olive oil production aid

235. The Court has also held that, in an action for annulment based on Article 173 of the EC Treaty, the Court's sole task is to consider whether the pleas in law raised in support of the application are well founded. The Court is not required to increase or reduce any corrections which may prove to be inappropriate in the light, in particular, of the criteria laid down in Document No VI/216/93.⁹⁵

236. This is why I consider that the plea designed to procure a downward revision of the correction of expenditure effected by the Commission must also be dismissed.

1. The relevant Community provisions

238. Article 12b(1) of Regulation No 3061/84 which lays down detailed rules for the application of the system of production aid for olive oil, as amended by Regulation No 928/91,⁹⁶ provides that, after fixing the average of the yields for the four previous marketing years, the Member States are to pay the production aid to growers whose average production is less than the quantity indicated in the first indent of Article 5(2) of Regulation

⁹⁵ — See, by analogy, Case C-253/97, at paragraph 8.

⁹⁶ — See points 38 to 40 of this Opinion.

No 136/66, amended by Council Regulation (EEC) No 1915/87 of 2 July 1987⁹⁷ and Regulation No 2210/88,⁹⁸ within 90 days of submission of the aid application accompanied by evidence of processing of the olives at an approved mill.

vision under which Greece and Portugal were authorised to pay the aid for the 1992/93 marketing year by 15 October 1993 at the latest.

2. Facts

239. In accordance with Article 12b(2) of Regulation No 3061/84, as amended by Regulations Nos 98/89⁹⁹ and 928/91,¹⁰⁰ the Member States are to pay the balance of the production aid to producers whose average output is at least equal to the quantity referred to in the first indent of Article 5(2) of Regulation No 136/66, amended by Regulations Nos 1915/87 and 2210/88, within 90 days of the determination by the Commission of the actual production for the marketing year concerned and of the unit amount of the production aid provided for in Article 17a(3) of Regulation No 2261/84, amended by Regulation No 3500/90.¹⁰¹

241. Summary Report No 2 states that the EAGGF introduced a programme to check automatically whether or not the ceilings and deadlines for payments specified in the Community regulations were being complied with. With regard to the payment of aid to recipients after the deadlines, the programme is designed automatically to refuse expenditure according to a sliding scale of penalties which takes account of the number of months of delay.

240. Commission Regulation (EEC) No 2796/93 of 12 October 1993 amending Regulation No 3061/84¹⁰² added a new subparagraph to the abovementioned pro-

242. Those provisions, after they had been discussed and approved at a meeting of the EAGGF Committee on 26 and 27 January 1993, were confirmed in Document No VI/488/92.

243. All the Member States were officially informed about any overrun payment deadlines which affected them.

244. The exchange of information led to the decision that the correction which

97 — OJ 1987 L 183, p. 7.

98 — See points 28 to 30 of this Opinion. This provision states: '[T]he aid shall be granted to growers who are members of a producer group ... and who have an average production of at least 300 kilograms of olive oil per marketing year, on the basis of the quantity of olive oil actually produced by them'.

99 — See point 49 of this Opinion.

100 — See points 39 and 40 of this Opinion.

101 — *Ibidem*, point 40.

102 — OJ 1993 L 255, p. 1.

would be applied in this respect to the Hellenic Republic would amount to GRD 1 322 433 341.

to plead that concept as valid justification for the deficiencies of its administration, all the more so as the deadlines already constitute an extension of the deadlines set by Regulation No 3061/84 which was granted in view of Greece's difficulties.

3. The actions

245. The Hellenic Republic claims that this correction is unjustified on grounds of *force majeure*. In its submission, the competent departments did their utmost to pay the recipients by the deadlines, but the volume of cases checked and the purpose of the exercise, to check the regularity of payments, meant that those deadlines could not be scrupulously observed.

4. Assessment

248. It is settled case-law¹⁰³ that *force majeure* must be understood as referring to unusual and unforeseeable circumstances which are beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised.

246. The Commission points out that *force majeure* constitutes an exception to the general rule of strict compliance with the legislation in force and must, as such, be interpreted and applied restrictively. According to the case-law of the Court, the concept of *force majeure* implies either an absolute impossibility or an unusual circumstance beyond the control of the operator, the consequences of which could be avoided only at the price of excessive sacrifices, despite the exercise of all due care.

