

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

12 September 2007*

In Case T-243/05,

Hellenic Republic, represented by G. Kanellopoulos and E. Svolopoulou, acting as Agents,

applicant,

v

Commission of the European Communities, represented by H. Tserepa-Lacombe and L. Visaggio, acting as Agents, assisted by N. Korogiannakis, lawyer,

defendant,

ACTION for annulment of Commission Decision 2005/354/EC of 29 April 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2005 L 112, p. 14), in as much as it excludes certain

* Language of the case: Greek.

expenditure incurred by the Hellenic Republic in the sectors of arable crops and olive oil and in respect of financial audits,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges,

Registrar: C. Kantza, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2007,

gives the following

Judgment

Legal background

- ¹ Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), as last amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), established the general rules applicable to the financing of the common

agricultural policy. Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), replaced Regulation No 729/70 and applies to expenditure incurred after 1 January 2000.

- 2 The Guarantee Section of the EAGGF finances, under Articles 1(2)(b) and 3(1) of Regulation No 729/70 and Articles 1(2)(b) and 2(2) of Regulation No 1258/99 and within the framework of the common organisation of the agricultural markets, intervention intended to stabilise those agricultural markets, undertaken according to Community rules.

- 3 Under Article 5(2)(c) of Regulation No 729/70 and Article 7(4) of Regulation No 1258/99, the Commission is to decide on the expenditure to be excluded from the Community financing where it finds that the latter has not been effected in compliance with Community rules. When evaluating the amounts to be excluded, the Commission is to take into account the nature and gravity of the infringement and the financial loss suffered by the Community.

- 4 The fifth subparagraph of Article 5(2)(c) of Regulation No 729/70 provides that '[a] refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned'. The fifth subparagraph of Article 7(4) of Regulation No 1258/1999 contains an identical provision.

- 5 The detailed rules for the procedure for clearance of the EAGGF accounts are laid down by Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation No 729/70 regarding the

procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as amended, inter alia, by Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5).

6 Article 8(1) of Regulation No 1663/95 provides:

'If, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it shall notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance.

The communication shall refer to this Regulation. The Member State shall reply within two months and the Commission may modify its position in consequence. In justified cases, the Commission may extend the period allowed for reply.

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission, after consultation of the Member States, for the provision of further information or, where the Member State does not accept the invitation to a meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC. Without prejudice to the fourth subparagraph of this paragraph, that communication shall include an evaluation of any expenditure the Commission intends to exclude under Article 5(2)(c) of Regulation ... No 729/70.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force. The Commission shall, as appropriate, adopt one or more Decisions under Article 5(2)(c) of Regulation ... No 729/70 to exclude expenditure affected by non-compliance with Community rules up to the date of entry into force of the corrective measures.'

- 7 The guidelines for the application of flat-rate corrections were defined in document No VI/5330/97 of the Commission of 23 December 1997, headed 'Guidelines regarding the calculation of the financial consequences on preparation of the decision for clearance of the EAGGF Guarantee accounts' ('document No VI/5330/97'). Where the information provided by the inquiry does not permit assessment of the losses suffered by the Community on the basis of an extrapolation of those losses, by statistical means or by reference to other verifiable data, a flat-rate correction may be considered. The rate of correction applied is, in general, 2%, 5%, 10% or 25% of the expenditure declared, depending on the extent of the risk of loss.

Background to the dispute

- 8 By Commission Decision 2005/354/EC of 29 April 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the EAGGF (OJ 2005 L 112, p. 14; 'the contested decision'), the Commission excluded from Community financing, with regard to the Hellenic Republic, in the sectors of arable crops and olive oil and in matters of financial audit, the sum of EUR 26 437 135.76 for the financial years of 1996 to 1998, 2001 and 2002.

- 9 The reasons for the financial corrections made by the Commission were summarised in summary report AGRI-64241-2004 of 31 October 2004 concerning the results of the checks on the clearance of accounts of the Guarantee Section of the EAGGF pursuant to Article 5(2)(c) of Regulation No 729/70 and Article 7(4) of Regulation No with regard to export refunds, fruit and vegetables, milk products, public storage, animal premiums, arable crops, olive oil and fats, rural development and delays in payment ('the summary report').
- 10 The action relates to three types of corrections:
- a flat-rate correction of 5% concerning arable crops because of insufficient assurance provided that claims are regular, that is to say, EUR 25 361 283 for the 2002 financial year;
 - a specific adjustment of a total of EUR 200 146.68 concerning olive oil because of delays in withdrawing accreditation and the failure to impose quality penalties for the financial years of 1996 to 1998;
 - a specific adjustment of EUR 488 788.96 for failure to comply with payment deadlines (financial audit) for the 2001 financial year, broken down into EUR 455 070.44 with regard to aid for vetches and EUR 33 718.52 with regard to aid per hectare for rice.

Procedure and forms of order sought

11 By application lodged at the Registry of the Court of First Instance on 30 June 2005, the Hellenic Republic brought the present action.

12 The Hellenic Republic claims that the Court should:

— annul or, in the alternative, amend the contested decision;

— order the Commission to pay the costs.

13 The Commission contends that the Court should:

— dismiss the action;

— order the Hellenic Republic to pay the costs.

Substance of the action

- 14 The action relates to three interventions financed by the EAGGF, that is to say, those concerning arable crops, olive oil, and financial audit. It is in that order, differentiating according to those three interventions, that the Court will examine the substance of the pleas in law submitted by the Hellenic Republic.

Arable crops

Community legislation

- 15 Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1), as amended by Council Regulation (EC) No 1593/2000 of 17 July 2000 (OJ 2000 L 182, p. 4), provides that each Member State is to create such a system ('IACS'), which applies, inter alia, to the support system for producers of certain arable crops.
- 16 In accordance with Article 1(1)(a) of Regulation No 3508/92, the IACS applies, inter alia, to aid provided for by Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), replaced with effect from 1 July 2000 by Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops (OJ 1999 L 160, p. 1).

17 According to Article 2 of Regulation No 3508/92:

‘The [IACS] shall comprise the following elements:

(a) a computerised data base;

(b) an alphanumeric ISAP for agricultural parcels;

(c) an alphanumeric system for the identification and registration of animals;

(d) aid applications;

(e) an integrated control system.’

