

OPINION OF ADVOCATE GENERAL

JACOBS

delivered on 20 January 2005¹

1. In the present case, Spain seeks the partial annulment of Commission Decision 2002/461/EC of 12 June 2002 on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2001 financial year ('the contested decision').²

The legislative framework

3. The common agricultural policy is financed according to the rules set out in Regulation No 1258/99 ('the Basic Regulation')³ which provides that the Guarantee Section shall finance intervention intended to stabilise the agricultural markets, undertaken according to Community rules within the framework of the common organisation of those markets.⁴

4. The preamble to the Basic Regulation states that: 'two types of decisions should be

2. Specifically, Spain contests the issuing of amendments under the procedure for clearance of the accounts of certain nationally accredited paying agencies and the correction issued for the accounts of one such paying agency, Castilla-La Mancha.

3 — Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103). With effect for expenditure from 1 January 2000, Regulation No 1258/1999 repealed and replaced Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, 1970 (I), p. 218), as amended in particular by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1); by virtue of Article 16(2) of and the Annex to Regulation No 1258/1999, references in earlier legislation to provisions of Regulation No 729/70 are to be construed as references to the equivalent provisions of Regulation No 1258/1999.

4 — Articles 1(2)(b) and 2(2).

1 — Original language: English.

2 — OJ 2002 L 160, p. 28.

established, one concerning the clearance of the Guarantee Section of the Fund, the other determining the consequences, including financial corrections, to be drawn from the results of the checks on conformity, with Community rules, of the expenditures'.⁵

8. Such decisions on compliance are governed by Article 7(4), the first paragraph of which requires the Commission to 'decide on the expenditure to be excluded from ... Community financing ... where it finds that expenditure has not been effected in compliance with Community rules'.

5. The first type of decision, on clearance, is governed by Article 7(3) of the Basic Regulation and the second type of decision, on compliance, is governed by Article 7(4) of that regulation.

9. Decisions on compliance are to be taken in accordance with the following procedure set out in Article 7(4):

6. With regard to decisions on clearance, Article 7(3) requires the Commission to clear the accounts of the paying agencies before 30 April of the year following the financial year concerned, on the basis of the information referred to in Article 6(1)(b). That provision requires Member States to transmit to the Commission annual accounts of the paying agencies relating to transactions financed by the Guarantee Section, accompanied by the information required for clearance and an attestation regarding the integrality, exactitude and veracity of the accounts transmitted.

'Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

7. Article 7(3) further provides that the accounts clearance decision may not prejudice the adoption of a subsequent decision by the Commission regarding compliance with Community rules of expenditure.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

The Commission shall evaluate the amounts to be excluded having regard in particular to

⁵ — Recital 9.

the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community.’

is to determine the amount of annual expenditure effected in each Member State which shall be recognised as being chargeable to the EAGGF, without prejudice to a later decision on compliance with Community rules of expenditure.⁹ Article 7(1) of the Implementing Regulation continues:

10. In addition to the procedures provided in the Basic Regulation, an accounts clearance decision and a decision on compliance with Community rules of expenditure are, according to Article 7(5) of that regulation, to be further regulated by detailed rules adopted separately. Such additional rules have been adopted in Regulation No 1663/95 (‘the Implementing Regulation’).⁶ With regard to the accounts clearance decision, the following further rules are delineated.

‘The amounts which, as a result of the above decision, are recoverable from, or payable to, each Member State shall be established by deducting the advances paid in respect of the financial year concerned from the expenditure recognised for the same year according to the first subparagraph.’

11. The information to be supplied by the Member State,⁷ which includes annual accounts of expenditure charged to the Guarantee Section, shall be sent to the Commission by 10 February of the year following the end of the financial year which they concern.⁸

13. Article 7(2) of the Implementing Regulation provides that:

12. The accounts clearance decision pursuant to Article 7(3) of the Basic Regulation

‘The Commission shall communicate to the Member State concerned the results of its verifications of the information supplied, together with any amendments it proposes, before 31 March following the end of the financial year.’

6 — Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6), as amended by Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5).

7 — Listed above at point 6.

8 — Article 4(2).

9 — Article 7(1) of the Implementing Regulation.

14. With regard to a decision on compliance with Community rules of expenditure pursuant to Article 7(4) of the Basic Regulation, Article 8(1) of the Implementing Regulation provides the following detailed rules relating to the negotiation procedure between the Member State concerned and the Commission which leads to the adoption of such a decision:

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

The communication shall refer to this regulation. The Member State shall reply within two months and the Commission may modify its position in consequence ...