249. In this case, the Hellenic Republic cites an excessive workload caused by the influx of applications to be dealt with in the short period prescribed by Regulation No 2796/93.

250. Those circumstances, as very properly pointed out by the Commission, cannot be described either as beyond the control of

247. It contends that in this case the Hellenic Republic has no basis on which

¹⁰³ — See, in particular, Case C-263/97 *First City Trading and Others* [1998] ECR I-5537, at paragraph 38, and Case C-376/97 *Wettwer* [1999] ECR I-3449, at paragraph 30.

the party relying on them, or as unforeseeable, and therefore do not constitute a case of *force majeure*.

B — *The correction applied in respect of exports of olive oil from Greece to non-member countries*

1. The relevant Community provisions

251. The urgent processing, in accordance with the short time-limits imposed by Regulation No 2796/93, of the numerous applications submitted to the Greek authorities was the result of the failure by those authorities to comply with the initial deadlines set by Regulation No 3061/84, as amended by Regulation No 98/89.

252. As observed by the Commission in its answer to the Court's written question, Regulation No 2796/93 aimed to extend retroactively the deadlines which had not been observed by certain States, including the Hellenic Republic, because of the time required to carry out the relevant checks in certain remote areas, but still within the marketing year which ended on 15 October 1993. The aim was not therefore to impose on Member States an obligation to make all payments within one day of the entry into force of that regulation but to acknowledge the payments made after those deadlines, by simultaneously setting the deadline at the end of the 1992/93 marketing year.

253. As a result, I would ask the Court to reject the plea submitted by the Hellenic Republic as unfounded.

254. Article 8(1) of Regulation No 729/70, on the financing of the common agricultural policy,¹⁰⁴ provides that the 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 Fund are actually carried out and are executed correctly, to prevent and deal with irregularities, and to recover sums lost as a result of irregularities or negligence.

255. Similarly, as we have seen, Article 8(2) of that regulation provides that, in the absence of total recovery, the financial consequences of irregularities or negligence are to be 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 are to be paid to the paying authorities or bodies and deducted by them from the expenditure financed by the EAGGF.

256. In addition, Article 9(1) of Regulation No 729/70 provides that Member States

¹⁰⁴ — See points 6 to 12 of this Opinion.

are to make available to the Commission all information required for the proper working of the EAGGF and are to take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot. Member States are to communicate to the Commission provisions laid down by law, regulation or administrative action which they have adopted for the application of legal acts of the Community relating to the common agricultural policy in so far as those acts have financial consequences for the EAGGF.

1990 to 1993. Containers supposedly containing olive oil actually contained other products which were not eligible for export refunds.

259. The result of the wide-ranging investigation carried out in 1993 and 1994 in Cyprus, Lebanon and Greece by the Commission, with which the competent Greek authorities were sometimes associated, confirmed the reported fraud.

257. Finally, I would also recall that Article 9(2) of that regulation states that officials appointed by the Commission to carry out inspections on the spot are to have access to the books and all other documents relating to expenditure financed by the EAGGF. At the request of the Commission and with the agreement of the Member State, inspections or inquiries concerning the transactions referred to in that regulation are to be carried out by the competent authorities of that Member State. Officials of the Commission may also participate.

260. The investigators found, during missions carried out in Cyprus and Lebanon, that a very small number of containers declared as having been exported to Australia or the United States of America had actually given rise to false shipping declarations from Piraeus to the port of the country of destination. It was found that the majority of the containers had only transited through the port of Limassol to be shipped to Beirut rather than Australia or the United States of America. Through the assistance of the Australian customs authorities, it was found that only a very small percentage of containers declared as exported to Australia actually arrived there and that the majority of those that did arrive were declared to contain goods other than olive oil.

2. Facts

258. Summary Report No 2 notes that, through 'unofficial' documents communicated to the Commission, the EAGGF became aware of fraudulent exports of olive oil from Greece in the period from

261. The investigations conducted in Lebanon also revealed that imports of olive oil into Lebanon were prohibited irrespective of their origin unless accompanied by an

import licence issued by the competent Lebanese authorities; that, during the years 1990 to 1992, no imports of olive oil declared to be of Greek origin had taken place, and that the consignments which were declared, on their exportation from Greece, to be of olive oil and were transhipped via Cyprus, were declared as soya oil on their arrival in Lebanon.