18 Article 7 of Regulation No 3508/92 states that the IACS ‘shall cover all aid applications submitted, in particular as regards administrative checks, on-the-spot checks and, if appropriate, verification by aerial or satellite remote sensing’.

19 Under Article 8 of Regulation No 3508/92:

‘1. Member States shall carry out administrative checks on aid applications.

2. Administrative checks shall be supplemented by on-the-spot checks covering a sample of agricultural holdings. For all these checks, Member States shall draw up a sampling plan.

3. Each Member State shall designate an authority responsible for coordinating the checks provided for in this Regulation.

4. National authorities may, under conditions to be laid down, use remote sensing to determine the area of agricultural parcels, identify crops and verify their status.

...’

20 Article 13(1) of Regulation No 3508/92, as amended by Council Regulation (EC) No 2466/96 of 17 December 1996 (OJ 1996 L 335, p. 1), provides that the IACS is to apply as from 1 February 1993 as regards aid applications, an alphanumeric system of identification and registration of bovine animals and the IACS referred to in Article 7 and as from 1 January 1997 at the latest as regards the other elements referred to in Article 2.

- 21 The detailed rules for applying the integrated system were laid down, for the financial years covered by the contested decision, by Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36), as amended by Commission Regulation (EC) No 2801/1999 of 21 December 1999 (OJ 1999 L 340, p. 29).
- 22 Articles 6 and 7 of Regulation No 3887/92 laid down the detailed rules for the checks to be made by the authorities of the Member States.

Summary report

- 23 Between 6 and 9 August 2001 and between 15 and 17 April 2002, the Commission carried out inspections in Greece relating to the introduction of the measures required to ensure the lawfulness and regularity of payments in the arable crop sector.
- 24 According to point B.7.1.1 of the summary report, Greece had not introduced, with regard to harvesting year 2001, either the IACS or the accreditation procedure, by which the Ministry of Agriculture had been asked, as from 16 October 1995, to have all the necessary checks carried out before making payments to beneficiaries. The Commission points out that the body responsible for making the payments (the Greek intervention agency Geniki Diefthinsi Diachiriseos Agoron Georgikon Proïonton, 'Gedidagep') continued, however, to make those payments without having evidence showing prior verification of the respective applications by other departments, in particular by some prefectures.

- 25 With regard to the implementation of the IACS, the same point of the summary report notes that the identification system for agricultural parcels ('ISAP') (see paragraph 17 above), which should have been completed on 1 January 1997 (see paragraph 20 above), had still not been completed in 2003 and that only 67.5% of the areas of arable crops and areas under forage crops have been identified in the ISAP with reference parcels on the basis of orthophotographs. Accordingly, in the Commission's view, a large section of land, amounting to 28.2% of the areas concerned, was identified using inappropriate materials, whilst 4.3% of the areas have not been identified at all.
- 26 According to the summary report, the on-site checks were of an insufficient quality and, moreover, related to a small sample of the applications for aid and thus were not sufficient to ensure appropriate verification of eligibility in 100% of cases or to prevent an undue cumulation of aid. In order to be effective, a standard inspection must be carried out before or shortly after the harvest. Since most of the crops are harvested between the end of May and the beginning of July, the Commission notes that the Greek authorities were not able to guarantee, for 2001, compliance with the conditions on which the aid was granted, since 28% of the standard inspections were carried out after 31 August. According to the Commission, this aspect is particularly important for the durum wheat crops, which are harvested in July and represent 40 to 50% of the surface area of Greek arable crops. In the summary report, the Commission also noted deficiencies in the quality of checks by remote sensing (delay in the conclusion of contracts and in follow-up visits and in communication of results to the administration, age of photos, failure to comply with recommendations as to technical tolerances).
- 27 With regard to the accreditation procedure, the Commission notes that the situation in the prefectures is unsatisfactory, particularly in terms of organisation of staff, the carrying-out of checks and the tasks performed by the farmers' trade union organisations.

The first plea: the Commission's lack of competence *ratione temporis*

— Arguments of the parties

- 28 Firstly, the Greek Government refers to the limitation introduced by the provisions referred to in paragraph 4 above. It goes on to point out that the first subparagraph of Article 8(1) of Regulation No 1663/95 specifies the content of the written communication by which the Commission is to communicate the result of its enquiries to the Member States. It also notes that the same provision stipulated, before its amendment by Regulation No 2245/1999, that the communication in question was to include an evaluation of the expenditure which the Commission proposed to exclude under Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999.
- 29 The limitation laid down by the Articles referred to in paragraph 4 above is intended to protect the Member States against the lack of legal certainty which would exist if the Commission were able to challenge expenditure effected a number of years before the adoption of a decision on its compliance with the Community rules. Moreover, that limitation has the aim of reinforcing the transparency of the procedure by informing the Member State in due time of the assessment of the financial loss and also of the proposed correction. The important role played by the Member States in the EAGGF accounts clearance procedure justifies their right to be fully informed at the different stages of the procedure and to submit their observations each time.
- 30 Consequently, the Greek Government takes the view that it is appropriate to ascertain whether each communication sent pursuant to the first subparagraph of Article 8(1) of Regulation No 1663/95 meets the requirements of that provision. In

that context, 'evaluation of any expenditure which [the Commission] may propose to exclude' must be interpreted as meaning that an indication in figures of the amount of the expenditure at issue is not necessary and that it is sufficient that the elements permitting that amount to be calculated at least approximately be provided.

31 Those evaluations cannot be called into question because of the amendment of Article 8(1) of Regulation No 1663/95 by Regulation No 2245/1999. The shifting of the obligation to evaluate the financial correction does not demonstrate an intention on the part of the legislature to abolish the protection for the Member States referred to in paragraph 28 above. On the contrary, it was intended to provide the EAGGF accounts clearance procedure with the opinion of the Member State concerned. It follows that a communication which does not include an evaluation of the expenditure which the Commission proposes to exclude cannot cause the period of 24 months laid down by Regulations No 729/70 and 1258/1999 to start to run. The case-law has confirmed that it is the second communication required under the third subparagraph of Article 8(1) of Regulation No 1663/95 which triggers the period of 24 months since it is in that communication that the Commission refers to the expenditure which it proposes to exclude.