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission, after consultation of the Member States, for the provision of further information or, where

the Member State does not accept the invitation to a meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Member State ... Without prejudice to the fourth subparagraph of this paragraph, that communication shall include an evaluation of any expenditure the Commission intends to exclude under Article 7(4) of Regulation (EC) No 1258/1999.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force. The Commission shall, as appropriate, adopt one or more decisions under Article 7(4) of Regulation (EC) No 1258/1999 to exclude expenditure affected by non-compliance with Community rules up to the date of entry into force of the corrective measures.'

Factual background

15. After receiving annual accounts of expenditure effected by the Spanish paying agencies for the 2001 financial year, the Commission communicated to the Spanish authorities the results of its checks in a letter of 27 March 2002. That letter stated that it was a communication pursuant to both

Article 7(2) and Article 8(1) of the Implementing Regulation. It proposed that the accounts of several paying agencies including Navarra would be cleared before 30 April. The Commission did not at that time propose clearance of the accounts of paying agencies FEGA, Castilla-La Mancha, Baleares, La Rioja, and Pais Vasco, for which further investigation and information were required before an accounts clearance decision could be made. An annex to the letter specified in each case the nature of any further investigation and information required prior to a proposal for clearance, together with the results of the Commission's checks.

written communication issued in response to the draft decision on 23 April 2002 by its certifying body, those observations related both to the clearance of its accounts for the financial year 2001 and to the procedure governing any later decision on compliance. The Spanish authorities noted that the certifying body claimed to have obtained sufficient guarantees that the accounts were complete, accurate and true; that it proposed their clearance; and that the correction proposed by the Commission should be revised since the error related simply to set-aside subsidies for irrigated maize and not additionally to compensatory allowances as suggested by the Commission. The Spanish authorities therefore contended that the correction should be assessed at EUR 17 855 rather than at EUR 1 831 526.

16. At a meeting of the EAGGF Committee on 19 April 2002 attended by the Spanish authorities, the Commission circulated a Summary Report containing the results of its checks and a draft of the contested decision.

18. On 11 June 2002, the Spanish authorities sent to the Commission documents relating to the accounts of the paying agency Navarra and their compliance with Community rules of expenditure.

17. The Spanish authorities subsequently sent several responses to the Commission's letter of 27 March and to the Summary Report and draft decision. In a letter dated 22 April 2002, the Spanish authorities communicated to the Commission their observations on the draft decision and on the report. In a letter dated 25 April 2002, the Spanish authorities conveyed observations to the Commission concerning the accounts of Castilla-La Mancha. Based on a

19. The Commission issued the contested decision on 12 June 2002. The decision, which stated that it was based on Article 7(3) of the Basic Regulation, cleared the accounts of all Spanish paying agencies except for those of FEGA and Pais Vasco, and included

amendments to the cleared accounts. The amendments appear to address errors in certain payments made by Castilla-La Mancha, Navarra and Pais Vasco which were identified in the Summary Report.

20. Subsequently, the Spanish authorities made further replies to the Commission's letter of 27 March 2002, sending documents to the Commission which related to the accounts of Castilla-La Mancha and Pais Vasco and their compliance with Community rules of expenditure.

21. Spain then brought the current proceedings seeking partial annulment of the contested decision on the grounds, first, that it infringed the Implementing Regulation and, secondly, that the correction proposed for the accounts of Castilla-La Mancha was incorrect.

Alleged infringement of the Implementing Regulation

Principal plea in law

22. Spain alleges that the contested decision has been tainted by an infringement of the

Implementing Regulation in that its authorities were not properly consulted by the Commission on the nature of the amendments contrary to Article 8(1) of that regulation. In particular the Commission infringed that provision by adopting the contested decision without considering the Spanish authorities' response to the proposed decision, without inviting Spain to a bilateral discussion to evaluate the gravity of the accounting error and without allowing it the opportunity to request the initiation of a conciliation procedure if relevant.

23. The Commission submits that the accounts clearance procedure, which is regulated by Article 7(3) of the Basic Regulation and Article 7 of the Implementing Regulation, should be distinguished from the procedure relating to checks on compliance with Community rules of expenditure, which is regulated by Article 7(4) of the Basic Regulation and Article 8 of the Implementing Regulation. The contested decision, the preamble to which states that it is 'without prejudice to further examination according to Article 7(4) of [the Basic] Regulation',¹⁰ is governed by the accounts clearance procedure, which was followed in all respects before the decision was issued.

