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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 March 2002

on the aid schemes implemented by Greece in favour of the settlement of debts by the agricultural cooperatives in 1992 and 1994 including the aids for reorganisation of the dairy cooperative AGNO

(notified under document number C(2000) 686)

(Only the Greek text is authentic)

(2002/458/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

INITIAL OPENING OF THE ARTICLE 88(2) PROCEDURE

- (1) On 7 June 1993, the Commission was informed by letter from the Greek Minister of Agriculture of the intention of the Greek Government to apply the provisions of Article 32(2) of Greek law No 2008/92 to write off the debts of several types of cooperatives to the Agricultural Bank of Greece (ABG), concerning the period 1982 to 1989.
- (2) At an early stage, the Commission considered this letter as a notification within the meaning of Article 88(3) of the Treaty. Subsequently, the Commission was informed

of the fact that aid provided for in Article 32(2) of Greek law No 2008/92 had already been granted, at least to the dairy cooperative AGNO, without previous Commission approval. Taking this into account, the Commission decided to include these legal provisions in the register of non-notified aids (NN 168/97).

- (3) By letter SG (97) D/10773 dated 19 December 1997, the Commission informed Greece of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid measures to reimburse debts of cooperatives pursuant to Article 32(2) of Greek law No 2008/92. The file was registered under Aid C 82/97.

SECOND OPENING OF THE ARTICLE 88(2) PROCEDURE

- (4) By letter of 20 November 1995, the Commission received a complaint regarding aid to the dairy cooperative AGNO in northern Greece. According to the complainant, the Greek authorities decided, through the ABG, to assist AGNO in paying some or all of its debts, possibly amounting to GRD 13 billion. AGNO had supposedly also benefited from fiscal concessions available to cooperative companies in the agricultural sector in Greece.

⁽¹⁾ OJ C 100, 2.4.1998, p. 7 and OJ C 107, 7.4.1998, p. 19.

- (5) Following requests for additional information, two bilateral meetings were held, at the request of the Greek authorities, on 16 May 1997 and 23 July 1997 between the Greek authorities and the Commission. As a result of these meetings, the Greek authorities supplied additional information by letters dated 9 June and 29 August 1997.
- (6) As a result of this exchange of information with the Greek authorities, it was possible to ascertain that AGNO benefited from the following measures, all provided by the ABG:
- GRD 851 million in the framework of Article 32(2) of Greek law No 2008/92 (Aid NN 168/97) and GRD 529,89 million in the framework of Article 19(1) of Greek law No 2198/94 (non-notified) for compensation for losses due to the Chernobyl nuclear disaster,
 - GRD 10,145 billion in the framework of Article 5 of Greek law No 2237/94 (non notified) in a consolidation loan linked to a debt due to the considerable delays in the implementation of an investment project,
 - GRD 1,899 billion in the framework of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 allowing banks to consolidate loans to clients (non-notified).
- (7) By letter SG (97) D/10775 dated 19 December 1997, the Commission informed Greece of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the general provisions for debt consolidation of agricultural cooperatives, as well as in respect of the aids for reorganisation of the dairy cooperative AGNO. The file was registered under Aid C 78/97.
- 200 cooperatives and the unions, companies and farmers via the ABG (C 32/98) ⁽²⁾. The overall amount of debt to be written-off was established at GRD 163 billion.
- (9) Subsequently, Greece made a request to the Council to agree to such measures pursuant to the provisions of Article 88(2)(3). By Decision of 15 December 1998, the Council agreed to this request ⁽³⁾.
- (10) Consequently, the provisions of Articles 14 to 17c of Greek law No 2538/97 are not covered by the present Decision.

Comments

THIRD OPENING OF THE ARTICLE 88(2) PROCEDURE

- (8) The Commission has already investigated debt write-offs from the Greek State via the ABG in favour of agricultural cooperatives. By letter SG (98) D/4020 of 20 May 1998, the Commission communicated to the Greek Government its decision to open the procedure provided for in Article 88(2) of the Treaty in relation to Articles 14 to 17c of Greek law No 2538/97 of 1 December 1997 allowing the Greek State to write off debts of over
- (11) Both Commission Decisions to initiate the procedure were published in the *Official Journal of the European Communities* ⁽⁴⁾. The Commission invited interested parties to submit their comments on the measures.
- (12) By letters of 18 March 1998, and of 31 March 1998, registered on 8 April 1998, the Greek authorities have submitted their observations to the Commission on, respectively, aid files C 78/97 and C 82/97.
- (13) By letter dated 30 April 1998, registered on 4 May 1998, and of 7 May 1998, registered on the same date, the Commission received comments from the Association of Greek Dairy Product Industries (Sevgap) on, respectively, aid files C 78/97 and C 82/97. These comments were forwarded to Greece which was given the opportunity to react by letter dated 25 May 1998. The Commission also received, on 12 March 1999, the observations of the Agricultural Bank of Greece in respect of the debt consolidation of AGNO and other agricultural cooperatives.
- (14) By letter dated 18 August 1998, registered on 20 August 1998, Greece transmitted its remarks concerning the submission of Sevgap.
- (15) By letter dated 12 March 1999, the ABG forwarded its comments in relation to both Article 88(2) procedures.

⁽²⁾ OJ C 376, 4.12.1998, p. 2.

⁽³⁾ OJ C 120, 1.5.1999, p. 16.

⁽⁴⁾ See footnote 1.

II. DESCRIPTION

ARTICLE 32(2) OF GREEK LAW No 2008/92

- (16) Article 32(2) of Greek law No 2008/92 establishes that the Greek State may assume and settle debts to the ABG incurred by primary, secondary and other tertiary cooperative associations, cooperatives and companies between the years 1982 and 1989, provided and to the extent that they were incurred due to the implementation of social or some other intervention policy on the instructions and on behalf of the State.
- (17) Article 32(3) of Greek law No 2008/92 establishes that the assumption and settlement of the said liabilities shall take place subject to the essential prerequisite that the cooperative association, cooperative or company shall be deemed viable.
- (18) According to the letter from the Greek authorities dated 7 June 1993, the Greek Government undertook to apply these legal provisions to write off debts of several types of cooperatives towards the ABG, for the period 1982 to 1989. The beneficiaries had to be considered viable on the basis of restructuring plans approved by a special committee created for this purpose. According to this letter, the Greek Government had committed to reimburse to the ABG part of the outstanding debt from 61 agricultural cooperative associations, totalling GRD 91,769 billion, from an overall amount of GRD 266,126 billion.
- (19) The letter from the Greek authorities of 7 June 1993 refers to the fact that these debts arise from reductions in the retail price of goods, benefiting consumers. Due to this fact, the Greek authorities considered it was impossible to recover the sums involved. Nevertheless, an early assessment of the scheme showed that it can also cover debts arising from other reasons such as marketing policies, investments, lack of own capital, extraordinary events and other things.
- (20) In their letter of 9 June 1997 relating to aid file No C 78/97, the Greek authorities confirmed that they applied legal provisions to compensate for damage caused to the dairy cooperative AGNO by the Chernobyl nuclear disaster. This cooperative was on the list of 61 organisations mentioned in the Annex to the Greek letter of 7 June 1993.
- (21) In the letter opening the procedure provided for in Article 88(2) of the Treaty, the Commission requested Greece to provide extensive information about the interventionist and social policy of the Greek Government in the agricultural sector as well as Greece's position about compatibility of this policy with the common agricultural policy. The Commission also required information as to the criteria used to assess the viability of agricultural cooperatives and conformity with the Community policy for restructuring companies in difficulty.
- (22) In the particular case of the aid granted to AGNO in the framework of Article 32(2) of Greek law No 2008/92, the Commission considered that the Chernobyl nuclear accident was an 'extraordinary event' within the meaning of Article 87(2)(b) of the Treaty. However, the Commission expressed doubts about the applicability of this Treaty provision to compensate for damage that occurred more than five years after the actual losses incurred. Equally, the Commission took the view that the amount granted (GRD 1,38 billion, including GRD 529,89 million in the framework of Article 19(1) of Greek law No 2198/94) may have led to overcompensation for the damage incurred.
- (23) After clarification, the Greek authorities indicated that the Greek State wrote off an overall amount of GRD 37,835 billion for 116 cooperatives that were judged viable on the basis of specific restructuring and rationalisation programmes. Greece supplied the individual sheets that formed the basis for the ABG write-offs, indicating for each cooperative the amount and the reason(s) for the write-off.
- (24) The analysis of the individual files indicates that the measures concerned cooperatives in all subsectors of agricultural production. The 116 files indicate that the reasons for the write-offs are extremely varied. The most important ones are:
- production aids,
 - collection and marketing of agricultural products,
 - storage of agricultural products,
 - export of agricultural products,

- acquisition of the materials needed for the production process,
- operating expenses,
- management of pesticides on behalf of SYNEL and animal feed on behalf of KYDEP,
- unspecified debt to the ABG,
- damage caused by a price-fixing policy,
- compensation due to administrative actions (reduction of Community aids, ban on exports, inspections),
- damage caused by social policy,
- damage caused by the Chernobyl nuclear accident,
- investments.

Article 5 of Greek law No 2237/94

- (25) Greek law No 2237/94 is a law implementing Council Regulation (EEC) No 2079/92 concerning aid to encourage early retirement of farmers⁽⁵⁾. However, added to the text of Greek law No 2237/94 is a series of provisions concerning the debts of agricultural cooperatives. According to Article 5 of this law, the ABG may, within specified parameters, assist agricultural cooperatives with the payment of outstanding debts. These arrangements apply to any debt outstanding at 31 December 1993 which is attributable to objective and external circumstances (e.g. not to mismanagement).
- (26) According to this law, no interest is payable on the loan for the first half of the term, whereafter interest is chargeable at a rate of 50 % of the normal market rate for such loans. The duration of the loan is established at 10 years. The ABG has however the faculty, in exceptional cases where the deficits are particularly important, to extent the reimbursement period to 15 years, with a grace period of three years, or to reduce the applicable rate to less than 50 % of the market rate.
- (27) According to this law, assistance to cooperatives is subject to the previous submission of a development/modernisation feasibility study, demonstrating that the cooperatives are able to reimburse the rescheduled debts.

Furthermore, assistance may be conditional on the execution of certain conditions (such as administrative/organisation modernisation, reduction of personnel, reinforcement of own capital, etc.).