32 In the present case, the first communication in which the Commission carried out an evaluation of the expenditure which it proposed to exclude was a letter of 16 February 2004. It follows that the Commission did not have the competence *ratione temporis* to impose a correction relating to expenditure incurred before 16 February 2002. Thus, the contested decision should be annulled in so far as it applies, in the arable crops sector, a financial correction to the expenditure for the 2001 harvest year.

33 The Commission, however, denies having communicated the results of its enquiries for the first time in the letter of 16 February 2004. It states that it had already done so in two letters of 1 March and 21 August 2002, which meet the requirements of Article 8(1) of Regulation No 1663/95.

34 Moreover, Article 8(1) of Regulation No 1663/95, as amended by Regulation No 2245/1999, no longer requires the Commission to carry out an evaluation of the expenditure to be excluded in its communication to the Member States. That communication fulfils a warning function. Moreover, a distinction must be drawn between, on the one hand, the ‘communication of findings’ referred to in the first subparagraph of Article 8(1) of Regulation No 1663/95 and, on the other, the ‘formal communication of conclusions’ referred to, initially, in the second subparagraph of that provision, then in the third subparagraph thereof following amendment by Regulation No 2245/1999. The communication of findings does not have to meet conditions of form as strict as those for the formal communication of conclusions. Accordingly, the Commission takes the view that, contrary to the submissions of the Greek Government, the letters of 1 March and 21 August 2002 do meet the requirements relating to communication of the results of its enquiries.

35 The Commission relies on a literal interpretation of the fifth subparagraph of Article 7(4) of Regulation No 1258/1999 and of the first subparagraph of Article 8(1) of Regulation No 1663/95 and concludes that the starting point for the period of 24 months is the letter in which it communicates the results of its enquiries. Leaving aside that interpretation, the purpose of the latter provision is better protection of the procedural rights of the Member States. Consequently, the Greek Government’s argument based on case-law developed under the former wording of Article 8(1) of Regulation No 1663/95 cannot succeed.

— Findings of the Court

36 It is clear from well-established case-law that Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999, on the one hand, and the first subparagraph of Article 8(1) of Regulation No 1663/95, on the other, refer to the same stage of the EAGGF accounts clearance procedure,

that is to say, the sending of the first communication by the Commission to the Member State following the checks which it has carried out. Accordingly, the first subparagraph of Article 8(1) of Regulation No 1663/95 specifies the content of the written communication required under Article 5(2)(c) of Regulation No 729/70 and the fifth subparagraph of Article 7(4) of Regulation No 1258/1999 (Case C-170/00 *Finland v Commission* [2002] ECR I-1007, paragraphs 26 and 27; Case C-158/00 *Luxembourg v Commission* [2002] ECR I-5373, paragraph 23; and Case C-300/02 *Greece v Commission* [2005] ECR I-1341, paragraph 68).

37 Before its amendment by Regulation No 2245/1999, the first subparagraph of Article 8(1) of Regulation No 1663/95 provided that the communication in question was to indicate the corrective measures to be taken to ensure future compliance with the rules in question and an evaluation of the expenditure which the Commission might propose to exclude, and refer to Regulation No 1663/95 (*Finland v Commission*, paragraph 23; *Luxembourg v Commission*, paragraph 23; and Case C-300/02 *Greece v Commission*, paragraph 69).

38 Nevertheless, the Commission's obligation to provide, in the communication which it sends to the Member State concerned under the first subparagraph of Article 8(1) of Regulation No 1663/95, an evaluation of the expenditure which it proposes to exclude was repealed by Regulation No 2245/1999. That evaluation must henceforth appear in the letter sent after the bilateral discussions, in accordance with the third subparagraph of Article 8(1) of Regulation No 1663/95, as amended.

39 The Greek Government does not dispute that the Commission is no longer required to carry out an evaluation of the expenditure to be excluded in the first letter which it sends after its enquiries. However, it submits that, although the Commission must henceforth carry out that evaluation in the second letter which it sends following the bilateral discussions and before the conciliation procedure, it is the dispatch of that letter which must from now on be regarded as the starting point for the period of 24

months. In support of its allegation, the Greek Government relies on the wording of the judgments referred to above, according to which, if the Commission does not comply with the obligations which it has imposed on itself by Regulation No 1663/95, that non-compliance may, depending on its gravity, render nugatory the procedural guarantee given to the Member States by the provisions of Regulations No 729/70 and 1258/1999, which place a temporal limit on the expenditure which may be affected by a refusal of EAGGF financing.

- 40 If, consequently, the communication of the evaluation of expenditure to be excluded forms part of 'the procedural guarantee given to the Member States by Article 5(2)(c) of Regulation No 729/70 and by the fifth subparagraph of Article 7(4) of Regulation No 1258/1999', the conclusion, according to the Greek Government, is that the period of 24 months is to be calculated as from the time when that communication is effected.
- 41 The Greek Government's argument cannot be accepted. It must be borne in mind that, both under Article 5(2)(c) of Regulation No 729/70 and under the fifth subparagraph of Article 7(4) of Regulation No 1258/1999, 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 (*Finland v Commission*, paragraph 27).
- 42 Thus the Commission is in no way required by Regulations No 729/70 and 1258/1999 to provide an evaluation of the expenditure which it proposes to exclude in order for the period of 24 months to begin to run. That requirement was laid down only in Regulation No 1663/95 before its amendment by Regulation No 2245/1999. Accordingly, the procedural guarantee granted, in the form of the period of 24 months, by the abovementioned provisions of Regulations No 729/70 and 1258/1999 is linked only to the communication of the results of the checks by the Commission and not to an evaluation of the expenditure which it proposes to

exclude. It is those results 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.