262. Finally, the Lebanese authorities had noted that imports of soya oil from Egypt had significantly increased in 1992. An analysis of the statistics showed that, from the middle of that year, Greece had claimed to have exported large quantities of olive oil to Egypt whereas trade in this type of product had previously been virtually non-existent. A check on the movements of containers revealed that several containers had in fact been unloaded in the port of Limassol, although they had been declared as having been shipped directly to Egypt.

263. Through the inquiry conducted in Cyprus in September 1994 by the Commission and intended to establish the content of the suspect containers, their transport arrangements and their destination, it was discovered that two Greek companies had made false declarations in Greece while exporting what was supposed to be olive oil to non-member countries in 1992 and 1993. Examination ad hoc of the Cypriot customs documents revealed that the pro-

duct actually exported was soya oil. The investigators also discovered that a Greek company had made false declarations in Greece while exporting what was supposed to be olive oil to non-member countries during 1990 to 1993.

264. Faced with such extensive fraud and given the Community rules in force which require Member States to subject all exports of olive oil to non-member countries to physical control, the investigators wondered about the extent of the Hellenic Republic's responsibility in this fraud.

265. The mission to the Piraeus customs office and the National Laboratory in November 1994 revealed that this fraud had been made easier by the lack of actual and efficient controls in Greece. Thus, it emerged that no appropriate custom control had taken place, that the National Laboratory was unable to provide the slightest trace of analyses certifying the nature and quality of the oil and that, although the existence of the fraud had already been established, no steps had been taken to put a stop to the practices that were continuing or to investigate the conduct of the departments concerned.

266. The investigators concluded that, by tolerating without demur a situation in which the customs authorities and National Laboratory certify, contrary to the facts, that a physical control of exports of olive oil had been carried out to the extent of

100%, the Hellenic Republic had helped to foster a feeling of impunity among certain unscrupulous exporters who were able to engage in a fictitious trade in olive oil since they knew perfectly well that they did not run the slightest risk of a penalty for fraud. In so doing, the Hellenic Republic had infringed the provisions of Article 8 of Regulation No 729/70.

to be subject to the financial consequences of irregularities detected, as permitted by the provisions of Article 8(2) of Regulation No 729/70.

3. The actions

267. Summary Report No 2 indicates, moreover, that the Greek authorities were unable to prove that, in their campaign against unlawful activities, they took sufficient action to initiate the legal proceedings (both criminal and civil) that were necessary in order to put an end to that kind of traffic. Moreover, they did not inform the EAGGF of the total amount of fraud committed by the operators subject to inquiry, despite the insistence of the EAGGF.

270. The Hellenic Republic does not dispute either the existence or the amount of the fraud described in Summary Report No 2, but considers that in this case the financial consequences of that fraud are not attributable to it. It relies on the same arguments as those which it put forward in the inquiry and conciliation procedure.

268. As a result, the amounts relating to the companies in question were calculated on the basis of the quantities declared to have been exported to Egypt and Lebanon in 1992 and 1993. The financial corrections applied under Article 8(2) of Regulation No 729/70 amounted to GRD 2 031 347 293 and GRD 2 413 383 890.

271. The Commission, for the reasons expounded in Summary Report No 2, maintains its complaints.

4. Assessment

269. The Greek authorities did not dispute the inquiry's conclusions but have claimed that, as they cooperated extensively with the Commission both in identifying and penalising the defrauders, they should not

272. It must be observed that the Hellenic Republic does not dispute either the facts or the amount of the fraud detected by the EAGGF. In addition, it has not adduced any evidence capable of rebutting these findings, particularly with regard to the total absence of physical controls by the customs

authorities and the National Laboratory of exports of olive oil to non-member countries and the inferences which the Commission has drawn from this.

aforesaid agency without delay of any problem arising in that respect.

273. Consequently, I can only ask the Court to find that the Hellenic Republic has failed to comply with its obligations under Article 8 of Regulation No 729/70 and, in accordance with settled case-law,¹⁰⁵ to reject the plea relating to the correction applied in respect of exports of olive oil from Greece to non-member countries.