- (28) The Greek authorities have supplied copies of the AGB Circulars No 150/94 and No 22/95 containing detailed implementation provisions for Article 5 of Greek law No 2237/94.
- (29) Greece indicated that a large number of cooperative associations (116) have benefited from these debt rescheduling arrangements. One of these cooperatives was the dairy business AGNO.
- (30) AGNO is a union of 74 cooperatives and 35 producer groups active in the dairy sector in Northern Greece (Macedonia). AGNO is active in all activities linked to the milk sector, from the production of animal feed to marketing of dairy products. In 1994 AGNO was the third largest operator in Greece in terms of sales of fresh milk (14 % market share). AGNO is also active in the production of other types of milk, cheese, yoghurt and other drinks. At the date of the debt settlements, AGNO had a turnover of GRD 19,8 billion and 912 employees.
- (31) The ABG signed with AGNO a loan for regularisation of debts outstanding at 31 December 1993 at the latest. The overall amount of this loan is GRD 10,145 billion. This amount is due to financial charges incurred on investment projects linked to the removal and modernisation of the dairy industry. An extremely long tendering process affected the investment financial plan unfavourably. Thus, instead of an expected cost of GRD 8,5 billion, the project finished with a total cost of GRD 13,5 billion, i.e., a 58 % increase.
- (32) According to the Greek authorities, AGNO, and other cooperatives, benefited from the debt rescheduling after submission of a feasibility study, evaluated and approved by the ABG according to purely banking criteria, and subject to the realisation of a concrete programme for restructuring of the milk industry, the execution of which is monitored by a special expert committee.

⁽⁵⁾ OJ L 215, 30.7.1992, p. 91.

(33) In the case of AGNO, the initial measures for financial recovery consisted of reductions of operational costs, such as personnel (150 persons in three years), extra hours by 80 %, wages over legal thresholds by 20 %, publicity expenses by 2 % and general costs by GRD 50 million. These measures include also ensuring new resources, such as recovery of cooperative capital, increase of cooperative fees by GRD 50 000, imposition of a special levy on delivered milk GRD 1,5/kg on the first three years and GRD 3/kg after 1998) and sale of real estate. A secondary set of measures was equally foreseen.

(34) In its Decision concerning the opening of the procedure provided for in Article 88(2) of the Treaty, the Commission considered that the assistance given to cooperatives to pay its debt pursuant to Article 5 of Greek law No 2237/94 is a State aid within the meaning of Article 87(1) of the Treaty.

(35) Firstly, the ABG would be regarded as a public enterprise in the meaning of Commission Directive 80/723/EEC between Member States and public enterprises ⁽⁶⁾. Secondly, the Commission considered that the principle of the private investor in a market economy was not followed by the ABG, since the consolidation loans were given on conditions extremely favourable to companies in difficulty. Thirdly, the Commission considered that these operations would not take place in normal market conditions.

(36) In the framework of the appraisal of the aids, the Commission considered that the provisions of Article 5 of Greek law No 2237/94 did not respect either the general conditions of the Community guidelines for State aids for rescue and restructuring of companies in difficulty ⁽⁷⁾ (hereinafter 'guidelines') in force at the date of the opening of the Article 88(2) procedure or the special rules applicable to aids in the agricultural sector ⁽⁸⁾, that may be applicable in place of the general rules. The same conclusion applied to the specific aid granted to AGNO pursuant to these provisions.

ACT OF THE GOVERNOR OF THE BANK OF GREECE No 1620 OF 5 OCTOBER 1989

(37) The Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 authorises credits institutions in Greece to regularise their debts pursuant to any type of loans in GRD or foreign currencies. The same act allows the banks to convert loans into equity. This provision applies to all banks, both public and private.

(38) In 1992, the Act of the Governor of the Bank of Greece No 2091 of 11 June 1992 introduced minimal rates for these consolidations: 18 % for short-term loans and 17 % to medium- and long-term loans. These limits were subsequently abolished by the Act of the Governor of the Bank of Greece No 2326 of 4 August 1994.

(39) The Greek authorities have indicated that AGNO also benefited from a debt rescheduling of GRD 1,899 billion in the framework of the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989. The loan was granted for 10 years (including a two-year period where only simple interest is calculated), at the rate in force for medium-term loans.

(40) In parallel with the position taken regarding Article 5 of Greek law No 2237/94, Greece considered that this provision does not involve State aid within the meaning of Article 87(1) of the Treaty.

(41) In the light of the parallelism of this mechanism with the one described previously and on the basis of the scanty information available at the time, the Commission decided also to open the procedure provided for in Article 88(3) of the Treaty also in respect of these provisions.

TAX EXEMPTIONS

(42) In their letter of 20 November 1995, the plaintiff also mention the granting of State aid to AGNO via Greek laws No 2238/94 and No 2169/93. As these laws concerned the general financing of agricultural organisations and the general tax law, the Commission considered that these do not involve State aid to agricultural cooperatives within the meaning of Article 87(1).

⁽⁶⁾ OJ L 195, 29.07.1980, p. 35, Directive as last amended by Directive 93/84/EEC (OJ L 254, 12.10.1993, p. 16).

⁽⁷⁾ OJ C 368, 23.12.1994, p. 12.

⁽⁸⁾ SEC (89) 343/2, 7 March 1989.

III. COMMENTS FROM THIRD PARTIES

- (43) The only third party submitting comments in procedures C 78/97 and C 82/97 was Segvap, the plaintiff in the case.
- (44) In general, the plaintiff considers that there is a regular long-term policy of the Greek authorities, using government resources, to treat assisting companies not on the basis of objective criteria but because of their status. The plaintiff considers this policy harmful and discriminatory in relation to non-cooperative undertakings, that cannot have access to such aids. The result of this practice is the survival of companies with structural weaknesses, low productivity, and an incapacity to adapt to a competitive environment. In conclusion, the plaintiffs consider that this policy is harmful to the agricultural economy in Greece and the European Union.
- ARTICLE 32(2) OF GREEK LAW No 2008/92*
- (45) In particular regarding Article 32(2) of Greek law No 2008/92, the plaintiff maintains that the measure constitutes State aid within the meaning of Article 87(1) of the Treaty. Indeed, it involves consumption of State resources and selectively benefits certain undertakings.
- (46) Article 87(2) and (3) provides for certain types of aid that can be reconciled with the common market. The plaintiffs consider that only Article 87(3)(c) could be applicable. In that, they consider that the measure does not fulfil the conditions to be considered compatible with the common market in the light of the guidelines.
- (47) In particular, the plaintiffs note that Greece did not supply any evidence of the existence of restructuring programmes relating to the restoration of viability of the beneficiary enterprises, the requisite reduction production capacity, the enhancement of their competitiveness in the relevant market, and the proportional ratio between the aids granted and the contribution of the beneficiary to the restructuring effort. There is no real programme to ensure financial soundness of the co-operatives, only a succession of debt settlements.
- (48) The plaintiffs alert the Commission to the recurrent nature of such debt write-offs. In particular, Greek law No 2198/94 approving a debt settlement for an overall amount of GRD 500 billion, Article 5 of Greek law No 2237/94 and the provisions of Greek law No 2538/97.
- (49) Regarding the aid granted to AGNO in particular, in the framework of Article 32(2) of Greek law No 2008/92, the plaintiffs consider that the debt amount of GRD 851 million cannot be attributed to the Chernobyl nuclear accident. On the one hand, the plaintiffs sustain that all milk companies (including AGNO) continued to deliver fresh milk products to the market during the whole of 1986. Also, it is very unlikely that AGNO would destroy 19 000 t of milk. Most of it was dehydrated into milk powder, subsequently used for the production of other dairy products.
- (50) The plaintiff calls upon the Commission to declare that the provisions of Article 32(2) of Greek law No 2008/92 are incompatible with the common market.
- ARTICLE 5 OF GREEK LAW No 2237/94*
- (51) The plaintiffs consider that the distinction made by the Greek authorities between the ABG and the Greek State is new and manifestly contrary to the spirit of Article 87(1) of the Treaty.
- (52) According to the plaintiffs, the conditions of Article 5 of Greek law No 2237/94 are evidently more favourable than the general rules for regularisation of debts foreseen in the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989, namely in terms of interest rates (where they are actually set at 50 % of the market rates) and in terms of duration of the loans (in relation to normal banking practice).
- (53) The plaintiffs disagree with the assertions of the Greek authorities that the terms of adjustment of AGNO's debt were made solely on the basis of banking practices and criteria. Not only are the terms of the consolidation loans considered extremely favourable, but also the criteria should be made explicit by the Greek authorities. Furthermore, a report on the execution of the restructuring programme should be made public.

TAX EXEMPTIONS

(54) The plaintiffs do not support the initial conclusion of the Commission relating to the absence of State aids in favour of agricultural cooperatives in the framework of Greek law No 2238/94, relating to the general tax legislation in Greece. The plaintiff argues that the cooperatives benefiting from tax exemptions are favoured in relation to other undertakings in the same objective circumstances.

IV. COMMENTS FROM GREECE

(55) The Greek authorities transmitted their remarks in several stages. Firstly, they supplied their initial reactions to the opening of the procedure provided for in Article 88(2) of the Treaty. At a later stage, Greece sent comments in relation to the submissions made by the plaintiffs. Finally, the ABG sent its comments. Due to the nature and status of the ABG (see point 108), these remarks are considered as an additional submission by the Greek authorities and not as comments from third parties.

ARTICLE 32(2) OF GREEK LAW No 2008/92

(56) In their initial remarks to the opening of the procedure provided, the Greek authorities pointed out that the cooperatives have a special status in the agricultural economy, that their members have joint liability, that they have a statutory obligation to take over the production of their members and dispose of it at the best possible market prices (regardless of whether or not they manage to do so in the end). Furthermore, Greece added that they represent the interests of large groups of producers farming in mountain, hill and lessfavoured areas.

(57) During the period in question (1982 to 1989), in addition to the Chernobyl nuclear disaster, Greece suffered from many natural disasters that had a negative impact on the financial situation of the cooperatives. The Greek authorities attach a list of 24 natural disasters that affected Greece during that period. According to the Greek authorities, the causes of these disasters were flooding, high winds, snowstorms, heavy rainfall, disease, bad weather, frost, low temperatures, scab, drought and heatwave. These natural disasters and adverse weather conditions affected several types of agricultural products and regions.

(58) According to Greece, this was compounded by State interventions concerning the formation of prices at which cooperatives dispose of their products. The debts were written off only after certification and recognition by a committee.

(59) Greece supplied copies of the reports made by the committees for each cooperative. These reports showed that the overall amount of debt adjusted (GRD 37,835 billion) is substantially lower than the initial forecasts (GRD 91,676 billion). 116 cooperatives were concerned, all of which were deemed viable on the basis of specific rationalisation programmes.

(60) Regarding the aid granted to AGNO in particular, in application of the provisions of Article 32(2) of Greek law No 2008/92, Greece added that the time lag was needed to check the details of every applicant (there were first and second level verification committees).

(61) Greece considers that the amount of GRD 91 million, equivalent to the difference between GRD 851 million effectively considered and the amount of 760 million that could theoretically be considered as the actual losses, is not unjustified. The difference of actual sales figures for AGNO between 1985 and 1986 is 8,5 million kg. This surplus milk was pasteurised in bulk for various cheese producers at a loss of GRD 10,7 kg. The total loss was therefore GRD 91 million.