- 43 It follows that, although the evaluation of the expenditure to be excluded is now included in the Commission's second communication to the Member State concerned following the bilateral discussions, the period of 24 months is still to be calculated, pursuant to Regulations No 729/70 and No 1258/1999, as from the first communication which sets out the results of the checks.
- 44 That position does not affect the procedural rights relied on by the Greek Government. 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 (Case C-61/95 *Greece v Commission* [1998] ECR I-207, paragraph 39). In particular, since the entry into force of Regulation No 2245/1999, the Member States always have the opportunity to submit their position with regard to the findings made by the Commission at the end of its enquiries, in the letter intended for that purpose and provided for by the second subparagraph of Article 8(1) of Regulation No 1663/95, as amended, and at the time of the bilateral discussions which follow. With regard to the proposed corrections, which are communicated for the first time in the letter sent after the bilateral discussions, the Member States may present their point of view during the subsequent stages of the procedure, inter alia, by referring the matter to the Conciliation Body.
- 45 In those circumstances, the view cannot be taken that the Member States are in a situation of intolerable uncertainty, as alleged by the Greek Government, when the Commission does not inform them, in its first communication, of its evaluation of the expenditure it proposes to exclude from Community financing. Even before the amendment of Regulation No 1663/95, the evaluation of that expenditure, made by the Commission in its first application, was not definitive and, accordingly, was

liable to be reviewed in the light of the responses supplied by the Member State during the administrative procedure. Consequently, so long as a decision has not been taken as to the final correction, uncertainty as to its amount is inherent in any procedure which provides for bilateral contact prior to adoption of the definitive decision.

⁴⁶ Accordingly, it is the letter sent pursuant to the first subparagraph of Article 8(1) of Regulation No 1663/95, as amended, which marks the starting point of the period of 24 months. In the present case, the Commission communicated to the Greek authorities the results of its checks by letters of 1 March and 21 August 2002. Since the flat-rate correction applied affected only the expenditure for the 2002 financial year, it was effected in accordance with the period of 24 months laid down in the fifth subparagraph of Article 7(4) of Regulation No 1258/1999. The first plea seeking annulment must therefore be rejected.

The second plea: errors of law and of fact and inadequate statement of reasons

— Arguments of the parties

⁴⁷ Firstly, the Greek Government submits that the IACS does not constitute a check but a means of checking.

⁴⁸ Secondly, the percentage of 67.5% of land duly identified as arable crops and forage crops corresponds, in reality, to 70.5% of the surface area in respect of which payment was made. The Greek authorities have made no payment for the 4.3% of

land which has not been identified (see paragraph 25 above). That factor is important because it calls into question one of the arguments on which the Commission based the disputed correction.

- 49 Thirdly, the Greek Government states that the alphanumeric system in force before the adoption of the IACS relied on factors (plans and land registry documents, maps, etc) corresponding to those on the basis of which 28.2% of the surface area declared was identified (see paragraph 25 above).
- 50 Fourthly, before implementation of the IACS, the authorities carried out all types of checks (on-the-spot checks, cross-checks, etc) on the basis of the alphanumeric ISAP of the parcels, without doubts being raised as to its reliability, which was merely enhanced by the IACS.
- 51 It follows from the foregoing that, with regard to the 2001 harvest year, the IACS was applied to 70% of the declared surface areas, whilst, for the remainder, the Greek authorities implemented a system which, although not compatible with the IACS, was absolutely reliable and operational. Accordingly, all the payments made for the 2001 harvest year were covered by a reliable and operational system of checks.
- 52 The Greek Government challenges the assertion that Gedidagep continued to make payments without having evidence to show that checks were made on the respective applications by other departments, in particular by certain prefectures (see paragraph 24 above). Whilst noting the rigorous nature of the EAGGF accounts clearance procedure, the Greek Government points out that in 2001 Gedidagep was replaced, as a department of the Ministry of Agriculture and body responsible for payment, by Opekepe, a fact of which the Commission was aware.

- 53 The contested decision should therefore be annulled in so far as it imposes the flat-rate correction in question.
- 54 According to the Commission, the Greek Government acknowledges that the IACS was not operational but states that the Greek authorities applied different but, in their view, appropriate control systems to achieve the same result. According to well established case-law, even if alternative checks were organised, the Member States would be required to apply the specific control measures laid down by a regulation without its being necessary to assess whether any different control system applied would be more efficient.
- 55 Accordingly, even admitting that the Greek authorities did not make payments for the 4.3% of surface area which was not identified, the identification of 28.2% of surface area on the basis of a system not compatible with the IACS, and moreover not reliable, fully justifies the flat-rate correction applied. Furthermore, the IACS must be applied to all areas in order to guarantee the accuracy of the results which it gives.
- 56 With regard to the reference to the exact name of the body responsible for payments, the Commission notes the lack of relevance of that factor and the fact that Opekepe replaced Gedidagep as from 3 September 2001, whereas the enquiry in question took place in August 2001.

— Findings of the Court

- 57 According to settled case-law, in order to prove an infringement of the rules on the common organisation of the agricultural markets, 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 (Case C-247/98 *Greece v Commission* [2001] ECR I-1, paragraphs 7 to 9; Case C-278/98 *Netherlands v Commission* [2001] ECR I-1501, paragraphs 39 to 41; and Case C-329/00 *Spain v Commission* [2003] ECR I-6103, paragraph 68).

58 Thus, in the present case, it is necessary to ascertain whether the Greek Government has demonstrated the inaccuracy of the Commission's assessments or the lack of risk of loss or irregularity for the EAGGF (see, to that effect, Case C-318/02 *Netherlands v Commission*, not published in the ECR, paragraph 36) on the basis of the application of a reliable and efficient control system (see, to that effect, Case C-300/02 *Greece v Commission*, paragraph 95).

59 The argument based on the exact percentage of areas covered by the IACS must be examined jointly with the argument relating to the use of a reliable and operational alphanumeric system other than the IACS to identify 28.2% of the land declared. It is to be noted that where a regulation lays down specific measures of supervision, the Member States must apply them and it is unnecessary to examine the merits of their view that another system of supervision is more effective (see Case C-130/99 *Spain v Commission* [2002] ECR I-3005, paragraph 87, and Case C-332/01 *Greece v Commission* [2004] ECR I-7699, paragraph 62).

- 60 Accordingly, even if alternative controls have been organised, that fact cannot influence the Commission's assessments based on the failure to apply the IACS, a fact which, moreover, the Greek Government does not dispute. Consequently, given that a significant part of the areas in question was not covered by the IACS, the question whether the percentage of land covered by the application of the IACS is 67.5% or 70.5% is not decisive.
- 61 Moreover, the importance of the introduction of the integrated system should not be forgotten. The actual identification of agricultural parcels, not yet fully achieved in Greece, is a key factor in the correct application of a system linked to surface area. The lack of a reliable parcel identification system in itself implies a greater risk of loss for the Community budget (Case C-300/02 *Greece v Commission*, paragraph 97, and judgment of 17 March 2005 in Case C-285/03 *Greece v Commission*, not published in the ECR, paragraph 62).
- 62 With regard to the replacement of Gedidagep by Opekepe, the fact remains that that the Greek Government has not shown how an alleged error in the name of the paying body could affect the substance of the complaints made by the Commission.
- 63 Since the Greek Government has not succeeded in demonstrating the inaccuracy of the Commission's assessments or the lack of effect on the Community budget of the irregularities found, the second plea in law must be rejected.