24. The Commission then considers the alleged infringement of Article 8(1) of the Implementing Regulation. It notes that the

¹⁰ — Recital 9.

procedure set out in that provision to check compliance with Community rules of expenditure was initiated by its letter of 27 March 2002. However, given the distinction between that procedure and the accounts clearance procedure, it emphasises that the correction contained in the contested decision is provisional. A definitive decision to refuse financing can be made only following the exchange of views required under Article 8(1).

diture under Article 7(4) thereof. The Commission submits that, by analogy with the system so endorsed by the Court of provisional deductions pending final clearance, it is similarly entitled to effect provisional deductions in the clearance decision pending a definitive refusal to finance.

Assessment

25. As confirmation of its competence to propose amendments in the accounts clearance decision which are essentially provisional until completion of the Article 8(1) procedure, the Commission refers to case-law in which the Court has made clear the Commission's entitlement, while awaiting the final decision on the clearance of accounts, to reduce the payment of amounts due under advances when it has established that the national body had, contrary to Community law, effected certain expenditure chargeable to the Fund.¹¹ The judgments cited pre-dated the establishment of parallel procedures separately governing the accounts clearance decision under Article 7(3) of the Basic Regulation and the decision to refuse financing on the ground of non-compliance with Community rules of expen-

26. At the outset, it should be noted that the Commission's submission that it adhered to the accounts clearance procedure is not entirely accurate. The contested decision was issued on 12 June 2002, and not before 30 April 2002 as required by Article 7(3) of the Basic Regulation. However, the applicant does not challenge the decision on that ground, nor is it even mentioned in its submissions.

27. Subject to that reservation, I consider that the Commission's understanding of the legislative framework governing clearance of accounts is correct. Article 7(3) of the Basic Regulation explicitly states that the clearance of accounts decision 'shall not prejudice the adoption of a subsequent decision' on the expenditure to be excluded from Community financing on the ground that it has not been effected in compliance with Community rules. Article 7(1) of the Implementing Regulation repeats the point and states that

¹¹ — Case C-342/89 *Germany v Commission* [1991] ECR I-5031, and Case C-346/89 *Italy v Commission* [1991] ECR I-5057, at paragraph 16.

the amounts which, as a result of the accounts clearance decision, are recoverable from each Member State are to be established by deducting the advances paid from the expenditure recognised. Manifestly therefore the accounts clearance decision may provide for amendments.

Commission, that the Commission is not entitled to commit funds in such a case.¹² That the rule was established in judgments concerning the payment of monthly advances is of no present importance. As the Commission notes, it was explicitly stated by the Court to be of general application.¹³ Moreover the case-law demonstrates that it has been so applied.¹⁴

28. If further confirmation of the legality of the Commission's conduct should be required, it may be provided in particular by the following two points.

31. Those two factors confirm the interpretation of the legislative framework governing clearance which is offered by the Commission and with which I concur.

29. First, Article 7(2) of the Implementing Regulation indicates that, where relevant, proposed amendments to the annual accounts of paying agencies may be issued before clearance, so long as the proposals are communicated to the Member State concerned before 31 March. The corrections proposed for the accounts of Castilla-La Mancha and Pais Vasco were communicated in the letter of 27 March 2002 in satisfaction of that requirement.

32. I am therefore of the view that there has been no infringement of the accounts clearance procedure, other than the failure to issue the contested decision by 30 April 2002 as required by Article 7(3) of the Basic Regulation.

33. I also share the view of the Commission that there has been no infringement of

30. Second, duly proposed amendments to annual accounts containing expenditure effected contrary to Community rules for the common organisation of the market concerned are not simply permitted under Article 7(2) but are in fact required according to the general rule, cited by the

¹² — Cases C-342/89 and C-346/89, cited in footnote 11, paragraph 14.

¹³ — *Ibid.* at paragraph 15.

¹⁴ — See, for example, the judgments in Case 327/85 *Netherlands v Commission* [1988] ECR 1065, at paragraphs 24 and 25, Case C-197/90 *Italy v Commission* [1992] ECR I-1, at paragraph 38, and Case C-118/99 *France v Commission* [2002] ECR I-747, at paragraph 38.

Article 8(1) of the Implementing Regulation.

34. The letter of 27 March 2002 sent by the Commission to the applicant explicitly states that it constitutes a communication under that provision, indicating corrective measures to be taken to ensure future compliance with Community rules of expenditure. The Spanish authorities appear to have acknowledged the status of the letter of 27 March 2002 in sending several replies in which they responded to the correction proposed by the Commission in accordance with the procedure under Article 8(1).

