

Case C-253/97

Italian Republic

v

Commission of the European Communities

(EAGGF — Clearance of accounts — 1993 financial year)

Opinion of Advocate General Alber delivered on 6 May 1999 I-7532
Judgment of the Court (Fifth Chamber), 28 October 1999 I-7559

Summary of the Judgment

1. *Agriculture — EAGGF — Clearance of accounts — Disallowance of expenditure arising from irregularities in the application of the Community rules — Disputed by the Member State concerned — Burden of proof — Shared by the Commission and the Member State*
(Council Regulation No 729/70)
2. *Agriculture — Common organisation of the markets — Sugar — Compensation for storage costs — Levies imposed on manufacturers — Principle of fiscal neutrality — Scope*
(Council Regulation No 1358/77, Art. 6(2))

3. *Agriculture — EAGGF — Clearance of accounts — Disallowance of expenditure arising from irregularities in the application of the Community rules — Financial correction — Application of analytical corrections concurrently with flat-rate corrections — Whether permissible — Conditions*
4. *Acts of the institutions — Statement of reasons — Obligation — Scope — Where a decision concerning the clearance of accounts in respect of EAGGF funding applies a 10% flat-rate correction to certain expenditure — Reasons must be given to support the conclusion that there is a high risk to the EAGGF of widespread loss (EC Treaty, Art. 190 (now Art. 253 EC))*

1. So far as concerns the financing of the common agricultural policy by the EAGGF, it is for the Commission, where it intends to refuse to charge to the EAGGF expenditure declared by a Member State, to prove that the rules on the common organisation of the agricultural markets have been infringed. Accordingly, the Commission is obliged to give reasons for any decision finding an absence of, or defects in, inspection procedures operated by a Member State. The latter, for its part, cannot rebut the Commission's findings by mere assertions unsupported by evidence of a reliable and operational supervisory system. If it is unable to show that those findings are inaccurate, they can give rise to serious doubts as to the existence of an adequate and effective system of supervisory measures and inspection procedures.

2. It is evident from Article 6(2) of Regulation No 1358/77 that the system for offsetting storage costs in the sugar sector is based on the principle of financial neutrality in that the levies collected must be equivalent to the

reimbursement paid. However, that balance must be achieved at Community level, not at the level of the Member State or the undertaking concerned.

3. Additional expenditure resulting from national measures which are liable to compromise the equality of treatment of traders in the Community and thus to distort competitive conditions between the Member States cannot be financed by the EAGGF and must in any event be borne by the Member State concerned.

If, therefore, at the time of clearing the accounts it becomes apparent that the risk incurred by the EAGGF cannot be covered by analytical corrections alone, other flat-rate corrections must also be possible. It would be contrary to the system of EAGGF financing if, in the event of there being grounds for apply-

ing an analytical correction, other less clearly determinable damage or risk were chargeable to the EAGGF.

conclusion — as the Belle Group Report requires — that there is a high risk of widespread loss to the EAGGF.

There is therefore no reason in principle why an analytical correction should not be applied concurrently with a flat-rate correction.

Accordingly, a 10% flat-rate correction applied by the Commission because of late payments for intervention purchases of beef must be annulled on the ground that the statement of reasons for it is inadequate where neither the contested decision nor the Summary Report shows that the deficiencies found relate to the whole of the control system, or to fundamental elements thereof, or to the operation of controls essential to assuring the regularity of the expenditure.

4. A decision taken by the Commission when clearing the accounts for EAGGF financing to apply a flat-rate correction of 10% to certain expenditure must give reasons sufficient to support the