The third plea: infringement of document No VI/5330/97 and of the principle of proportionality, an error of fact and inadequate statement of reasons with regard to the rate of the flat-rate correction in question

— Arguments of the parties

- ⁶⁴ The Greek Government refers to the assessments referred to in paragraphs 48 to 50 above, adding that account should also be taken of the difficulties arising due to the very fragmentary nature of the agricultural parcels and the progress made since 2001. Today, the IACS covers 90% of the country.
- ⁶⁵ With regard to the standard inspections (see paragraph 26 above), the Greek Government states that they related to more than 10% of the applications for aid and that therefore the percentage is higher than that required by Community rules. Moreover, more than 200 000 ha of those areas are spring crops (maize) which are harvested until mid-autumn, which explains why it is possible to carry out inspections after 31 August. Furthermore, the predominantly xerothermic climate in the country encourages farmers to leave the residue of the crop in a relatively identifiable state for a fairly long period, which makes identification of the durum wheat crops possible. In the event that the check is made after the harvest, the competent authorities ask the producers not to destroy the residue so that the inspections may be completed. Thus, the Commission's complaint regarding standard inspections cannot justify or be of use in supporting the flat-rate correction applied.
- ⁶⁶ With regard to the checks by remote sensing (see paragraph 26 above), the Greek Government submits that delays due to the adjudication procedures cannot distort

the result of the checks and, accordingly, constitute a true risk for the EAGGF. Remote sensing is carried out on the basis of satellite images taken before the harvest and at different stages of growth.

67 With regard to the technical tolerance accepted (see paragraph 26 above), the Greek Government notes that it was fixed at approximately 3 m following an enquiry and in accordance with the technical specifications established in collaboration with the Joint Research Centre at Ispra (document of 24 November 2000). Furthermore, that tolerance, which was applied to the orthophotographs of 1996 to 1998, is preferable to that fixed at approximately 5 m, which would have been applied if the authorities had used satellite images.

68 With regard to the age of the orthophotographs dating from 1996 to 1998, the Commission itself acknowledged, in its letter of 21 August 2002, that an age of five years is considered satisfactory. Accordingly, the complaints relating to the checks by remote sensing cannot justify or usefully support the flat-rate correction applied, which, in any event, is vitiated by a lack of reasoning.

69 In the alternative, the Greek Government submits that a correction not exceeding 2% of the declared expenditure is in accordance with the principle of proportionality.

70 The Commission, however, reiterates its assessment set out in paragraph 55 above. The IACS constitutes a key element in the system of checks, the number, frequency and rigour of which are specified by Community rules, and with which the Hellenic Republic failed to comply.

- 71 The Commission does not deny the progress made to date (see paragraph 64 above), but points out that it relates to periods subsequent to the period in question.
- 72 With regard to the arguments relating to the possibility of carrying out checks after the harvest (see paragraph 65 above), the Commission maintains that, once the harvest has been completed, a parcel does not give sufficiently precise information on the production. It states that the support measures in question are based on production and not on surface area cultivated. Furthermore, durum wheat, which is harvested around the end of July and the beginning of August, accounts for most of the crops.
- 73 The Commission confirms that it accepts the tolerance of approximately 3 m, whilst pointing out, nevertheless, that it has not raised a complaint in the present case relating thereto. Rather, its complaint concerns the tolerance of 5% for at least 50% of the surface area checked. That tolerance is laid down in working document No VI/8388/94 making recommendations for the on-the-spot measures for the areas and is mentioned in the document of 24 November 2000 issued by the Joint Research Centre (see paragraph 67 above).
- 74 With regard to the age of the orthophotographs, the Commission states that it accepts ages of up to five years for the purposes of the IACS, but that on-the-spot checks require photographs from the same year. According to the Commission, archived orthophotographs may be useful for measurements in the context of the IACS. However, it is clearly impossible to use old orthophotographs to register the harvest relating to a subsequent financial year. Since the aid provided for by Regulations Nos 1765/92 and 1251/1999 is calculated on the basis of production, the Commission takes the view that a finding that a specific parcel was cultivated during a particular harvest year for a particular crop is of central importance. That finding can be based only on photos from the same harvest year.

— Findings of the Court

- 75 With regard to the repeated argument relating to the exact percentage of areas covered by the IACS and to the application of other monitoring methods, it is appropriate to refer to the analysis carried out in paragraphs 59 and 60 above.
- 76 Moreover, in its judgments in Case C-300/02 *Greece v Commission*, paragraphs 97 and 100, and Case C-285/03 *Greece v Commission*, paragraphs 62 to 64, the Court considered that the failure fully to apply the IACS in itself justified the application of a flat-rate correction of 5%, without its being necessary to examine in detail the questions of the quality of the checks by remote sensing or the number of on-the-spot checks.
- 77 The argument put forward by the Greek Government at the hearing, that the Court should dismiss those findings in the light of the progress made in the completion of the IACS, cannot be accepted. Even if the improvements relating to the functioning of the IACS were established, the Greek Government could not claim that, because of that finding, the rate of the corrections to be made must be reduced. Despite those improvements, the risk of loss for the EAGGF due to the failure to complete large portions of the IACS continued to be very high, and that was after the expiry of the period allowed for the establishment of the IACS, namely 1 January 1997 (Case C-300/02 *Greece v Commission*, paragraph 99, and Case C-285/03 *Greece v Commission*, paragraph 63).
- 78 Consequently, the flat-rate correction in question appears to be in accordance with the guidelines established by the Commission in document No VI/5330/97. The third plea in law must therefore be rejected in its entirety without its being necessary

to rule on whether the argument relating to checks by remote sensing on the basis of satellite images taken before the harvest and the acceptable age of the orthophotographs is well founded.