The intervention agency shall check the quality of the stored product at least once a year. Samples for that purpose may be taken when the annual inventory is established as provided for in Article 3 of Commission Regulation (EEC) No 618/90.¹⁰⁷

C — The corrections applied in respect of the public storage of cereals and missing quantities of durum wheat not declared

275. The aforementioned Article 3 provides that the annual accounting inventory is to be verified by the storekeeper during the last two months of the financial year. That verification is to entail verification of the physical presence of the goods in accordance with a form, a model for which is given in an annex.¹⁰⁸

1. The relevant Community provisions

274. Commission Regulation (EEC) No 689/92 of 19 March 1992 fixes the procedure and conditions for the taking-over of cereals by intervention agencies.¹⁰⁶ Article 5 of that regulation provides that '[A]ny operator who stores bought-in products on behalf of the intervention agency shall monitor their presence and state of preservation regularly and inform the

276. Council Regulation (EEC) No 3492/90 of 27 November 1990 lays down the factors to be taken into consideration in the annual accounts for the financing of intervention measures in the form of public storage by the EAGGF, Guarantee Section.¹⁰⁹

¹⁰⁵ — Case C-253/97, at paragraph 6.

¹⁰⁶ — OJ 1992 L 74, p. 18.

¹⁰⁷ — Commission Regulation of 14 March 1990 laying down rules for drawing up the annual inventory of agricultural products in public storage (OJ 1990 L 67, p. 21).

¹⁰⁸ — This form must indicate the type of product stored, the name of the storekeeper, the description of the batch, the batch number, the weight entered, the weight checked, the weight verified and so on.

¹⁰⁹ — OJ 1990 L 337, p. 3.

277. Article 2(1) of that regulation provides that 'Member States shall take all measures necessary to ensure the proper preservation of products which have been the subject of Community intervention.'

points out that quality checks by approved laboratories on lots offered for purchase were not being carried out on anonymous samples as required by ethical practice in this field and that the storage itself was unsatisfactory due to the absence of any systematic measuring of warehouses and silos by officials responsible for the physical controls.

278. Article 2(2) adds that 'Member States shall notify the Commission, at its request, of additional administrative provisions adopted for the application and administration of intervention measures.'

279. Article 5(1) provides that '[A]ll missing quantities and quantities which have deteriorated because of the physical conditions of storage, transport, processing or by reason of overlong preservation shall be recorded in the accounts as having left the intervention stock on the date when the loss or deterioration was established.'

281. The EAGGF sent the Hellenic Republic specific recommendations so that appropriate measures could be adopted to remedy these irregularities. The attention of the Hellenic Republic was therefore drawn to the need to recruit qualified officials responsible for checking the lots offered on their entry into intervention stock or immediately thereafter, for physically inspecting the cereals and for verifying their quality. The Hellenic Republic was also asked to entrust national inspectors with the task of carrying out unannounced checks on the stocks and to do the same at regional level.

2. Facts

The public storage of cereals

280. Summary Report No 2 describes persistent deficiencies and negligence in the administration and control system for the public storage of cereals in Greece. Thus, it

282. The EAGGF pointed out that the Greek authorities were aware of the comments made by their departments and have adopted specific measures with a view to improving the control system. Thus, with regard to the annual inventory, additional checks on the quantity and quality of stocks have been carried out on the initiative of the competent Greek authorities.

283. Given that the Greek authorities, having acknowledged that the control system put in place was deficient, started to make improvements to it, the EAGGF proposed applying a flat-rate correction of 2% in respect of the public storage of cereals. The amounts of the financial correction thus applied were GRD 82 224 025, GRD 54 471 120 and GRD 97 597 184.

3. The actions

The public storage of cereals

The missing quantities of durum wheat

284. Summary Report No 2 mentions the fact that, following the inquiry conducted by the EAGGF in Greece in 1992, 1993 and 1994, it was discovered that 22 721.164 tonnes of durum wheat were missing from the intervention stocks contrary to the declarations made in that respect.

287. Although acknowledging the facts set out against it, the Hellenic Republic disputes the flat-rate correction of 2% which was applied. It claims that its cooperation in good faith and its willingness to deal with the negligence and deficiencies detected should exempt it from any penalty.