(62) Furthermore, Greece adds that the interest of GRD 529,89 million settled under Article 19 of Greek law No 2198/94 is not overcompensation for the overall loss of GRD 851 million. Indeed, Greece considers that, in order to provide full compensation for late payment, the overall amount of interest to be written off would be GRD 959,79 million.

(63) Greece concludes that the aid granted to AGNO in the framework of Article 32(2) of Greek law No 2008/92 constitutes aid to compensate for the loss incurred as a result of an extraordinary event, namely the Chernobyl disaster, and consequently meets the requirements of Article 87(2)(b) of the Treaty.

- (64) In reply to the complainant's allegations, Greece indicates that compensation for damage caused by the Chernobyl nuclear disaster was also available for some of the private dairy companies, cleared by the Commission under the Article 87 and 88 procedure⁽⁹⁾.
- (65) In reply to the plaintiffs' comments on the opening of the procedure provided for in Article 88(2) of the Treaty, Greece maintains that the substantive beneficiary of any debt restructuring schemes are the producers/members of cooperatives that suffered the economic impact of disasters or extraordinary events. Greece states that cooperatives are statutorily bound to take up the entire production of their members, contrary to other undertakings, which can operate freely and selectively as regards quantities and quality of supplies. Consequently, they operate in the market under different arrangements and *ipso facto* cannot be treated in the same way.
- (66) Debt write-offs under Article 32(2) of Greek law No 2008/92 are intended to secure the agricultural cooperatives financial equilibrium and make possible long-term cooperation between them and the ABG with consequent benefits for both sides. In that, the intervention of the ABG respects the private investor principle.
- (67) The Greek authorities attach to their submission viability study forms that had to be submitted by each cooperative to benefit from the write-offs.
- (69) Greece disagrees with the Commission's claim that the ABG, in settling the debts of AGNO under Article 5 of Greek law No 2237/94, did not act according to the private investor principle. Greece points out that the application of the provisions of Article 5 of Greek law No 2237/94, which was at the discretion of the ABG, was decided by the Board of Directors and the General Assembly of the ABG shareholders on the basis of the private investor principle. This was likewise applied by the ABG to all other cooperative entities whose debts were settled by Article 5 of Greek law No 2237/94.
- (70) Greece indicated that the total amount of the debt settlement for the dairy cooperative AGNO under Article 5 of Greek law No 2237/94 was GRD 10,145 billion, consisting of GRD 3,12 billion from mature and uncovered short-term debt, GRD 4,725 billion from medium-term loans (mainly linked to the project of relocation of the dairy plant) and 2,3 billion GRD for contractual interest between 1 January 1994 and 31 March 1995.
- (71) The Greek authorities indicate that the Circular of the ABG No 150/94 contains a set of criteria for the application of Article 5 of Greek law No 2237/94, not only regarding servicing the debt to the ABG but also restoration of long-term viability of debtors.

ARTICLE 5 OF GREEK LAW No 2237/94

- (68) In the view of the Greek authorities, Article 5 of law No 2237/94 concerning consolidation of debts by agricultural cooperatives does not constitute State aid within the meaning of Article 87(1) of the Treaty. Greece sustains that regularisation of debts is a normal banking practice applied in all Member States and does not lead to an additional use of State resources.
- (72) According to Greece, the measures undertaken are realistic and contribute to the cooperative's financial equilibrium, as indicated in the viability study sent. Greece also sent a progress report on the implementation of the reorganisation measures for AGNO. This report is dated 31 October 1996.
- (73) AGNO imposed a special charge on milk deliveries. The overall product of this special charge was GRD 240,44 million in 1996 and 1997. This helped substantially to increase the cooperative's assets.

⁽⁹⁾ Aid N 54/87 — Commission letter SG (87) D/5035 of 15 April 1987.

- (74) The Greek authorities claim that, contrary to what has been asserted by the Commission, Article 5 of Greek law No 2237/94 contains provisions imposing reduction or cessation of productive capacity. To illustrate this, Greece indicates that the restructuring plan for AGNO involves cessation of lossmaking activities, such as production of animal feed for members.
- (75) According to the Greek authorities, Greece as an Objective 1 area would be exempted from the application of the sector limits relating to the processing and marketing of dairy products under the Annex to Commission Decision. No 94/173/EC⁽¹⁰⁾.
- (76) Greece adds that the annual statements of AGNO show positive operating results and that the cooperative serviced all the short-term loan debt interest and part of that on the medium-term loans. Application of the reform measures and the reduction of costs permitted a positive financial result guaranteeing AGNO's viability.
- (77) In its reply to the comments of the plaintiff, Greece further adds that, in the case of AGNO, restructuring of its debts was based both on the findings of the feasibility study, and on the anticipated benefits for the Bank from the application of any alternative solutions (i.e. initiation of enforcement proceedings).
- (78) In this respect, Greece indicates that, according to the financial position on 31 December 1994, AGNO had an overall debt of GRD 21,58 billion, against a total security-cover of GRD 44,14 billion. The major part of the overall debt consists of the debt to the ABG (GRD 16,75 billion), while the main part of the financial envelope concerning securities relates to the joint liability of AGNO's members (GRD 30,55 billion).
- (79) According to Greece, the feasibility study made provision for the regular servicing of the Association's debts through implementation of a financial reform plan. Therefore, on the basis of the adjustment of AGNO's
- debts, the Bank anticipated the receipt of the sum of GRD 16,75 billion, plus interest and considerable revenue from various banking transactions. On the other hand, in the case of enforcement proceedings being initiated (i.e. seizure, public auction, etc.), the Greek authorities anticipated the receipt of an overall amount of GRD 2,64 billion.
- ACT OF THE GOVERNOR OF THE BANK OF GREECE No 1620 OF 5 OCTOBER 1989*
- (80) Regarding the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989, Greece adds that it determines the general framework for the restructuring of business debts by the banking system, while allowing the banks freedom to determine the specific terms applying to the servicing of their customers' debts. Specifically, the banks are free to determine the period given to their business clients to pay off debts, as well as the interest rates where their debts are restructured.
- (81) Initially, these provisions were subject to a minimum interest rate level of 18 % per annum for working capital and 17 % per annum for medium-term loans. Since 4 August 1994, these minimum interest rates were abolished, thus enabling the banks to fix interest rates according to their own discretion and according to the circumstances of each individual case, even at the level of each individual customer.
- (82) Greece considers then that the adoption of Article 5 of Greek law No 2237/94 only aims to make the general framework of the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 more specific and render its application possible for the ABG. According to Greece, this specification was needed to define a stricter framework for this debt restructuring, namely by the introduction of strict eligibility conditions and provisions for non-respect of the terms of the adjustment loans.
- COMMENTS SUPPLIED BY THE ABG*
- (83) In its submission of 12 March 1999, the ABG supports the comments and information submitted by the Greek authorities. Its submission sets out to amplify the comments and information transmitted by Greece.

⁽¹⁰⁾ OJ L 79, 23.3.1994, p. 29, repealed by Regulation (EC) No 1750/1999 as from 1.1.2000.

- (84) Regarding the debt rescheduling of several cooperatives, the ABG states that, in 1994, it was faced with a situation where several agricultural cooperatives, including AGNO, were not in a position to service their debts due to a combination of factors. The high costs of servicing these debts (mostly consisting of compound interest) seriously jeopardised the ability of the cooperatives to continue operating. As these cooperatives were a significant proportion of ABG's clients, ABG had a significant financial interest in their survival. The ABG pointed out that not only would it lose the capital invested in these cooperatives but it would also mean an important loss of future revenue, via the provision of banking services to these cooperatives.
- of equity capital (via imposition of a levy on products and an increase in members' equity share),
 - a timetable for completion of financial restructuring,
 - provision for cancellation of the debt restructuring arrangement if instalments were delayed for more than six months and reversion to previous situation,
 - a reduction of the financial charges to the cooperatives,
- (85) The ABG considers that its decision to reschedule debts of cooperatives was entirely consistent with the behaviour of a private bank in equivalent circumstances. All requests for rescheduling of debts were examined and granted by ABG on the basis of commercial criteria and the fulfilment of the ABG's general requirements for debt rescheduling.
- the provision of further credit to depend on the fulfilment of the terms and conditions of the debt-restructuring arrangements,
 - a contractual obligation on each beneficiary cooperative to cover all its needs for banking services through ABG,
- (86) The ABG argues that the assertions of the Commission concerning the link between the decision of the Greek Government and the behaviour of the ABG are not correct. The ABG states that Article 5 of Greek law No 2237/94 was not necessary for the ABG to reschedule the debts owed to it. The Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 had granted to all banks in Greece (both private and public) the freedom to enter into debt rescheduling arrangements with their clients. Furthermore, according to the ABG, Article 5 of Greek law No 2237/94 did not impose any obligation on the ABG to settle the debts of cooperatives and did not confer any legal rights upon cooperatives to request from the ABG the rescheduling of their debts.
- the ratio of security given to ABG and debt to ABG should be 110:100,
 - regular close monitoring of the implementation of the business plan by the ABG.
- (87) According to the ABG, its only objective in agreeing to the rescheduling was to protect its commercial interests. For this purpose, the ABG laid down requirements for these settlements in circulars No 150/94 and No 22/95, containing:
- a viability plan providing for measures to ensure financial restructuring and repayment of debt, including reduction of operational expenses (through personnel cuts and other appropriate cost savings), the cessation of loss-making activities, obligation to dispose of idle assets, and the increase
- (88) The ABG adds that several cooperatives did not comply with the eligibility criteria and their applications were rejected. Furthermore, in accordance with circulars No 150/94 and No 22/95, the ABG cut the credit lines to some cooperatives and took the necessary steps to recover the outstanding amounts.
- (89) Regarding the debt write-off provided in the framework of Article 32(2) of Greek law No 2008/92, the ABG states that there was no overcompensation for the damage suffered by AGNO resulting from the Chernobyl nuclear accident. In addition to the loss of GRD 760 million (AGNO's loss from the destruction of 19 000 tonnes of contaminated milk at an average price of GRD 40/kg). The amount of GRD 1,38 billion actually granted includes GRD 91 million for AGNO's loss from the sale of pasteurised milk to cheese processors and an amount of GRD 529,89 million representing interest on these losses. To this end, the ABG avers that AGNO was paying a market price of GRD 40/kg, instead of the target price of GRD 34/kg which was then applicable.

