

Case T-243/05

Hellenic Republic

v

Commission of the European Communities

(EAGGF — Guarantee Section — Expenditure excluded from Community financing
— Arable crops — Olive oil — Financial audit — Period of 24 months)

Judgment of the Court of First Instance (Second Chamber), 12 September
2007 II - 3478

Summary of the Judgment

1. *Agriculture — EAGGF — Clearance of accounts*
(Council Regulations Nos 729/70, Art. 5(2)(c), and 1258/1999, Art. 7(4), fifth subpara.;
Commission Regulation No 1663/95, as amended by Regulation No 2245/1999, Art. 8(1),
first and third subparas)

2. *Agriculture — EAGGF — Clearance of accounts*

3. *Acts of the institutions — Regulations — Regulation prescribing specific control measures*

1. Both under Article 5(2)(c) of Regulation No 729/70 on the financing of the common agricultural policy and under the fifth subparagraph of Article 7(4) of Regulation No 1258/1999 on the financing of the common agricultural policy, which place a temporal limit on the expenditure which may be affected by a refusal of EAGGF financing, the period of 24 months is to be calculated as from the time when the Commission communicates to the Member State concerned the results of its checks, that is to say, the on-the-spot inspections in the Member States by the Commission's services. The procedural guarantee granted, in the form of the period of 24 months, by the said provisions is linked only to that communication of the results of the checks and not to an evaluation of the expenditure which the Commission proposes to exclude. It is the results of the Commission's checks which constitute the basis of any correction and which must be communicated to the Member State as soon as possible in order that it may remedy the defects found without delay and, consequently avoid fresh corrections in the future.

included in the Commission's second communication to the Member State concerned following the bilateral discussions, in accordance with the third subparagraph of Article 8(1) of Regulation No 1663/95 laying down detailed rules for the application of Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section, as amended by Regulation No 2245/1999, the period of 24 months is still to be calculated, pursuant to Regulations Nos 729/70 and 1258/1999, as from the first communication which sets out the results of the checks, as provided by the first subparagraph of Article 8(1) of Regulation No 1663/95.

That position does not affect the procedural rights of the Member States. Decisions on clearance of EAGGF accounts are taken at the conclusion of an adversarial procedure, during which the Member States concerned are provided with all the guarantees necessary for them to present their point of view.

It follows that, even if the evaluation of the expenditure to be excluded is

(see paras 41-44)

2. In the matter of the financing of the common agricultural policy by the EAGGF, the Commission is not required to demonstrate exhaustively that the checks carried out by the national authorities are inadequate, or that the data submitted by them are incorrect, but to adduce evidence of serious and reasonable doubt on its part regarding the checks or data. The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of EAGGF accounts and, consequently, it is for that State to adduce the most detailed and comprehensive evidence that its inspections or figures are accurate and, if appropriate, that the Commission's statements are incorrect.
3. Where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of the argument that another system of supervision would be more effective, even if alternative controls have already been organised.

(see para. 57)

(see paras 59, 60)