285. The EAGGF treated those missing quantities as having left the stock accounts in May 1993.

288. It also states that under its domestic law it cannot retroactively and unilaterally require the amendment of terms of contracts concluded between the intervention agency and the economic operators even if the contracts in question contain clauses contrary to the provisions of the Community regulations in force.

286. Noting that the Greek authorities had not taken account of this factor in their annual declaration, the Commission notified the Hellenic Republic on 25 April 1996 that a correction in the amount of GRD 1 531 502 946 would have to be applied.

289. The Commission maintains its complaints. It points out, and this has not been denied by the Hellenic Republic, that the administration and control system at issue was retained until 1997 and that, conse-

quently, the negligence and deficiencies detected in this case actually continued during the 1993 financial year.

4. Assessment

The public storage of cereals

The missing quantities of durum wheat not declared

290. The Hellenic Republic acknowledges the facts but claims, first, that some amounts corresponding to missing quantities have subsequently been repaid and, second, that some sums have not been received because court proceedings are still pending in this respect. As regards the latter sums, the Hellenic Republic states that the EAGGF will be credited with the corresponding amounts either voluntarily or through compensation at the end of the current court proceedings.

291. The Commission maintains its complaints and contends that, under Article 5 of Regulation No 3492/90, the missing quantities having left the intervention stock must be recorded in the accounts on the date when the loss was established.

292. It points out that the Hellenic Republic has not raised any objection to the consequences of the notification of this correction.

293. According to settled case-law,¹¹⁰ only intervention undertaken in accordance with Community rules is to be financed by the EAGGF and, where the Commission has doubts concerning a transaction which it considers to be justified by the surrounding facts or circumstances, it must withhold the sums corresponding to that transaction unless the Member State produces sufficient evidence to dispel those doubts.¹¹¹

294. Similarly, it has unfailingly been held that, in an action for annulment under Article 173 of the EC Treaty, the Court's only task is to consider whether the pleas in law raised in support of the application are well founded. It is not required to increase or reduce any corrections which may prove to be inadequate in the light, in particular, of the criteria laid down in Document No VI/216/93.¹¹²

295. Finally, the internal relations between the Greek authorities and the parties concerned, particularly following decisions delivered by national courts, do not affect

¹¹⁰ — Case C-48/91, at paragraph 14, and Case C-253/97, at paragraph 6 (referred to in footnote 7 of this Opinion).

¹¹¹ — Case C-240/97, at paragraph 39.

¹¹² — See, by analogy, Case C-253/97, at paragraph 8.

the obligations of Member States arising from the Community regulations.¹¹³

to apply them differently, for example by providing compensation.

296. It follows that the pleas of the Hellenic Republic relating to the correction applied in respect of the public storage of cereals must be rejected.

300. Finally, with regard to the argument pleading pending court proceedings in justification of the delay in repaying the sums unduly received, I have already said that the relations between the Greek authorities and the parties concerned, particularly following decisions delivered by the competent national courts, do not affect the obligations of Member States arising from the Community regulations.

The missing quantities of durum wheat not declared

297. It should be pointed out that the Hellenic Republic has acknowledged the facts set out against it by the Commission.

301. Consequently, it follows from all the foregoing considerations that the pleas raised by the Hellenic Republic in these cases must be rejected in their entirety.

298. In addition, it is expressly stated in Article 5 of Regulation No 3492/90 that the missing quantities of durum wheat must be recorded in the accounts as having left the intervention stock on the date when the loss was established.

302. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if these have been applied for.

299. The Commission is required to comply with the rules thus laid down by the Community regulations and cannot derogate from them by allowing Member States

303. That provision falls to be applied in these two cases.

304. In Cases C-46/97 and C-243/97, the Hellenic Republic must therefore bear its own costs and pay those incurred by the Commission.

¹¹³ — See, for example and by analogy, Case C-263/96, at paragraph 27.

Conclusion

305. I therefore conclude that the Court should:

In Case C-46/97

- (1) dismiss the application;
- (2) order the Hellenic Republic to bear its own costs and pay those incurred by the Commission.

In Case C-243/97

- (1) dismiss the application;
- (2) order the Hellenic Republic to bear its own costs and pay those incurred by the Commission.