Olive oil

Community legislation

- 79 The general rules relating to aid in the olive oil sector were established, for the financial years concerned, by Council Regulation (EEC) No 3089/78 of 19 December 1978 laying down general rules in respect of aid for the consumption of olive oil (OJ 1978 L 369, p. 12), as amended by Council Regulation (EC) No 1582/96 of 30 July 1996 (OJ 1996 L 206, p. 13).
- 80 The implementing rules for the system of consumption aid for olive oil were established, for the financial years concerned, by Commission Regulation (EEC) No 2677/85 of 24 September 1985 laying down implementing rules in respect of the system of consumption aid for olive oil (OJ 1985 L 254, p. 5), as amended by Commission Regulation (EC) No 643/93 of 19 March 1993 (OJ 1993 L 69, p. 19) and Commission Regulation (EC) No 887/96 of 15 May 1996 (OJ 1996 L 119, p. 16).

Summary report

- 81 In the light of the inspections already conducted by the Commission in July 1996 (the respect of the financial years of 1994 and 1995), the check in the olive oil sector

was limited, in the present case, to the documentary analysis, including numerous exchanges of correspondence between 1999 and 2001 (point B.8.4.1 of the summary report). That analysis confirmed that various problems detected relating to the financial years of 1994 and 1995 had continued, although notable improvements had been made.

82 Thus a specific adjustment for a total amount of EUR 200 146.68 was applied for the financial years of 1996 to 1998 (point B.8.4.3 of the summary report).

Arguments of the parties

83 The Greek Government puts forward a single ground of annulment, alleging the Commission's lack of competence *ratione temporis*. Referring to the analysis carried out in the context of the first ground of annulment concerning the arable crop sector, the Greek Government submits that the first letter in which the Commission advised of the correction in question was that of 14 April 2004. Consequently, it takes the view that the Commission could not exclude the expenditure incurred before 14 April 2002 unless the Greek authorities had sent the Commission the information necessary for the calculation of that correction after that date. The relevant information had in fact been sent to the Commission at a much earlier date.

84 Accordingly, in the view of the Greek Government, the contested decision must be annulled in so far as it imposes a flat-rate correction in the olive oil sector.

85 The Commission disputes those allegations. In its letter of 3 July 1998, it had already stated the need to impose the corrections applied for the financial years of 1994 and 1995 in respect of the following financial years. The failure of the system of aid in the

sector had been noted since 1990, which had given rise to corrections imposed for the financial years of 1992 to 1995. The correction in question is based on the same facts, given that Greece has only partly improved its aid system. The Hellenic Republic has known of the irregularities at issue since 1992 without ever disputing their substance. The Commission reiterated those complaints in its letter of 3 July 1998 and, by letter of 8 February 1999, requested the Greek authorities to inform it of the measures adopted in that regard for the financial years of 1996 and 1997. The request for information was repeated in the invitation of 3 August 2001 to a bilateral meeting.

- ⁸⁶ In any event, the corrections for 1996 to 1998 are an extension of those applied since 1992. The Hellenic Republic was therefore fully informed of the correction at issue and indirectly acknowledged that it was well founded.

Findings of the Court

- ⁸⁷ In order to analyse of this plea, it is appropriate, firstly, to take into consideration the findings set out in paragraphs 36 to 46 above. Next, the Court notes that, irrespective of whether the date considered by the Greek Government to be the starting point for the period of 24 months is correct, by this plea the Greek Government raises before this Court the question of the Commission's competence *ratione temporis* to impose the correction in question.

- ⁸⁸ In that regard, it must be noted that the facts of the procedure which gave rise to that correction and relied on by the parties show that, even under Regulation No 2245/1999, the Commission acted outside its competence *ratione temporis*.

- 89 By letter of 3 July 1998, the Commission informed the Greek authorities of its final position following the check relating to the financial years of 1994 and 1995. As is clear from point B.8.4.1 of the summary report and the letter of 3 July 1998, that check had brought to light a failure on the part of the Ministry of Agriculture to follow up on the findings and proposed sanctions issued by the body controlling aid for olive oil included in the inspection reports sent to that Ministry up to the end of October 1994. By letter of 12 January 1999, the Commission informed the Greek authorities, in the context of the same procedure, of the final amount of the specific adjustment which was to be proposed (GRD 3 068 123 875, equal to EUR 9 004 031.91). That correction was finally applied, as confirmed in point B.8.4.1 of the summary report.
- 90 With regard to the present EAGGF account clearance procedure relating to the financial years of 1996 to 1998, by letter of 8 February 1999 the Commission requested the Greek authorities to supply to it certain information concerning the corrective measures taken against the undertakings in the third of the five categories listed in the letter of 3 July 1988, for which the checks had shown certain irregularities.
- 91 By letter of 2 May 2001, sent pursuant to Article 8(1) of Regulation No 1663/95, the Commission informed the Hellenic Republic of the result of its checks in the context of enquiry 2000/11 relating to the expenditure incurred in respect of consumption aid for olive oil for the financial years of 1996 to 1998. In that regard, the Commission refers to the letter of 8 February 1999. By letter of 3 August 2001, the Commission invited that Member State to a bilateral meeting in accordance with Article 8(1) of Regulation No 1663/95 concerning, inter alia, consumption aid for olive oil. Lastly, by letter of 14 April 2004, the Commission formally communicated its findings to the Greek authorities and evaluated the expenditure which it proposed to exclude.

- 92 The Court finds that, in the present case, the letter of 8 February 1999 constitutes the start of a new check by the Commission and not a letter pursuant to Article 8(1) of Regulation No 1663/95.
- 93 In that regard, it must be pointed out that the correction in question, carried out in relation to the financial years of 1996 to 1998, was based on findings relating to facts more recent than those which gave rise to the correction in respect of the financial years of 1994 and 1995.
- 94 It is clear from point B.8.4.3 of the summary report, read in conjunction with the Commission's letter of 14 April 2004, that the financial correction in question was applied for two reasons. Firstly, there were delays in the withdrawal of approval of certain undertakings, which should have been done for the financial years of 1996 and 1997 pursuant to Article 12(6) of Regulation No 2677/85, as amended by Article 1 of Regulation No 643/93 and, secondly, there was a failure to impose sanctions for irregularities concerning the quality of olive oil pursuant to Article 5(2) of Regulation No 2677/85, as amended by Article 1 of Regulation No 887/96.
- 95 As is apparent from point B.8.4.3 of the summary report, read in conjunction with a letter from the Commission dated 31 October 2001, the correction applied because of delays in the withdrawal of approvals is equal to the amount of aid wrongly received during the financial years of 1996 and 1997 by four undertakings whose accreditation should have been withdrawn for those periods.
- 96 In addition, it is clear from the Commission's communication of 14 April 2004 that the correction applied because of the failure to apply sanctions due to irregularities concerning the quality of olive oil is equal to the financial penalties which should have been imposed in 38 cases during the financial years of 1996 to 1998 and which

