

# Case C-300/02

**Hellenic Republic**

**v**

**Commission of the European Communities**

(EAGGF — Arable crops — Regulation (EEC) No 729/70 — Article 5(2)(c) —  
Discrepancies between annual declarations of expenditure and eligible expenditure  
— Time-limit of 24 months — Retention from the amount of aid paid to farmers)

Judgment of the Court (First Chamber), 24 February 2005. . . . . I - 1344

## 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 — EAGGF — Clearance of accounts — Regulation No 729/70 — Restriction on disallowance of expenditure — Time-limit of 24 months — Commencement — Communication by the Commission of the results of checks — Conditions*  
(Council Regulation No 729/70, Art. 5(2)(c); Commission Regulation No 1663/95, Art. 8(1))
3. *Agriculture — EAGGF — Clearance of accounts — Preparation of decisions — Evaluation of expenditure to be excluded from Community financing — Definition of evaluation*  
(Commission Regulation No 1663/95, Art. 8(1))
4. *Agriculture — Common agricultural policy — Support to producers of certain arable crops — Payments to compensate for the loss of income attributable to the reform of the common agricultural policy — Requirement to pay the amounts in question in full to the beneficiaries — Collection by agricultural cooperative associations of a fee to cover their operating expenses — Prohibited*  
(Council Regulation No 1765/92, Art. 15(3))

1. For the purposes of the financing of the common agricultural policy by the EAGGF, it is for the Commission, when it intends to disallow expenditure declared by a Member State, to prove an infringement of the rules on the common organisation of the agricultural markets. The Commission is therefore obliged to give reasons for its decision finding an absence of, or defects in, inspection procedures operated by the Member State in question. However, it is required not to show exhaustively that the checks carried out by the national authorities or that the figures they have transmitted are irregular, but to produce evidence of its serious and reasonable doubt regarding such checks or figures. The Member State, for its part, cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system. If it is not able to show that they are inaccurate, the Commission's findings can give rise to serious doubts as to the existence of an adequate and effective series of

supervisory measures and inspection procedures. The reason for this mitigation of the burden of proof on the Commission is that it is the Member State which is best placed to collect and verify the data required for the clearance of EAGGF accounts; consequently, it is for that State to adduce the most detailed and comprehensive evidence that its checks have been carried out and that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect.

(see paras 33-36)

2. The fifth subparagraph of Article 5(2)(c) of Regulation No 729/70 on the financing of the common agricultural policy, as amended by Regulation No 1287/95, imposes a time-limit as regards the expenses which the EAGGF may refuse to finance. Thus, that article provides that a refusal to finance may not involve expenditure effected prior to 24 months preceding the Commission's written communication of the results of its checks to the Member State concerned. The first subparagraph of Article 8(1) of Regulation No 1663/95 laying down detailed rules for the application of Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section specifies what that written communication must contain. The Commission is bound, in its relations with the Member States, to respect the conditions it has imposed on itself by implementing regulations. A failure to observe those conditions may, depending on its significance, deprive of its efficacy the procedural guarantee accorded to Member States by Article 5(2)(c) of Regulation No 729/70.

(see paras 67-68, 70)

3. The term 'evaluation' of expenditure, which appears in Article 8(1) of Regulation No 1663/95 laying down detailed rules for the application of Regulation No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section, should be interpreted, as should its equivalent in the different language versions, as mean-

ing that it is not necessary to state a particular figure for the value of the expenditure in question and that it is sufficient to provide the elements necessary in order to calculate that value at least approximately.

(see para. 74)

4. Article 15(3) of Regulation No 1765/92 establishing a support system for producers of certain arable crops, which provides that the payments referred to in that regulation are to be paid over to the beneficiaries in their entirety, prohibits national authorities from making a deduction from the payments made or from demanding the payment of administrative fees charged for processing applications and having the effect of reducing the aid. The same applies to agricultural cooperative associations involved in the payment of the aid in question.

The obligation stemming from that provision is an obligation to achieve a particular result, so that it is of no importance whether complaints were received or agreements were concluded between the beneficiaries and the cooperatives regarding the retention of part of the aid.

(see paras 111-112)