- (90) According to the ABG, AGNO's sales of fresh milk and yoghurt were reduced by 8 500 t between 1985 and 1986. This cooperative was then obliged to dispose of this additional milk by processing it into cheese. AGNO was then paying to its members up to GRD 44,5/kg of milk to be processed into cheese, GRD 10,5 higher than the indicative price of GRD 34/kg applicable during this period. On the basis of such price difference, the ABG justifies that AGNO's loss was 91 million GRD (8 500 t × GRD 10,5/kg). The ABG adds that, in 1987 alone, AGNO processed into cheese 5,23 t of milk. AGNO should have paid its raw milk suppliers GRD 30,03/kg. However, the ABG added that, pursuant to the Greek Government's price-intervention policy, AGNO was paying its producers GRD 44,5/kg of milk.
- (91) The ABG argues that, in order to cover the abovementioned losses, AGNO was obliged to raise significant loans from the ABG. The actual payment of compensation did not occur until 31 August 1993. Taking account of the reference rates applicable in Greece between 1988 and 1993, the amount of interest due on the losses calculated at GRD 851 million was GRD 959,79 million. Thus, the ABG argues that the writing-off of GRD 529,89 million in interest does not overcompensate the actual losses incurred.
- (92) The ABG argues that AGNO's financial situation deteriorated sharply before 1994 as a result of delays in the write-off of the Chernobyl-related debts and the delay in the implementation of the investment project. AGNO's output was below normal levels, a problem that was compounded by strong competition in the market and a downturn in market sales.
- (93) Faced with AGNO's inability to pay its debt, the ABG could either force AGNO into bankruptcy or reschedule its debts. According to the ABG, the cost-benefit analysis of both options was favourable to restructuring the cooperatives' debts. The overall amount of credits returning to the ABG from liquidation (after payment of privileged creditors) would be GRD 2,64 billion. This would only cover a minor part of the overall debt of AGNO the ABG of GRD 16,75 billion. Equally, the ABG argues that the debt rescheduling arrangements were accompanied by an overall value of securities of GRD 44,23 billion (of which GRD 30,55 billion member's liability, GRD 7,11 billion liabilities on fixed assets and GRD 4,84 billion claims).
- (94) According to the ABG, AGNO's restructuring measures were agreed with this bank on 7 July 1995, when two debt rescheduling arrangements were concluded concerning respectively GRD 10,145 billion and GRD 1,899 billion. The restructuring measures were:
- increase in equity capital by 290 million GRD in the period 1995-1997,
 - imposition of a levy of GRD 1,5/kg of milk delivered until 31 December 1995 and 3 GRD/kg from 1 January 1996,
 - annual savings of GRD 200 million through reduction of overtime and supplementary payments to staff,
 - reduction in returns on products with total savings of GRD 210 million in the first year and GRD 250 million thereafter,
 - reduction of marketing/advertising expenditure down to 2 % of turnover, i.e. GRD 540 million,
 - savings of GRD 500 million in 1995 and 1996 related to the lay-off of 150 employees,
 - annual savings of GRD 50 million by general reduction of production costs,
 - cancellation of planned investment and any other investment not linked to the milk processing plant,
 - extension of the product range and increase in product quality,
 - introduction of modern marketing methods, including incentives for sales personnel, exclusive representatives, change of the distribution methods and change of billing system.
- (95) On the basis of these restructuring measures, the ABG concluded that AGNO had material prospects of returning to viability and repaying its debts. ABG agreed to reschedule AGNO's debts. The amount of AGNO's debt concerned was GRD 10,145 billion. According to the ABG, this debt comes not only from the execution of the investment project, but from loans related to the entire operation of the factory and interest on such loans. The rescheduling agreement provided for repayment over a period of 15 years, with a three-year grace period during which AGNO would not pay any amount to the ABG. Payment of interest would only be made for the second half of the 15-year term at an interest rate 50 % lower than market rates.

- (96) As a result of the high level of AGNO's indebtedness, there was also a significant amount of debt that could not be covered by the provisions of Article 5 of Greek law No 2237/94 because it matured after 31 December 1993. Thus, the ABG decided to reschedule a further GRD 1,899 billion on the basis of the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989. It was agreed that this amount would be paid over a period of 10 years, with a two-year grace period in which only payments of interest would be paid at the rate of 21,5 %.
- (97) As regards the implementation of the viability plan, the ABG adds that the first report, issued on 14 February 1996, showed that the initial measures were not sufficient to achieve the financial targets set. On the basis of this report, additional measures were implemented:
- increase of the levy on delivered milk from GRD 3 to 4/kg. The annual proceeds of this measure were expected to be GRD 230 million,
 - GRD 80 million cost-savings by changing the payment system for the milk suppliers,
 - reduction of the marketing expenditure to GRD 550 million in 1996 and 1997. This would result in annual savings of GRD 950 million in these years,
 - lay-off of 81 employees by 31 January 1996, resulting in GRD 283 million savings in 1995 and 1996,
 - annual savings of GRD 20 million on recruitment of seasonal personnel,
 - the levy charged to milk suppliers for animal feedstock would be increased by GRD 0,5/kg of delivered milk, for an annual income of 35 million GRD,
 - cooperation with a producer of animal feedstock would result in annual savings of financial charges of GRD 91 million,
 - cooperation with a distributor in the Athens market, resulting in additional benefits of about GRD 100 million,
 - payment by milk producers of outstanding debts of GRD 75 million in 1996 and 1997,
 - annual savings of GRD 196 million and GRD 60 million from payments of producers' debts to feedstock suppliers and advance payments respectively,
- agreement with producers and personnel would allow the freezing at 1995 prices of their outstanding claims against AGNO and deferment of payment of GRD 2,5 billion until 1999.
- (98) A second report identified in 1996 a short delay in implementing certain measures and a cash-flow difficulty in AGNO's operation that did not allow the achievement of the financial objectives. Measures were recommended for the period June-September 1996, including the following:
- calculation of interest on amounts owed by producers over seven days for the sale of animal feedstock,
 - reductions in daily allowances and expenses for missions of AGNO's staff,
 - a levy of 1 % for monthly salaries up to GRD 200 000 and 2 % for salaries over GRD 200 000,
 - compulsory delivery to AGNO of all milk production by its members,
 - application of interest on bounced cheques from customers and negotiations for the payment of frozen debts by customers,
 - detailed financial plan for coverage of AGNO's needs for working capital and repayment of medium-term debts.
- (99) According to the ABG, its close monitoring of AGNO's operation following the 1995 debt rescheduling agreements allowed it to try and exercise influence on AGNO's management decisions with a view to minimising its financial exposure in this cooperative. However, a series of situations after 1996 in which ABG's interest diverged from the decisions of AGNO's management indicated that the ABG should be more actively engaged in AGNO's management to ensure that the implementation of the agreed restructuring measures and the prospects of repayment of its debts were not undermined, if not abandoned.
- (100) The ABG indicated that it realised then that its financial exposure in AGNO entailed a more active commitment in the cooperative's management. Consequently, the ABG nominated four technical advisers in August 1997, with the consent of AGNO's Board of Directors. The ABG assumed direct responsibility for AGNO's management on 1 May 1998, with the consent of AGNO's General Assembly.

V. ASSESSMENT

EFFECT ON TRADE

APPLICABILITY OF ARTICLE 87(1) OF THE TREATY

- (101) In accordance with Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
- (102) The measures being assessed concern cooperatives active in all sectors in the production, processing and marketing of agricultural products in Greece. In the framework of the common agricultural policy, the large majority of these products is covered by a common organisation of the market. In all regulations establishing a common market organisation for a given sector, there is a specific provision stating that, save as otherwise provided by the Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production and trade of the products covered by the said Regulation.

USE OF STATE RESOURCES

- (103) With the exception of the alleged tax exemptions, all the measures undertaken in favour of agricultural cooperatives in general, and AGNO as an example, were done through the ABG.
- (104) Even if the ABG is formally a private company, the sole shareholder of the ABG is the Greek State, its Board of Directors is appointed by governmental decision and the Greek State can establish a dominant influence in the rules governing this bank. The ABG would be regarded as a public undertaking within the meaning of Article 2 of Commission Directive 80/723/EEC on transparency of financial relations between Member States and public enterprises, as amended⁽¹¹⁾.
- (105) Consequently, debt write-offs and debt reschedules by the ABG involve necessarily a use of State resources. In the context of the Commission examination of certain measures pursuant to Articles 87 and 88 of the Treaty, the use of ABG's resources is assimilated to measures undertaken by a Member State or through State resources within the meaning of Article 87(1) of the Treaty. However, in order to fulfil the conditions required by Article 87(1) of the Treaty, it has to be demonstrated for all measures that the behaviour of the ABG is not compatible with the principle of the private investor in a market economy.

⁽¹¹⁾ OJ L 195, 29.07.1980, p. 35, Directive as last amended by Directive 93/84/EEC (OJ L 254, 12.10.1993, p. 16).

- (106) Most of the measures under examination cover beneficiaries active throughout the agricultural sector in Greece. The production value of agricultural products in the Community was EUR 213,467 million in 1998⁽¹²⁾, while the value of the Greek agricultural production was EUR 8,834 million in the same year, representing 4,1 % of overall European production. There is significant trade in agricultural products between Greece and the Community. Indeed, between 1988 and 1998, Greece imported a global value ranging between EUR 1,476 million and EUR 2,911 million and exported to the remaining European countries a minimum worth of EUR 842 million and a maximum worth of EUR 1,796 million,

DISTORTIONS OF COMPETITION

- (107) In the agricultural sector, the Commission has consistently held that certain measures are susceptible to affecting trade between Member States when there is a trade flow of the products concerned. Pursuant to the data shown above, the measures in question affect trade flows between Greece and other Member States.
- (108) Apart from the use of State resources and the effect on trade flows, the Commission notes that the measure is selective, i.e. the write-offs of the debts towards the ABG are made selectively to a group of economic operators (116 cooperatives). These write-offs have an immediate financial impact on the situation of these undertakings in relation to the undertakings that, in Greece and in other Member States, do not have access to such measures.

ADVANTAGES ACCORDING TO THE MARKET CREDITOR PRINCIPLE⁽¹³⁾**Article 32(2) of Greek law No 2008/92**

- (109) The Commission notes that the position of the Greek authorities on the aid character of this measure is contradictory. In their initial reply to the opening of the procedure provided for in Article 88(2) of the Treaty, the Greek authorities linked the debt write-offs to natural disasters and extraordinary events fulfilling the requirements of Article 87(2)(b) of the Treaty. Consequently, they considered at an initial stage that the measure involved State aids within the meaning of Article 87(1) of the Treaty.

⁽¹²⁾ Source Eurostat.

⁽¹³⁾ Judgment of the Court of 29 June 1999 in Case C 256/97 — DMT. Not yet published in the Official Journal.