35. Spain's submission that the Commission's failure to call a bilateral discussion and, had it been appropriate, to allow it recourse to a conciliation procedure in order to seek agreement on the correction was an infringement of Article 8(1) of the Implementing Regulation is in my view unfounded. The procedure for finalising corrections set out in that provision had not run its course at the time Spain lodged its application, and hence it was premature to allege infringement of that procedure. In fact, in subsequent compliance with the procedure, the Commission issued an invitation to Spain to a bilateral discussion on the correction in a letter dated 10 December 2002.

36. I therefore conclude that neither the accounts clearance procedure nor the procedure, under Article 8(1) of the Implementing Regulation, concerning any later decision on compliance has been infringed by the contested decision.

Additional arguments on the alleged infringement of the Implementing Regulation

37. Spain submits three further arguments relating to its allegation that the Implementing Regulation was infringed.

38. First, it argues that the failure to follow the procedure laid down by Article 8(1) of the Implementing Regulation and hence allow the Spanish authorities to express their view regarding the amendments was contrary to their rights of defence. In response, the Commission submits that the amendments proposed in the contested decision were purely provisional, pending a decision on the conformity of expenditure under Article 8(1) of that regulation, and that its letter of 27 March 2002 launched that procedure, which gives Member States the right to be heard before adoption of such a decision;¹⁵ there was accordingly no in-

15 — See Case C-177/00 *Italy v Commission* [2003] ECR I-233, paragraph 23.

fringement of Spain's rights of defence. In any event, the Commission notes that Spain was able to communicate its views concerning the proposed decision both at the EAGGF committee meeting of 19 April 2002, having received in advance a copy of the proposed decision and the related Summary Report, and in its written communications to the Commission prior to the adoption of the contested decision. That the Commission finally adopted the amendments originally proposed notwithstanding the Spanish authorities' observations is, in its view, another matter.

of defence, and for the sake of clarity, it might be expected that Article 7(2) would expressly permit the Member State, in protection of its financial interests, to respond to any proposal made by the Commission under the clearance procedure.

39. It might initially be noted that Article 7 (2) of the Implementing Regulation does not explicitly refer to the right of the Member State to communicate its views regarding amendments. Respect for the rights of defence is a fundamental principle of Community law which the Court has on several occasions held must be guaranteed even in the absence of any rules governing the proceedings in question.¹⁶ That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views before the decision is taken. Given the importance attached to respect for the rights

40. On the one hand, it could conversely be argued that since amendments under the clearance procedure are merely provisional, and the compliance procedure expressly provides for the right to be heard with regard to definitive corrections, there is no need for a separately articulated right of defence. On the other hand, it seems to me that its reiteration would be consistent with the aim of maintaining a distinction between the two procedures each of which is coherent in itself.

41. However, nothing in the present case turns on that issue.

42. I am convinced that the opportunities of which the Spanish authorities availed themselves to communicate their views to the Commission on the proposed amendments afforded them adequate rights of defence. Spain's oral and written communications to that end demonstrate implicit recognition by both parties of Spain's ability to contest the proposals before clearance. The alleged

16 — See, for example, Case C-395/00 *Cipriani* [2002] ECR I 11877, at paragraph 51; Case C-462/98 P *Mediocredito v Commission* [2000] ECR I-7183, at paragraph 36; Case C-7/98 *Kronbach* [2000] ECR I-1935, at paragraph 42; and Case C-32/95 P *Commission v Lisrestal* [1996] ECR I-5373, at paragraph 21.

infringement of its rights of defence is thus not substantiated.

Alleged incorrect amendments to the accounts of Castilla-La Mancha

43. Spain goes on to allege, secondly, that the Commission failed to communicate the correction in the context of the clearance procedure and, thirdly, that the Summary Report is not available in Spanish, which constitute substantial infringements of the clearance procedure. Both allegations were introduced in its reply, and therefore qualify as new grounds introduced in the course of proceedings.

44. Under Article 42, paragraph 2, of the Court's Rules of Procedure, introduction of a new ground in the course of proceedings is prohibited unless it is based on matters of law or of fact which come to light in the course of the procedure. That is not the case here.

45. As the Commission submits, both allegations are therefore inadmissible.

46. Spain contests the justification for the financial correction to the accounts of Castilla-La Mancha which is proposed in the Summary Report on the clearance of accounts of the Guarantee Section for the 2001 financial year.¹⁷ That report proposes a correction of EUR 1 831 526 on account of errors in the arable sector.