must be deducted from the EAGGF expenditure, pursuant to the third subparagraph of Article 5(2) of Regulation No 2677/85, as last amended by Article 1 of Regulation No 887/96. Furthermore, it is apparent from the communication of 14 April 2004 that all of the sampling carried out by the national authorities for the purposes of quality control took place after the end of the 1995 financial year (15 October 1995), whereas the section of the letter of 3 July 1998 concerning undertakings in the third category (see paragraph 90 above) refers to reports of checks prepared by the Greek authorities up to the month of October 1994.

⁹⁷ In those circumstances, the inevitable conclusion is that the failures which gave rise to the correction at issue (failure to withdraw accreditation and failure to impose financial penalties) arose after the 1995 financial year, which is the last financial year affected by the Commission's first check. Accordingly, the argument raised by the Commission at the hearing, that the check in question cannot be distinguished from the first check which related to the financial years of 1994 and 1995 (see paragraph 89 above) cannot be accepted. The view must be taken in the present case that, by ascertaining whether the Greek authorities had carried out the withdrawals of accreditation and imposed penalties during the financial years of 1996 to 1998, the Commission undertook a fresh check, distinct from the first. In the same way, the procedural guarantee flowing from the time-limit of 24 months laid down by Regulations No 729/70 and 1258/1999 cannot be disregarded on the sole ground that the findings of one check are partly analogous to those of an earlier check.

⁹⁸ Lastly, the Commission's argument that the Greek authorities accepted the possibility of the correction at issue during the administrative procedure cannot succeed. That fact is not sufficient to endow the Commission with the competence *ratione temporis* required by Regulations Nos 729/70 and 1258/1999 to impose financial corrections under the EAGGF.

⁹⁹ In the present case, the letter of 2 May 2001 sent pursuant to Article 8(1) of Regulation No 1663/95, as amended by Regulation No 2245/1999, is the first to

contain all the elements required by the first subparagraph of that provision. It is therefore that letter which constitutes the starting point from which the period of 24 months must be calculated.

- 100 It follows that the Commission did not have the competence *ratione temporis* to exclude the expenditure incurred before 2 May 1999. Accordingly, the contested decision must be annulled in so far as it excludes from Community financing the expenditure relating to consumption aid for olive oil.

Financial audit

Community legislation

- 101 Pursuant to Article 8(1) of Regulation No 1251/1999, '[p]ayments [to producers] shall be made between 16 November and 31 January following the harvest'.
- 102 Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the EAGGF and repealing Regulation (EEC) No 2776/88 lays down the conditions on which the expenditure which the Member States have incurred may be covered by the Guarantee Section of the EAGGF.

103 Under Article 4(2) of Regulation No 296/96, as amended by Commission Regulation (EEC) No 1577/2001 of one of August 2001 (OJ 2001 L 209, p. 12):

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

(a) where expenditure effected after the deadlines is equal to 4% or less of the expenditure effected before the deadlines, no reduction shall be made, irrespective of the number of months' delay,

(b) above the threshold of 4%, all further expenditure effected with a delay of up to:

— one month shall be reduced by 10%,

— two months shall be reduced by 25%,

— three months shall be reduced by 45%

— four months shall be reduced by 70%,

— five months or more shall be reduced by 100%.

However, the Commission will apply a different time scale and/or lower reductions or none at all, if exceptional management conditions are encountered for certain measures, or if well-founded justifications are introduced by the Member States.

The reductions referred to in this Article shall be made in accordance with the rules laid down in Article 14 of Regulation (EC) No 2040/2000.’

Summary report

- ¹⁰⁴ According to point C.1.1.1 of the summary report, the Commission examined the delays in payment found during the period from 16 October 2000 to 15 October 2001, pursuant to Article 4 of Regulation No 296/96. Following that check and bilateral discussions, the Commission applied corrections relating to eight budgetary headings.

Arguments of the parties

- ¹⁰⁵ Of the budgetary items affected by corrections relating to financial audit, the Greek Government challenges the corrections of EUR 455 070.44 concerning aid for vetches and of EUR 33 718.52 concerning aid by hectare for rice.

- 106 The Greek Government puts forward a sole ground of annulment, alleging infringement of Article 4(2) of Regulation No 296/96, of Article 7(4) and Article 8(1) of Regulation No 1258/1999 and of document No VI/5330/97, together with a failure to provide an adequate statement of reasons and an error of fact.
- 107 It follows from the abovementioned provisions that the Member States are obliged to comply with the time-limits for payment of aid, failing which they are subject to financial corrections on a sliding scale of up to 100% of the expenditure. The Commission should, firstly, take into account for that purpose the financial loss which the Community has suffered as a result of the failure to comply with those time-limits and, secondly, act in accordance with the principle of proportionality. In addition, the Commission is obliged to apply a lower or zero rate of reduction if there are particular management situations relating to certain measures, or if valid justification is provided by the Member States. Accordingly, the fact that a time-limit for payment has been exceeded because of additional checks in cases where there has been a challenge or because of additional payments made following examination of objections based on errors of registration in the databases constitutes a particular situation accompanied by valid justification.
- 108 The Greek authorities informed the Commission that the delay in payment was caused by necessary additional checks, particularly in the prefecture of Heraklion, which is the country's biggest producer of vetches. By letter of 26 January 2001, the Greek authorities requested an extension of the time-limit for payment of aid in order to comply with the requirements of working document No VI/7105/98 on the increase in the rate of checks in the event of findings of significant irregularities. By letter of 1 February 2001, the Commission rejected that request, while stating that the supporting documents relating thereto would be taken into account in the EAGGF accounts clearance procedure in order not to impose a correction. The threshold of 4% laid down by Article 4(2) of Regulation No 296/96 (see paragraph 103 above) was exceeded only because of the considerable increase in checks carried out by the Heraklion prefectorial authorities.