- (110) At a later stage, Greece argued that the debt write-offs were intended to secure long-term financial equilibrium of the cooperatives and make possible cooperation with the ABG, with mutual benefits. Thus, Greece concluded that the interventions of the ABG respected the private investor principle.
- (111) On this point, the Commission cannot agree with the views of the Greek Government. The Commission considers that in no circumstances would a private bank renounce all or part of its claims in relation to a given undertaking simply on the grounds of its potential economic viability.
- (112) In particular, the Commission does not agree that a private investor in a market economy would renounce its credits to 116 agricultural cooperatives, up to an amount of GRD 37,835 billion, without any reciprocity from these beneficiaries.
- (113) Therefore, the Commission considers that all the conditions for the application of Article 87(1) of the Treaty are fulfilled for this measure. The aid intensity consists of the overall amount of debt write-off.
- Article 5 of Greek law No 2237/94**
- (114) According to the Greek authorities, Article 5 of law No 2237/94 concerning consolidation of debts by agricultural cooperatives does not constitute State aid within the meaning of Article 87(1) of the Treaty. Greece sustains that regularisation of debts is a normal banking practice applied in all Member States and does not lead to an additional use of State resources.
- (115) The Commission does not share the views of the Greek authorities on this point.
- (116) The Commission noted that there are legal provisions authorising all banks in Greece to execute debt rescheduling arrangements. The terms and conditions according to which these debt reschedules are done is left the discretion of every bank according to its commercial banking practices. The adoption of Article 5 of Greek law No 2237/94 allows the ABG to perform the same type of operations, but in more specific conditions. The Commission can then presume that these operations would not have taken place in normal market conditions, i.e. if the ABG operated according to the private creditor principle using purely commercial banking criteria.
- (117) Firstly, the range of eligible undertakings is considerably reduced, introducing an element of selectivity. Indeed, Article 5 of Greek law No 2237/94 specifically concerns agricultural cooperatives and is not available to other types of undertakings. Secondly, while in the general case it is up to the banks to set the interest rates applicable for the debt rescheduling arrangements, Article 5 of Greek law No 2237/94 established very favourable terms for these arrangements, that can go up to 15 years, with a grace period of three years, and at 50 % of the normal market rate for such loans.
- (118) Consequently, the Commission considers that this measure is selective and distorts competition conditions in the internal market. It gives benefiting cooperatives competitive advantages not compatible with the private creditor principle.
- (119) The Commission considers that the aid intensity is at least equivalent to the granting of a new loan for the overall amount of the cooperative's debt, having a duration of 10 or 15 years, at 50 % of the normal market rate for consolidation loans. As the scheme was applicable to 116 cases and the Commission cannot exclude that at least some of these cooperatives would not obtain any debt rescheduling under normal market conditions, the aid intensity could be in some cases up to 100 %, if one of such cooperatives had been unable to obtain such settlement arrangements in any circumstances (point 41 of the Commission communication on the application of Articles 92 and 93 of the Treaty and of Article 5 of Commission Directive 80/723/EC to public undertakings in the manufacturing sector⁽¹⁴⁾).
- (120) Furthermore, the Greek argument according to which it would be financially more advantageous to the ABG to reschedule the cooperatives' debts than to force cooperatives, for example AGNO, into bankruptcy, does not withstand closer examination. The Commission considers this should be assessed on a case by case basis.

⁽¹⁴⁾ OJ C 307, 13.11.1993, p. 3.

- (121) As to the case of the dairy cooperative AGNO, it received support from the Greek Government in the form of debt write-offs or settlements through the ABG at least in four instances (Greek law No 2008/92, Greek law No 2198/94, Greek law No 2237/94 and Greek law No 2538/97). Any private investor would at a certain point call into question its participation in a cooperative in order to limit further losses.
- (122) Secondly, the Greek authorities failed to demonstrate that the private banks were executing the same operations on the same conditions to relieve the debt of the agricultural cooperatives.
- (123) Thirdly, the debt of AGNO to the ABG amounted to GRD 16,754 billion, while the net assets of AGNO had a market value of about GRD 7 billion. The debt of AGNO to other banks was minor (GRD 698 million) compared with the debt to the ABG, indicating that even if the banking system, as a whole, agreed to granting favourable lending terms to AGNO⁽¹⁵⁾, the ABG's servicing could not be comparable with that of the other banks. Equally, even if nominally the overall value of the securities provided (GDR 44,23 billion) exceeds the amount of debt to be restructured, the Commission noted that most of these securities come from the member's joint liability (GRD 30,55 billion) or claims (GRD 4,84 billion). By definition, these types of securities may prove extremely difficult to mobilise⁽¹⁶⁾ or uncertain, depending on the exact nature of these claims.
- (124) Therefore, the Commission considers that all the conditions for the application of Article 87(1) of the Treaty are fulfilled.

Act of the Governor of the Bank of Greece No 1620 of 5 October 1989

- (125) Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 provides a legislative framework to allow credit institutions in Greece to regularise their debts pursuant to any type of loans in GRD or foreign currencies.

⁽¹⁵⁾ Bulletin EC 9-1984 and see fn. 14, point 3.2, third indent, *mutatis mutandis* (as to the private contribution).

⁽¹⁶⁾ See aid C 47/95 where Italy obtained from the Council under the procedure of Article 88(2) third subparagraph of the Treaty an authorisation to grant aid in order to prevent banks from claiming personal assets of cooperative members, in case of bankruptcy of these cooperatives.

- (126) For a certain period, this provision was subject to a given level of interest rates. At the time the consolidated loans under Article 5 of Greek law No 2237/94 were granted to AGNO and other cooperatives, these minimal rates were not applicable anymore.

- (127) As the provisions of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 apply equally and according to the same rules to public and private banks active in the Greek market and debt rescheduling is a normal banking practice in all European States, the Commission concludes that this provision is not selective. Consequently, it does not in itself constitute State aid within the meaning of Article 87(1) of the Treaty. In so far as the public banks have used these provisions to reschedule debts, a case-by-case analysis is needed in this case to determine the aid character of each measure.

Loan to AGNO pursuant to Act of the Governor of the Bank of Greece No 1620 of 5 October 1989

- (128) Regarding recital 127, the Commission concluded that the provisions of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 do not in themselves constitute State aid within the meaning of Article 87(1) of the Treaty.
- (129) Being the general Greek provisions allowing restructuring of debts by banks, the above position is without prejudice to the actual behaviour of the ABG in rescheduling debts of cooperatives pursuant to these administrative provisions. These may indeed constitute State aid, if it can be demonstrated that the behaviour of ABG cannot be justified by the principle of the private creditor in the market economy.
- (130) In the case of AGNO, the total debt rescheduling arrangements concerned an overall amount of GRD 12,044 billion: GRD, 10,145 billion in the framework of Greek law No 2237/94 and GRD 1,899 billion on the basis of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989. The Greek authorities indicate that this amount was not eligible under the provisions of Greek law No 2237/94. Moreover, the ABG cannot be assimilated to a private creditor since it has repeatedly granted aid to AGNO.

(131) The Commission noted that this operation is concomitant with a major debt rescheduling fulfilling the conditions of Article 87(1) of the Treaty. Even if the rescheduling conditions are less favourable to AGNO than the ones pursuant to Article 5 of Greek law No 2237/94, the interest rate applicable (21,5 %) is still lower than the reference rate applicable at the time in Greece (26,47 %). The Commission considers that this additional settlement is part of an overall plan to assist AGNO in paying off its debt and, consequently, constitutes State aid pursuant to Article 87(1) of the Treaty.

(132) The Commission considers that the aid equivalent of this procedure corresponds to a new loan of the overall amount of debt at an interest rate equivalent to the difference between a market rate (at least the reference rate applicable in Greece at the time) and the applicable rate, for the total duration of the loan (see recital 119).

Tax exemptions

(133) The plaintiffs argue that differential treatment of cooperatives in the framework of Greek general tax law or cooperative law constitutes State aid within the meaning of Article 87(1) of the Treaty.

(134) According to point 23 of the Commission notice on the application of the State aid rules to measures relating to direct business taxation⁽¹⁷⁾, the differential nature of some measures does not necessarily mean that they must be considered State aids. They may constitute general measures justified by the nature or general scheme of the system. In particular, according to point 25 of the said Commission notice, it may also be justified by the nature of the tax system that cooperatives which distribute all their profits to their members are not taxed at the level of the cooperative when tax is levied at the level of their members.

(135) As this situation corresponds to the one described by the Greek authorities, the Commission has no grounds to consider that differential treatment of cooperatives in the framework of the Greek tax system constitutes State aid within the meaning of Article 87(1) of the Treaty.

POSSIBLE DEROGATIONS IN THE FRAMEWORK OF ARTICLE 87 OF THE TREATY

(136) However the prohibition on State aid contained in Article 87(1) is not unconditional. Except for Article 87(2)(b) of the Treaty, that Greece invokes as the legal basis for the granting of the aids in Article 32(2) of Greek law No 2008/92, the remaining exceptions contained in Article 87(2) of the Treaty are manifestly inapplicable.

ARTICLE 87(2)(b) OF THE TREATY

(137) In their reply to the opening of the procedure provided for in Article 88(2) of the Treaty, the Greek authorities invoke the provisions of Article 87(2)(b) of the Treaty, which deems that aid to make good the damage caused by natural disasters or exceptional circumstances is compatible with the common market.

(138) However, even if aid to compensate for the economic effects of natural and assimilated disasters is deemed compatible by the EC Treaty itself, all instances of such aid should be notified under Article 88(3) of the EC Treaty and the Member State must justify the aid. Only in this way can the Commission satisfy itself that an aid of this type is in fact caught by Article 87(2)(b).

(139) Firstly, the Commission took note of the fact that Article 32(2) of Greek law No 2008/92 is primarily intended to writeoff debt of agricultural cooperatives incurred by the execution of the social and intervention policy on behalf of the Greek State. Although Greece argues that the interventions from the Greek State resulted from the damage caused by a list of 24 natural disasters that affected Greece between 1982 and 1989, Greece fails to demonstrate a causal link between these natural disasters and State intervention concerning the formation of sales prices for products. For example, the link between compensation for damage caused by the exporting of oranges, marketing of apricots, construction of a fridge unit, storage of table olives and any type of natural disasters falling under Article 87(2)(b) is, at least, unclear.

⁽¹⁷⁾ OJ C 384, 10.12.1998, p. 3.

(140) Secondly, an analysis of the 116 evaluation sheets indicating the reasons for debt write-offs for individual cooperatives sent by the Greek authorities shows that in none of the cases is the damage caused by natural disasters or adverse climatic conditions. Only six cooperatives (including the dairy cooperative AGNO) benefited from write-offs linked to the nuclear disaster at Chernobyl.

(141) Thirdly, the Commission notes that the Greek State compensated the cooperatives, after 1992, for damage supposedly caused to agricultural production by natural disasters and exceptional events which occurred between 1982 and 1989. Consequently, in some situations, compensation may have occurred up to ten years after the event.