47. The accounts clearance decision is to determine the amount of expenditure effected in each Member State during the financial year in question to be recognised as being chargeable to the EAGGF; this will inevitably result in the quantification (albeit provisional pending any subsequent non-compliance decision) of amounts not so recognised.¹⁸

48. Further it is settled case-law that the Basic Regulation allows the Commission to charge to the EAGGF only sums paid in accordance with the rules laid down in the

17 — Document reference AGRI/60939/2002-FR final. See section 6.5.

18 — Article 7(1) of the Implementing Regulation.

different agricultural sectors¹⁹ and in consequence obliges the Commission to refuse financing of expenditure when it finds that irregularities have occurred.²⁰

by the Commission, two types of error occurred in the accounts for the 2000 financial year and in the accounts for the 2001 financial year

Arguments of the parties as to whether the correction was justified

49. As a preliminary observation, it should be noted that the Commission in the rejoinder has accepted Spain's assertion that the correction should not have been applied to compensatory allowances, and has stated that it intends to take account of that claim in assessing the amount of the final correction. Otherwise the parties disagree as to whether the correction was justified.

51. In the accounts for the 2000 financial year, a computer error resulted in the payment of incorrect amounts of aid for certain land down to hard wheat. A second, unexplained error in the accounts for the 2000 financial year related to the computer programme for detecting deficiencies in data necessary to ensure compliance with minimum surface area requirements for declarations of land subject to set-aside; that error resulted in payments which were higher than those that ought to have been made.

50. In its submissions, the Commission sets out its reasons for proposing the correction. In that regard, it relies on the report of Castilla-La Mancha's certifying body, dated 23 January 2002, which was based on inspections of the relevant accounts for the 2001 financial year ('the certification report'). According to the certification report as cited

52. According to the certification report as cited by the Commission, similar deficiencies in the accounts for the 2001 financial year indicate that errors affecting the accounts for the 2000 financial year were not addressed before drawing up the later accounts. On the basis of the errors cited in the certification report, the Commission alleges that their occurrence is random. It refers to the identification of mistakes in the 2001 accounts relating to wheat and to difficulties in recalculating the variables to be taken into account for calculating set-aside payments which was necessary following repetition of the second type of error.

¹⁹ — See the cases cited in footnote 14.

²⁰ — See, for example, Case C-157/00 *Greece v Commission* [2003] ECR I-153, paragraph 44.

53. The Commission makes specific reference to erroneous payments in 2001 due to an incorrect application of the reduction of surface area subject to set-aside in the context of irrigated maize. It also submits, on the basis of the certification report, that the results of inspections were not appropriately registered and that their absence was not detected by the relevant computer programme.

55. Referring to Commission guidelines No 8,²¹ Spain additionally submits that the error is systematic and that the assessment of the total number of errors in all sectors in the accounts for the 2001 financial year, which it cites as EUR 7 725 641, falls below the materiality level of 1% of total expenditure, which is EUR 8 759 994. In conclusion, it argues that there is no reason to impose a financial correction, at least not in the accounts clearance procedure.

Assessment

54. Spain, however, does not consider that the errors identified in the certification report justify the correction proposed by the Commission. It interprets the position adopted by the certifying body concerning the deficiencies in the accounts for the 2001 financial year in a different manner from the Commission. It relies on the written communication from the certifying body of 23 April 2002 which states that its observations concerning the errors in the certification reports for the two financial years in question are not the same. According to that communication, the observation regarding the 2001 financial year relates only to the incorrect application of the coefficient for penalisation for set-aside in the context of irrigated maize. The error thus affects only that budget heading, rather than all payments in the arable sector. Spain, apparently relying on an assessment given in the communication of 23 April 2002, submits that the corresponding monetary value of the error is EUR 17 855, which is the value of the error under irrigated maize.

56. It is common ground that in assessing the amount of the error, the Commission was incorrect to include compensatory allowances.

57. That in itself requires that the contested decision should at least be annulled as regards the correction of expenditure on that item of aid.

58. Spain does not otherwise raise any relevant issue for determining whether the

²¹ — Document No VI/5331/98, entitled 'Guidelines for the Certification of accounts of EAGGF Paying Agencies'.

correction was justified. In particular, in alleging that the total number of errors falls below the materiality level set by Commission guidelines No 8, the recommendations of which relate to assessment of error by national certifying bodies, Spain does not found its arguments on relevant grounds. Clearly those guidelines do not regulate the Commission's competence to propose amendments in the clearance decision.