- 109 By letter of 6 November 2003, the Commission took the view that the carrying-out of the checks in question fell under Article 4(2)(a) of Regulation No 296/96. The Commission should not therefore have imposed any correction or, at the very least, imposed only a lower correction.
- 110 With regard to the correction relating to aid per hectare for rice, the Greek Government points out that the delays noted were due to the examination of objections alleging errors of registration of items in the database. In the case of one of the three prefectures concerned, the delay was due to a strike within an association of agricultural cooperatives, a fact which constituted a case of force majeure. It follows that the delays in question were due to exceptional circumstances relating to the protection of the financial interests of the Community. In the light of those facts, the Greek Government seeks the annulment of the contested decision in so far as it imposes the correction in question or, in the alternative, the limitation of that correction to 2% of the payments made after expiry of the time-limit.
- 111 The Commission responds that since the last subparagraph of Article 4(2)(b) is a derogation, it must be interpreted strictly; the burden of proof is on the party which wishes to take advantage thereof.
- 112 With regard to aid for vetches, the delays in payment beyond the 4% margin (see paragraph 103 above) were not justified, that margin being granted with a view to facilitating the intensification of the checks and the carrying-out of additional checks. The request for extension of the time-limit was, moreover, submitted three days before the expiry of the additional time-limit and cannot, accordingly, be accepted. It follows from document No VI/5330/97 that, where Member States wish to obtain a derogation because of additional checks being carried out, they must prove that the sums challenged exceeded the threshold of 4% of the expenditure

incurred. The Commission takes the view that the Greek authorities failed adequately to justify their exceeding the time-limits and that, in any event, the request for an extension was made belatedly.

- 113 The same holds true for aid per hectare for rice. The Greek Government cannot rely on facts falling within its own sphere of responsibility, such as the examination of actions and objections because of errors in the database, to justify the non-compliance with the time-limits.

Findings of the Court

- 114 The Court notes, as is apparent from the table appearing in point C.1.1.4 of the summary report, that the Commission applied, with regard to aid for vetches and aid per hectare for rice, corrections equal to the deductions already made in the context of the monthly advances under Article 4(2) of Regulation No 296/96.

- 115 The Court further notes, like the Commission, that the second subparagraph of Article 4(2) of Regulation No 296/96 is a provision introducing a derogation and must, accordingly, be interpreted narrowly.

- 116 Furthermore, the financing costs chargeable to the EAGGF must be calculated on the assumption that the time-limits laid down by the applicable agricultural rules have been observed. Accordingly, when national authorities pay aid after expiry of the time-limit, they are charging irregular and thus non-eligible expenditure to the EAGGF, as confirmed by the fourth recital in the preamble to Regulation No 296/96

(see, to that effect, Case C-253/97 *Italy v Commission* [1999] ECR I-7529, paragraph 126). Consequently, the Member State must organise its system of checks taking into account the time-limit set for payment of aid by Article 8(1) of Regulation No 1251/1999 (see, by analogy, Case T-251/04 *Greece v Commission*, not published in the ECR, paragraph 76). In addition, the 4% margin laid down in Article 4(2) of Regulation No 296/96 is intended precisely to give Member States the opportunity to carry out additional checks whilst stating that the number of months' delay does not affect payments which do not exceed that threshold.

- 117 As is apparent from the file, the authorities of the prefecture of Heraklion informed the Ministry of Agriculture of the first results of the checks only on 19 January 2001, the latter having reminded the prefecture, by letter of 22 January 2001, of the obligation to carry out new checks in accordance with document VI/7105/98 (see paragraph 108 above). By letter of 26 January 2001 (a Friday), that ministry requested an extension of the time-limit for payment expiring on the 31st day of that month, without, however, stating the crop concerned or supplying supporting documents relating thereto. That request was rightly rejected by the Commission by fax of 1 February 2001 as imprecise and, above all, belated.
- 118 In those circumstances, the Commission was entitled to maintain its position as stated in its letter of the 6 November 2003 that the need to carry out additional checks raised by the Greek authorities should not exceed the 4% margin (see paragraph 103 above).
- 119 Accordingly, the Greek Government has not shown that the conditions were met for the last subparagraph of Article 4(2) of Regulation No 296/96 to apply with regard to the delays in payment relating to aid for vetches.

- 120 The same holds true for aid per hectare for rice. The Commission rightly points out that a Member State cannot justify late payment by relying on deficiencies in the national procedures and the actions resulting therefrom. The argument based on the strike relied on by the Greek authorities as a case of force majeure cannot succeed. The only document relating thereto is a letter dated 25 October 2001 from the prefecture of Imathia sent to the Ministry of Agriculture explaining that the strike in question resulted in the belated sending, on 30 April 2001, of the results of examination of the actions. That strike caused a delay in the examination of actions brought due to errors in aid payments, a complication attributable to the Member State. Moreover, the Greek Government has not adduced any evidence relating to the duration of the strike in question or whether or not it was unannounced. This plea must, accordingly, be rejected.
- 121 It follows from all the foregoing that the contested decision must be annulled in so far as it imposes a specific adjustment on the Hellenic Republic of EUR 200 146.68 for the financial years of 1996 to 1998 (consumption aid for olive oil), whereas the remainder of the action must be dismissed.

Costs

- 122 Pursuant to Article 87(3) of the Rules of Procedure, the Court of First Instance may order that the costs be shared or that each party bear its own costs where each party succeeds on some and fails on other heads. Since the Hellenic Republic has been unsuccessful in most of its submissions, it must be decided that it is to bear its own costs and to pay 70% of those incurred by the Commission, which is to bear 30% of its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

- 1. Annuls Commission Decision 2005/354/EC of 29 April 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it imposes a specific adjustment on the Hellenic Republic of EUR 200 146.68 for the financial years of 1996 to 1998 (consumption aid for olive oil);**

- 2. Dismisses the remainder of the action;**

- 3. Orders the Hellenic Republic to bear its own costs and to pay 70% of those incurred by the Commission, which shall bear 30% of its own costs.**

Pirrung

Forwood

Papasavvas

Delivered in open court in Luxembourg on 12 September 2007.

E. Coulon

Registrar

J. Pirrung

President

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