(142) According to its existent practice⁽¹⁸⁾, the Commission considers that, where aid is paid only several years after the occurrence of the event in question, there is a real danger that the payment of such aid will produce the same economic effects as operating aid. Therefore, in the absence of a specific justification, resulting for example from the nature and extent of the event, or the delayed or continuing nature of the damage, the Commission does not approve national aids which are submitted more than three years after the occurrence of the event. The existing practice has recently been codified in point 11.12 of the Community guidelines for State aid in the agriculture sector⁽¹⁹⁾. The administrative difficulties invoked by the Greek authorities cannot be considered an acceptable justification, since the law, adopted in 1992, foresees already the settlement of damage predating to 1982.

(143) Subsidiarily, in relation to the aid granted to the dairy cooperative AGNO in the framework of Greek law No 2008/92 as a result of the Chernobyl nuclear disaster, the Commission notes at least part of the losses consist of a comparison between the average prices paid by AGNO to their producers and the target prices for the same raw materials. Consequently, these losses result from higher producer prices for milk and not from the exceptional event itself.

(144) For the reasons detailed above, the Commission cannot consider that the provisions of Article 32(2) of Greek law No 2008/92 fulfil the conditions of Article 87(2)(b) of the Treaty.

ARTICLE 87(3) OF THE TREATY

(145) The Commission considers that the aid measures are not intended to promote the execution of an important project of common European interest, nor to remedy a serious disturbance of the economy of a Member State within the meaning of Article 87(3)(b). Equally, they are not intended to promote cultural or heritage protection within the meaning of Article 87(3)(d). It is therefore necessary to consider whether the application of the measures provided for may benefit from a derogation under either Article 87(3)(a) of the Treaty, or Article 87(3)(c).

Article 32(2) of Greek law No 2008/92

(146) The debt write-offs undertaken in the framework of Article 32(2) of Greek law No 2008/92 are made to the extent that the debts were incurred due to the implementation of social or intervention policy on instructions of the Greek State. Although the Commission, in opening the procedure provided for in Article 88(2) of the Treaty, called upon the Greek authorities to transmit all details in relation to these social and intervention policies, including an assessment of these national policies in the light of the common agricultural policy, the Greek authorities have failed to transmit the requested information.

(147) From an analysis of the text of the draft law and the 116 cases where a debt write-off has actually been agreed, it can be concluded that all the causes related to the write-off of debt resulting from expenditure incurred by the cooperatives for the execution of certain functions. All the causes for debt write-offs (production aids, collection and marketing of agricultural products, storage of agricultural products, acquisition of material needed for the production process, current operating costs, management of pesticides and animal feed, debts to ABG, damage caused by price fixing, compensation for administrative actions, compensation for damage caused by the Chernobyl accident and investments) are considered by the Commission as operating aids which therefore cannot be approved by the Commission under Article 87(3)(c) of the Treaty.

⁽¹⁸⁾ See precedent C 51/96.

⁽¹⁹⁾ OJ C 28, 1.2.2000, p. 2.

- (148) In particular, the aids for compensating the damages caused by the Chernobyl accident must be considered as operating aids because they do not fulfil the conditions of Article 87(2)(b) of the Treaty. Equally, aids compensating cooperatives for the realisation of investments must be considered operating aids since, as compensation is paid retroactively, these aids simply improve the financial situation of cooperatives after the execution of the investment without having any incentive for the realisation of investments and, thus, the development of the sector⁽²⁰⁾.
- (149) The remarks of the Greek authorities confirm that the objective of the measure is to relieve the beneficiaries of their debt burden, and that there is no reciprocity on the part of the beneficiaries which might be considered to benefit the development of certain economic activities or certain regions. To this extent, a mere statement of the 'viability' of the cooperative cannot be considered as reciprocity. The fact that cooperatives are statutorily bound to take up the entire production of their members is not liable to modify this conclusion, as acceptance of a cooperative statute is not mandatory. Having regard to the principles laid down in the case law⁽²¹⁾, the Commission is therefore bound to conclude that the measure cannot benefit from the derogation under Article 87(3)(c) of the Treaty.
- (150) Although Article 87(3)(a) of the Treaty has not been explicitly invoked by the Greek authorities, the latter argued that the measures had a regional scope, due to the fact that cooperatives represent the interest of large groups of farmers active in mountain, hill and less-favoured areas.
- (151) The Commission communication of 1988⁽²²⁾ on the method for the application of Article 87(3)(a) and (c) to regional aid provides in point I.6 that in recognition of their special difficulties the Commission may, by way of derogation, authorise certain operating aid in these regions under specific conditions which are enumerated in sub-points (i) to (v). Sub-point (ii) of these conditions specifies that 'the aid should be designed to promote a durable and balanced development of economic activity and not give rise to sectoral overcapacity at the Community level such that the resulting Community sectoral problem produced is more serious than the original regional problem; in this context, a sectoral approach is required and in particular the Community rules, directives and guidelines applicable to certain industrial (steel, shipbuilding, synthetic fibres, textiles and clothing) and agricultural sectors, and those concerning the industrial enterprises involving the transformation of agricultural products are to be observed.'⁽²³⁾
- (152) In the agriculture sector, which covers the production, processing and marketing of Annex I products, it has been constant Commission policy for many years to prohibit the payment of operating aid in all regions, including regions which fall under Article 87(3)(a) of the Treaty.
- (153) It can directly be seen from the examination of the long list of individual grants that the measure is susceptible of undermining the operation of the common market organisations established under the common agricultural policy. Indeed, the cooperatives are compensated for costs incurred by actions that are normally carried out in the framework of these common market organisations.
- (154) It is constant jurisprudence of the European Court of Justice that Member States are barred from adopting national measures which are liable to undermine the machinery of price formation established by a common market organisation⁽²⁴⁾. Given the precedence of the common agricultural policy over State aid rules and over the competition rules laid down in the Treaty (Article 36 of the EU Treaty)⁽²⁵⁾, national measures hampering a common organisation of an agricultural market can in no case be approved under a State aid scheme on the grounds that an exemption provision applies.
- (155) In view of the above, it must be concluded that the provisions of Article 32(2) of Greek law No 2008/92 constitute State aid within the meaning of Article 87(1) which cannot qualify for any of the exceptions provided for in Article 87(2) or (3).

⁽²⁰⁾ Judgment of 17 September 1989 in Case C 730/79, Philip Morris [1980] ECR p. 2671-2693.

⁽²¹⁾ In particular, Judgment of the Court of First Instance of 8 June 1995 in Case T-459/93, Siemens v Commission [1995] ECR II-1675, and the case law cited therein.

⁽²²⁾ OJ C 212, 12.8.1988, p. 2. Guidelines for national regional aid — point 2. (OJ C 74, 10.3.1998, p. 10).

⁽²³⁾ Judgment of the Court of 14 January 1997 on case C-165/97 — Spain v. Commission (Piezas y Rodajes SA) ECR [1997] p. I-0135.

⁽²⁴⁾ Judgment of the Court of 12 June 1990 in case 35/88, KYDEP, [1990] ECR page I-3125.

⁽²⁵⁾ Judgment of the European Court of Justice in Case 177/78 Pigs and Bacon, Commission v. McCarren [1979] ECR 2161.

(156) As an individual case of application of the aid scheme indicated above, the same conclusion applies to the aid granted to dairy cooperative AGNO (GRD 851 million).

(157) As to the particular case of the aid granted to AGNO pursuant to Article 19 of Greek law No 2198/94 (GRD 529,89 million), the Commission noted that it consisted of interest for late payment of damage relating to the Chernobyl nuclear accident. Since the object of the aid is the same as the one granted pursuant to Article 32(2) of Greek law No 2008/92, the previous conclusion is also applicable.

ARTICLE 5 OF GREEK LAW NO 2237/94

(158) Article 87(3)(c) of the Treaty establishes that aids to facilitate the development of certain activities or of certain economic areas may be considered compatible with the common market, where such aids do not adversely affect trading conditions to an extent contrary to common interest.

(159) Although this was not specifically invoked by the Greek authorities, the provisions of Article 5 of Greek law No 2237/94 should be examined in the light of these provisions.

(160) At an early stage, the Commission assessed these provisions in the light of the guidelines in force at the time the aids were granted and at the time of the opening of the procedure provided for in Article 88(2) of the Treaty⁽²⁶⁾. These guidelines have subsequently been modified by a new set of rules for State aids in favour of companies in difficulty, including specific conditions for the granting of these aids in the agricultural sector⁽²⁷⁾, that started to apply on 1 January 1998. These guidelines were subsequently codified in mid-1999⁽²⁸⁾. For reasons of legal certainty, the appraisal of the measure is done according to the criteria in force at the date of the opening of the procedure provided for in Article 88(2) of the Treaty.

(161) Point 2.2 of the 1994 Community guidelines established that Member States could, at their discretion, continue to apply special Commission rules for the agricultural sector for this type of aids in the agricultural sector. As the measures have not previously been notified to the Commission and Greece did not recognise the aid character of the measure, it has not indicated which set of rules it wishes the Commission to apply to examine conformity of the measures with the Treaty's rules.

(162) In these conditions, the Commission is obliged to cover all the aspects of the relevant Community guidelines, i.e. rescue aids, restructuring aids according to the special rules applicable to the agricultural sector and restructuring aids according to the general criteria.

Special rules for rescue and restructuring of enterprises in the agricultural sector

(163) Concerning the special rules in the agricultural sector which could apply as an alternative to the general rules, aid was in essence limited in volume by specific elements of the capital stock of the farm or company in question. Where the farm or company in question would be at risk through inability to pay debt, it was Commission policy that Member States would be able to safeguard these investments by granting restructuring aid within specific parameters.

(164) The Commission's previous practice on the agricultural sector⁽²⁹⁾ can be summarised as follows:

- (a) aid (for example, meeting the cost of interest due) must be intended to reduce the financial burden of existing debts contracted to finance investments;
- (b) the cumulated grant equivalent of any existing aids granted when the debts were contracted and the new aid may not exceed the rates generally accepted by the Commission:
 - for investments in primary production, 35 % or 75 % in less-favoured areas within the meaning of Article 21(2) of Regulation (EC) No 950/97⁽³⁰⁾,
 - for investments in processing or marketing, 55 % (75 % in Objective 1 areas) if they comply with the exclusions laid down in the Community guidelines for State aid in connection with investments in the processing and marketing of agricultural products⁽³¹⁾;

⁽²⁶⁾ See footnote 7.

⁽²⁷⁾ OJ C 283, 19.9.1997, p. 2.

⁽²⁸⁾ OJ C 288, 9.10.1999, p. 2.

⁽²⁹⁾ See footnote 8 and precedent cases N 864/97, C 65/97.

⁽³⁰⁾ OJ L 142, 2.6.1997, p. 1.

⁽³¹⁾ OJ C 29, 2.2.1996, p. 4.

(c) the new aid must be in response to readjustments of the rates for new loans made to take account of changes in the cost of borrowing — the amount of aid must not exceed the change in the rates for new loans — or must be for agricultural holdings whose viability can be guaranteed, particularly in cases where the financial burden of existing loans is such that the holdings are likely to be put at risk or even to be declared bankrupt.