State cannot rebut the Commission's findings by mere assertions which are not substantiated by evidence of a reliable and operational supervisory system.²⁴

59. The accounts clearance procedure explicitly requires the Commission to determine the amount of expenditure effected in Member States which is to be recognised as chargeable to the EAGGF.²² The Court has consistently held that, in order to establish an infringement of the rules on the common organisation of the agricultural markets, although the Commission must adduce evidence of serious and reasonable doubt on its part regarding the checks or figures communicated by the Member State, it is not required to demonstrate exhaustively that the checks were inadequate or that there are irregularities in the figures; it is the Member State which is best placed to collect and verify the data required for the clearance of the EAGGF's accounts and consequently, it is for the State to adduce the most detailed and comprehensive evidence that it has made checks or that its figures are accurate and, if appropriate, that the Commission's assertions are incorrect.²³ The Member

60. In its submissions, the Commission has adduced significant evidence of doubt on its part as to the reliability of the checks concerned as carried out in 2001. Not only has it asserted that errors occurring in 2000 had not been addressed in the following year, including two computer errors resulting in incorrect payments for hard wheat and for agricultural parcels subject to set-aside, it has also, on the basis of the observations in the certification report relating to 2001, specifically highlighted erroneous payments due to an incorrect application of the reduction of surface area subject to set-aside in the context of irrigated maize, and the absence of checks to ensure registration of the results of inspections. According to the extracts of the certification report annexed to the Commission's defence, the absence of those checks, as observed by the certifying body, relates to the arable sector in general.

61. Spain does not adduce evidence either of the results of such checks, or that the

22 — Article 7(1) of the Implementing Regulation.

23 — See Cases C-278/98 *Netherlands v Commission* [2001] ECR I-1501, paragraphs 39 to 41, C-157/00, cited in footnote 20, at paragraphs 15 to 17, and most recently C-344/01 *Germany v Commission* [2004] ECR I-2081.

24 — See, for example, Case C-157/00, cited in footnote 20, at paragraph 18.

assertions made by the Commission are incorrect. Moreover, it has not demonstrated that the deficiencies identified in the supervisory system in 2000 were remedied so as to permit the reliable operation of the system in 2001. None of those three requirements²⁵ is addressed by the mere assertion that the error affects only the budgetary heading relating to irrigated maize.

62. I am therefore of the view that the Commission has provided evidence of serious and reasonable doubt regarding the checks communicated by the Member State, and that consequently it was justified in finding an infringement of Community expenditure rules and in proposing a financial correction accordingly.

63. With regard to the amount of the correction, aside from the inclusion of compensatory allowances, the assessment appears to me to be in line with the Court's application of the principles found in the case-law regarding the burden of proof²⁶ to the situation in which an assessment has been carried out by the Commission on the basis of the results of checks. In such circumstances, the Court has confirmed the assessment where the Member State has not provided any evidence that the Commission

relied on incorrect facts, or demonstrated that the irregularities identified did not affect the Community budget or that they did so to an appreciably lesser extent than was estimated by the Commission.²⁷

64. As I have already stated, Spain has not demonstrated that the Commission's assertions were incorrect in alleging irregularities in the accounts. It follows that no evidence has been produced either disproving the facts on which the assertions were based or proving that the irregularities did not affect the Community budget.

65. Further nothing in Spain's submissions indicates that the irregularities affected the Community budget to an appreciably lesser extent than the Commission's assessment reflects. Under the principles in the case-law concerning the burden of proof,²⁸ the mere assertion that the error affects only irrigated maize, which is substantiated by no evidence of a reliable and operational supervisory system, in no way undermines the assessment made.

25 — Which the Member State must satisfy, according to the case-law cited in footnotes 23 and 24.

26 — See point 59 above.

27 — See Case C-130/99 *Spain v Commission* [2002] ECR I-3005, at paragraphs 90 and 91.

28 — See point 59 above.

66. For those reasons, aside from the component relating to compensatory allowances, the amount of the correction proposed by the Commission is not in my view incorrect.

67. Since Spain has partly succeeded in its submissions, each party must be ordered to bear its own costs.

Conclusion

68. On the basis of the foregoing observations, I am of the opinion that the Court of Justice should:

- (1) annul Commission Decision 2002/461/EC of 12 June 2002 on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 2001 financial year as regards the correction made to the expenditure relating to compensatory allowances;
- (2) dismiss the remainder of the application;
- (3) order each party to bear its own costs.