(165) The Commission concludes that these aids do not respect the special criteria for restructuring of agricultural enterprises, by the simple fact that debts to be rescheduled are not necessarily linked to the execution of investments. Indeed, Article 5 of Greek law No 2237/94 may cover other reasons for indebtedness, provided that these are attributable to objective and external circumstances.

Rescue aid

(166) As a general comment, the Commission considers that the spirit and the letter of Article 5 of Greek law No 2237/94 do not conform with the general objective of rescuing companies in difficulties, which merely aims at offering a brief respite to companies in difficulties while a long-term solution can be worked out. Indeed, these provisions aim themselves to constitute a long-term solution to the agricultural cooperatives' financial problems.

(167) According to the Commission's criteria, rescue aid must:

- consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates,
- be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies),
- be paid only for the time needed (as a general rule not exceeding six months) to devise the necessary and feasible recovery plan,
- be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States,
- be, in principle, one-off operations.

(168) The Commission does not have the necessary information to assess respect of the second, fourth and fifth conditions. However, the Commission noted that the first and third conditions are clearly not respected. Indeed, the consolidation loans are granted for a duration of 15 years at rates 50 % lower than market rates.

(169) Consequently, Article 5 of Greek law No 2237/94 does not respect the Community criteria for rescuing companies in difficulty.

General Community guidelines for restructuring of firms in difficulties

(170) Concerning the Community guidelines on aid for the rescue and restructuring of companies in difficulty, the general principle applied by the Commission is to allow restructuring aid only in circumstances where it can be demonstrated that the approval of restructuring aid is in the Community interest.

(171) From the formal point of view, Article 5 of Greek law No 2237/94 constitutes a scheme for restructuring agricultural cooperatives in difficulty. Pursuant to points 4.1. and 4.2. of the applicable guidelines, the Commission considers that approval of aid schemes relating to restructuring of companies in difficulty is only possible if these companies fall within the definition of small and medium enterprises (SMEs) within the meaning of the relevant Community guidelines for State aid in the agriculture sector applicable at that time⁽³²⁾. For large enterprises, individual notification of all awards is required by the guidelines.

(172) Article 5 of Greek law No 2237/94 does not contain any explicit provision limiting the aid to SMEs according to the Community definition. Even though these provisions have not been duly notified pursuant to Article 88(3) of the Treaty, the Commission notes that, according to the Greek authorities, 116 agricultural cooperatives made use of this scheme.

(173) One of the beneficiaries was the dairy cooperative AGNO, that could not be considered an SME within the meaning of the applicable Community guidelines. Indeed, at the end of 1993, AGNO had a 912 strong workforce (maximum for SMEs: 250) and EUR 60 million turnover (maximum at the time the aid was granted: EUR 20 million).

⁽³²⁾ OJ C 213, 19.8.1992, p. 10, presently OJ C 213, 23.7.1996, p. 4.

(174) Consequently, the Commission concluded that the restructuring scheme for cooperatives was not limited to SMEs according to the applicable Community guidelines. Therefore, the Commission cannot authorise such a scheme.

(175) Furthermore, the Greek authorities failed to supply to the Commission, as requested in the decision opening the Article 88(2) procedure concerning the measures, detailed information about the implementation of the scheme for all 116 beneficiaries, and not only in the particular case of AGNO.

(176) As regards substance, the approval of a restructuring aid can only be possible when the following general conditions are fulfilled:

(a) **Restoration of viability**

All restructuring plans must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. Improvement of viability must mainly result from internal measures and from external factors only to the extent that assumptions on the evolution of these factors are widely accepted. To fulfil the viability criterion, the restructuring plan must enable the company to cover all its costs including depreciation and financial charges and generate a minimum return on capital such that the firm will be able to compete in the market on its own merits.

(b) **Avoidance of undue distortions of competition through the aid**

Measures should be taken to avoid, as far as possible, adverse effects on competitors. When an objective assessment of the demand and supply situation demonstrates that there exists an excess of production capacity, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the relevant market in the European Community by irreversibly reducing or closing capacity.

(c) **Aid in proportion to the restructuring costs and benefits**

The amount and intensity of the aid must be limited to the strict minimum needed to enable

restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing. In order to limit the distortive effect, the aid shall not provide the company with surplus cash which could be used for aggressive, market distortive activities.

(d) **Full implementation of restructuring plan and observance of conditions**

The company must fully implement the restructuring plan agreed by the Commission and must discharge all obligations laid down by the Commission.

(e) **Monitoring and annual reports**

Granting of restructuring aid must be monitored at regular intervals through adequate reports.

(177) As regards the restoration of viability, the provisions of Article 5 of Greek law No 2237/94, in conjunction with ABG circulars No 150/94 and No 22/95, make access to the measure conditional on the execution of a feasibility study linked to the modernisation and development of the cooperative. This feasibility plan should show that the agricultural cooperative would be able to satisfy its financial obligations towards the ABG.

(178) Within these arrangements, the ABG could include conditions to assure modernisation (at administrative or organisational levels), by reduction of operational expenditure (personnel reducing measures and/or other relevant cost saving measures), sale of unproductive assets and reinforcement of own capital (via imposition of levies on delivered products and increase in members' equity share).

(179) The feasibility plans included also complete timetables for the completion of financial restructuring (depending on each cooperative), provisions for reversion to previous debt arrangements, as well as provisions for regular close monitoring of the plan.

- (180) While the provisions of Article 5 of Greek law No 2237/94 are linked to the reduction of financial exposure of the agricultural cooperatives towards the ABG and allow a regular reimbursement, the Commission accepts that the feasibility study for each cooperative can be considered as a restructuring plan within the meaning of the guidelines. Indeed, these feasibility studies are designed to assure financial support in a restructuring process guided mainly by internal measures.
- (181) As regards the respect of the second condition, Article 5 of Greek law No 2237/94 does not contain any provision concerning measures taken by the Greek State to offset as far as possible adverse effects on competitors. Furthermore, the aid scheme applies to cooperatives covering all the agricultural sector, including sub-sectors for which there is a structural excess of production capacity, as mentioned in point 2.3 of the Annex to Commission Decision 94/173/EC⁽³³⁾, setting out sectoral limits for the Community guidelines for aid for processing and marketing of agricultural products applicable at the time of the opening of the Article 88(3) procedure. Neither the aforementioned article nor its implementing rules foresee any provision imposing on the benefiting cooperatives an irreversible reduction or closure of capacity as a contribution to the restructuring of the relevant market at a European level.
- (182) To that extent, it should be noted that, contrary to the assertions of the Greek authorities, Decision 94/173/EC was applicable to all Community regions, with certain derogation criteria for Objective 1 regions like Greece. Decision 94/173/EC is mentioned as a yardstick to judge overcapacity in some sectors both for cofinanced and national aids, and not as an absolute reference. Other indications of overcapacity could also have been used (i.e. market surveys), if appropriate.
- (183) The Greek authorities argue that the present law contains provisions imposing a reduction or cessation of the productive capacity, namely the cessation of loss-making activities. The Commission considers that Greek law No 2237/94 and its implementing rules do not impose any reduction of production capacity on cooperatives, but only the obligation to dispose of idle assets. Abandoning unused or unprofitable capacities and disposal of idle assets is fully justified in order to rebalance assets and liabilities and it is necessary to achieve viability at the level of the cooperative. However, the Commission cannot consider this provision as an obligation to reduce capacity that should be seen as a real contribution from the beneficiary of the measure to the restructuring of the specific sector in the Community context.
- (184) Point 3.2.3 of the Community guidelines refers to particular conditions for restructuring aid in assisted areas. According to these provisions, if regional development needs justify it, the Commission can make use of certain flexibility in assisted areas (Article 87(3)(a) and Article 87(3) (c)) with regard to the requirement of reduction in capacity in the case of markets with structural overcapacity. However, the Commission could not accept a general waiver of this requirement. Indeed, the Greek authorities have not supplied any justification for such flexibility in the case of a measure affecting all sectors of agricultural production in the whole of Greece.
- (185) The third condition relates to the proportion between the costs of the restructuring aid and its benefits from the Community point of view.
- (186) Firstly, neither Article 5 of Greek law No 2237/94 nor its implementing provisions limit the overall amount of benefit to each cooperative to the strict minimum needed to enable restructuring. Therefore, the Commission cannot be sure that in all instances the approved aid was limited to the minimum necessary.
- (187) As a consequence, the Commission cannot be sure that, for all 116 cases, the agreed debt reschedules did not produce surplus cash (or newly-created borrowing capacity) for the cooperatives, allowing them to engage in aggressive and market distortive activities.
- (188) Furthermore, the Commission considers that measures such as increase in equity capital, imposition of a levy per unit of delivered product and sale of idle assets can be considered as contributions from the beneficiaries to the restructuring effort, if the product of these levies and sales is assigned to the restructuring process. The level at which these are required would allow the Commission to judge whether it could be considered as 'significant', in the light of the Community guidelines. However, it should be noted that Article 5 of Greek law No 2237/94 and its implementing provisions do not establish a minimum level at which beneficiary contributions can be considered important.

⁽³³⁾ See footnote 10.

(189) As regards the fourth condition (full implementation of restructuring programmes), the Commission notes that monitoring of the implementation of the business plan was performed by the ABG. At least in one case, the Greek authorities indicated that the initial restructuring measures were not sufficient to ensure the viability of the cooperative. As a result, two sets of additional restructuring measures were imposed on it. In this case, the ABG assumed directly the management of the cooperative. While the exact details on the conditions of this assumption of control by the ABG are unclear, these actions indicate that not in all cases was there full implementation of restructuring programmes. On the other hand, this direct assumption of control by ABG is in contradiction with the implementing provisions of the law, referring to cancellation of the debt rescheduling arrangements and reversion to the previous situation if instalments are delayed more than six months. Moreover, failure to assure full compliance of the restructuring programmes and assumption of control by the ABG may imply further aids to these cooperatives⁽³⁴⁾. Therefore, the Commission cannot be sure that there has been full implementation of the viability measures in all the approved settlements agreed under Article 5 of Greek law No 2237/94.

(190) As regards the fifth condition the Commission notes that the adopted implementing rules foresaw monitoring of the rescheduling arrangements at close intervals. However, Greece has failed to supply a detailed report on overall implementation of these measures, as requested by the Commission in opening the procedure provided for in Article 88(2) of the Treaty.

(191) Taking account of the above, the Commission concludes that the provisions of Article 5 of Greek law No 2237/94 do not comply with the general Community guidelines. Consequently, even if the scheme concerned only SMEs within the meaning of the relevant Community guidelines, it could not be approved by the Commission.

The particular case of the aids granted to the dairy cooperative AGNO in the framework of Article 5 of Greek law No 2237/94 and Act of the Governor of the Bank of Greece No 1620 of 5 October 1989

(192) Article 5 of Greek law No 2237/94 constitutes a scheme to restructure agricultural cooperatives in difficulty. The dairy company AGNO is merely one of the beneficiaries of the scheme. As a general principle, the Commission considers that assessment of individual cases of application of a scheme under Articles 87 and 88 of the Treaty does not affect the compatibility of the scheme with the common market. However, taking account of the fact that both the complaint and the comments from the Greek authorities and from the ABG are focussed on the dairy cooperative AGNO, the Commission considered it would be pertinent to consider, as an explanatory argument, the aid granted to AGNO according to the general criteria for rescue and restructuring firms in difficulty.

(193) Also, taking account of the concomitance of the aid to AGNO pursuant to Article 5 of Greek law No 2237/94 and the aid granted in the framework of the Act of the Governor of the Bank of Greece No 1620 of 5 October 1989, and their similar objectives and instruments, this assessment is done in conjunction for both aids.

(194) This assessment is without prejudice to the Commission's position in relation to the compatibility with State aid rules of Article 5 of Greek law No 2237/94.

(195) As regards the respect of the first condition of the Community guidelines (restoration of viability), the Commission noted that the Greek authorities have supplied a set of measures to be implemented. These measures envisage reestablishing the cooperative's financial balance. They involve cost-cutting measures like staff reductions (150 jobs in three years), reduction of overtime and supplementary payments to staff, marketing/advertising expenditure by 2 % and general costs by GRD 50 million. These measures include also ensuring new resources, such as recovery of cooperative capital, increase of cooperative fees by GRD 50 000, imposition of a special levy on delivered milk (GRD 1,5/kg for the first three years and GRD 3/kg after 1996), increase in equity capital and sale of real estate. In addition, AGNO should introduce modern marketing methods, extend its product range and improve product quality and cancel any planned investment not linked to the milk processing plant. These measures can be considered a restructuring plan within the meaning of the above guidelines.

⁽³⁴⁾ Judgment of the Court of 17 June 1999 in Case C-295/97 Piaggio. Not yet published.

- (196) In order to approve that restructuring plan, the ABG limits the financial assessment of the net cash-flow of the cooperative plus net effects with application of the restructuring plan minus loan instalments during the entire loan period. According to the Commission's view, this assessment method allows measurement of the capacity of the cooperative to reimburse the loans at the new rates, but cannot be considered as equivalent to a viability assessment of the cooperative within the meaning of the guidelines, requiring an analysis of the profitability of the cooperative in private terms.
- (197) This is particularly important, since according to the restructuring plan the net cash-flows are lower than GRD 100 million between 1998 and 2004, i.e. 0,5 % of the cooperative's turnover.
- (198) As regards respect of the second condition (reduction of capacity), the cooperative is active in the dairy sector, which suffers from structural overcapacity in the Community market. Sector limitations on investments are applicable, either at the level of primary production (Article 6 of Regulation (EC) No 950/97), or at the level of processing and marketing of dairy products (point 2.2 of the Annex to Decision 94/173/EC). On the other hand, and in spite of its size, the restructuring measures imposed on AGNO did not include any type of capacity reduction.
- (199) As regards the third criterion (proportionality), the Commission considers that the favourable provisions of Article 5 of Greek law No 2237/94 were not sufficient, by themselves, to allow AGNO to restore its viability. This is demonstrated by the fact that, in conjunction with these legal provisions, the ABG also rescheduled a further GRD 1,899 billion in the framework of this operation.
- (200) As regards the contribution from the beneficiary cooperative to the restructuring operation, the Commission should be assured that the contribution from the beneficiary to the restructuring process is significant. According to the calculation method normally followed by the Commission, the consolidation loan has a cash grant equivalent of at least 64,7 % (see recital 119). Taking into account the fact that the overall loan is GRD 12,044 billion (GRD 10,145 billion + GRD 1,899 billion), the total aid is GRD 7,79 billion. On the other hand, the total combined effect of the special levy per kilo of milk delivered, the increase in equity and the sale of assets would generate a beneficiary contribution of GRD 3,025 billion over the whole restructuring period, equivalent to 38 % of the total restructuring aid. The Commission can consider this own resources contribution as significant.
- (201) As regards the fourth condition (full implementation of the restructuring plan), it results clearly from the Greek authorities' comments that the initial measures imposed on the cooperative were not sufficient to ensure a return to viability. As a result, two sets of additional restructuring measures were imposed on it. On the other hand, AGNO received further State assistance, by the writing-off of GRD 570 million of its debt to the ABG pursuant to Greek law No 2538/97. Finally, the ABG took over AGNO's management on May 1998.
- (202) Taking account of the above, two situations might have occurred. If the first set of measures was realistic and liable to bring AGNO to viability, the restructuring measures were not fully implemented. If the initial restructuring measures were fully implemented, the development of further measures and further aid given to AGNO call into question the reasonableness of the calculation of the initial prospects of viability.
- (203) The assessment of the individual aids granted to the dairy cooperative AGNO confirms at the individual level the conclusion that the overall scheme implemented by Article 5 of Greek law No 2237/94 and the aid granted through Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 do not respect the Community guidelines.
- (204) Furthermore, the takeover of AGNO's management by the ABG should be assessed by the Commission pursuant to Articles 87 and 88 of the Treaty. For procedural reasons, this additional element cannot be assessed in the framework of this Decision.

VI. CONCLUSIONS

- (205) The Commission considers that the tax provisions for cooperatives pursuant to Greek laws No 2238/94 and No 2169/93 and the debt rescheduling provisions of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 do not in themselves constitute State aid within the meaning of Article 87(1) of the Treaty. However, in the individual case of the debt rescheduling arrangements for AGNO pursuant to Act of the Governor of the Bank of Greece No 1620 of 5 October 1989, the Commission considers they constitute State aid within the meaning of Article 87(1) of the Treaty.

- (206) On the other hand, the Commission considers that the provisions of Article 32(2) of Greek law No 2008/92 (including the aid to the dairy cooperative AGNO pursuant to Article 19 of Greek law No 2198/94) and the provisions of Article 5 of Greek law No 2237/94 do constitute State aid.
- (207) The Commission regrets that Greece has illegally put the abovementioned aids into application in violation of Article 88(3) of the Treaty.
- (208) For the reasons set out above the aids satisfying the requirements of Article 87(1) of the Treaty cannot qualify for any of the exemptions provided for in Article 87(2) and (3). They are therefore incompatible with the common market.
- (209) In cases such as the present one where non-notified aid is introduced without awaiting the Commission's final decision, the imperative character of the procedural rules set out in Article 88(3) of the Treaty, of which the Court of Justice has recognised the direct effect in its judgements of 19 June 1973 (Case 77/72 *Carminie Capolongo v. Azienda Agricola Maya*)⁽³⁵⁾, 11 December 1973 (Case 120/73 *Gebr. Lorenz GmbH v. Federal Republic of Germany*)⁽³⁶⁾ and 22 March 1977 (Case 78/76 *Steinicke und Weinlig v. Federal Republic of Germany*)⁽³⁷⁾, prevent any retrospective legalisation of the aids (Judgment of 21 November 1991 in Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires and others v. France*)⁽³⁸⁾.
- (210) Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for application of Article 88 of the EC Treaty⁽³⁹⁾ provides that when a negative decision is taken in a case of unlawful aid the Commission shall decide that the Member State concerned is to take all necessary action to recover the aid from the recipient. Reimbursement is necessary in order to restore the previous situation by removing all financial advantages unduly gained by the recipients since the date of granting of the aid.
- (211) Article 14(2) of Regulation (EC) No 659/1999 states that the aid to be recovered is to include interest at an appropriate rate set by the Commission. Interest runs from the date on which the illegal aid was made available to the recipients until that of its recovery.
- (212) The aids should be repaid in accordance with the procedures of Greek law. The amounts of these aids shall bear interest from the date on which the aid was granted to the moment of its effective recovery. It shall be calculated on the basis of the market rate, with reference to the rate used for calculating the grant-equivalent in the framework of regional aid⁽⁴⁰⁾.
- (213) The present Decision is without prejudice to an eventual Commission investigation on the competitive impact of the behaviour of the ABG in the Greek agricultural sector.
- (214) The present Decision is without prejudice to any conclusions that the Commission may draw as regards financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

1. The tax provisions in favour of cooperatives pursuant to Greek laws No 2238/94 and No 2169/93 and the debt rescheduling arrangements in Act of the Governor of the Bank of Greece No 1620 of 5 October 1989 do not in themselves constitute State aid within the meaning of Article 87(1) of the Treaty.
2. The following State aids are incompatible with the common market:
 - (a) Article 32(2) of Greek law No 2008/92;
 - (b) Article 5 of Greek law No 2237/94;
 - (c) The grant to the dairy cooperative AGNO pursuant to Article 19 of Greek law No 2198/94, of an amount of GRD 529,89 million;
 - (d) The rescheduling of the debt of the cooperative AGNO to the Agricultural Bank of Greece amounting to GRD 1,899 billion, in the framework of Act of the Governor of the Bank of Greece No 1620 of 5 October 1989.

⁽³⁵⁾ [1973] ECR 611.

⁽³⁶⁾ [1973] ECR 1471.

⁽³⁷⁾ [1977] ECR 595.

⁽³⁸⁾ [1991] ECR I-5505.

⁽³⁹⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁴⁰⁾ OJ C 74, 10.3.1998, p. 9.

Article 2

1. The Greek authorities shall take all the measures necessary to recover from the recipients the aids referred to in Article 1(2) and unlawfully made available to them, within two months of the notification of this Decision.

2. Recovery shall be effected in accordance with the procedures of Greek law. The sums to be recovered shall bear interest from the date on which they were made available to the recipients until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aids.

Article 3

1. Greece shall inform the Commission, within two months following notification of this Decision, of the measures taken to comply with it.

2. Within the same time period, the Greek authorities are requested to supply to the Commission:

- (a) a full list of beneficiaries for all schemes, the amounts to be recovered and the interest due;
- (b) all information available about the taking over of AGNO by the Agricultural Bank of Greece, as well as a demon-

stration that this operation does not include further State aids in favour of AGNO;

- (c) all information allowing the Commission to initiate an investigation pursuant to Articles 87 and 88 of the Treaty of the relations between the Greek State and the Agricultural Bank of Greece and its competitive impact in the agricultural sector. For that purpose, Greece should transmit to the Commission all relevant legislation, balance sheets of the Bank for the last 10 years and its eventual comments on the subject;
- (d) A report covering all debt settlement arrangements made by the ABG to agricultural cooperatives pursuant to Act of the Governor of the Bank of Greece No 1620 of 5 October 1989, as well as an appraisal as to their conformity with the rules of Articles 87 and 88 of the Treaty.

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 1 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission