

JUDGMENT OF THE COURT (Fifth Chamber)

18 September 2003 *

In Case C-346/00,

United Kingdom of Great Britain and Northern Ireland, represented by
R. Magrill, acting as Agent, assisted by P. Roth QC,

applicant,

v

Commission of the European Communities, represented by M. Niejahr and
K. Fitch, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for partial annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49), in so far as it excluded from Community financing, for the financial years 1996 and 1997, expenditure of EUR 5 039 175.46 incurred by the United Kingdom in the arable crops sector,

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges,

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 June 2002, at which the United Kingdom was represented by P. Ormond, acting as Agent, and the Commission by M. Niejahr and K. Fitch,

after hearing the Opinion of the Advocate General at the sitting on 23 January 2003,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 20 September 2000, the United Kingdom of Great Britain and Northern Ireland brought an action under the first

paragraph of Article 230 EC for partial annulment of Commission Decision 2000/449/EC of 5 July 2000 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2000 L 180, p. 49), in so far as it excluded from Community financing, for the financial years 1996 and 1997, expenditure of EUR 5 039 175.46 incurred by it in the arable crops sector.

Legal background

- 2 Article 5(2)(c) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (II), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1), ('Regulation No 729/70') provides:

'2. The Commission, after consulting the Fund Committee:

...

- (c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

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.

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 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.

A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned....'

- ³ Article 8(1) and (2) of Commission Regulation (EC) No 1663/95 of 7 July 1995 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 (OJ 1995 L 158, p. 6) provides:

'1. When, as a result of any enquiry, the Commission considers that expenditure was not effected according to Community rules, it shall communicate to the

Member State concerned its findings, the corrective measures to be taken to ensure future compliance, and an evaluation of any expenditure which it may propose to exclude pursuant to Article 5(2)(c) of Regulation (EEC) No 729/70. The communication shall make reference to this Regulation. The Member State shall reply within two months, and the Commission may modify its position in consequence. In justified cases the Commission may agree to extend this period for reply.

After expiry of the period allowed for reply, the Commission shall initiate a bilateral discussion, and both parties shall endeavour to come to an agreement as to the measures to be taken. The Commission shall then formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC...

2. The decisions referred to in Article 5(2)(c) of Regulation (EEC) No 729/70 shall be taken after an examination of any report drawn up by the Conciliation body according to the provisions laid down in [Decision] 94/442/EC.'

- 4 Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 1994 L 182, p. 45) established a conciliation body which may intervene in the clearance of the EAGGF accounts. Under Article 1(2)(a) of that decision, 'the position of the Body shall be without prejudice to the Commission's final decision on the clearance of the accounts...'
- 5 The guidelines for flat-rate corrections are laid down in Document VI/5330/97 of 23 December 1997 ('Document VI/5330/97'). Where it is not possible, on the basis of the information gathered in an inquiry, to assess the loss suffered by the

Community by extrapolating that loss, by way of statistics or by reference to other verifiable data, a flat-rate correction may be proposed. The level of correction applied depends on the seriousness of the deficiencies identified in the performance of the controls.

6 The Commission distinguishes between two categories of controls:

‘— Key controls are those physical and administrative checks required to verify substantive elements, in particular the existence of the subject of the claim, the quantity, and the qualitative conditions including the respect of time-limits, harvesting requirements, retention periods etc. They are performed on the spot, and by cross-checks to independent data such as land registers.

— Ancillary controls are those administrative operations required to correctly process claims, such as verification of the respect of time-limits for their submission, identification of duplicate claims for the same subject, risk analysis, application of sanctions and appropriate supervision of the procedures.’

7 In accordance with Document VI/5330/97, the Commission applies the following levels of flat-rate corrections:

‘When one or more key controls are not applied or applied so poorly or so infrequently that they are completely ineffective in determining the eligibility of

the claim or preventing irregularity, then a correction of 10% is justified, as it can reasonably be concluded that there was a high risk of widespread loss to the Fund.

When all key controls are applied, but not in the number, frequency or depth required by the regulations, then a correction of 5% is justified, as it can reasonably be concluded they do not provide a sufficient level of assurance of the regularity of claims, and that the risk to the Fund was significant.

When a Member State has adequately performed the key controls, but completely failed to operate one or more ancillary controls, then a correction of 2% is justified in view of the lower risk of loss to the Fund, and in view of the lesser seriousness of the infringement.'

The facts and the clearance procedure in question

- 8 In the course of an audit relating to aid for arable areas in England and Wales carried out from 30 June to 4 July 1997 ('the audit'), the Commission's services inspected the Bristol Regional Service Centre ('the Bristol Regional Centre'). They carried out a detailed audit of three claims for payment which had been the subject of on-the-spot checks by the same inspector ('the inspector concerned').

- 9 The United Kingdom and the Commission disagree as to the choice of the three cases selected for audit. According to the United Kingdom, inspections carried out by other inspectors could have been subjected to checks. The Commission maintains, conversely, that, at the time of the audit, no other inspection had been completed and could thus have been the subject of a check by its officials.
- 10 However, the United Kingdom and the Commission agree that serious deficiencies were discovered in the three selected cases.
- 11 The United Kingdom authority responsible for administering the system of payments relating to arable areas, the Ministry of Agriculture, Fisheries and Food ('MAFF') immediately transferred the inspector concerned, who was responsible for the three deficient inspections, to other duties. With the agreement of the Commission's services, MAFF undertook to repeat all the inspections relating to 1997 which had been carried out by the inspector concerned and to check a sample of cases which had been inspected by other inspectors attached to the Bristol Regional Centre in order to determine whether there was a more widespread problem than that which the Commission's services had detected.
- 12 By letter of 8 October 1997, the United Kingdom authorities submitted their report on the checks to the Commission. The checks had revealed that the

inspector concerned had carried out five other inspections in 1997 and that anomalies had been detected in four of those five inspections. However, since no payments had yet been made in respect of the applications for funding at the time when those checks were performed, it was possible to correct those anomalies in time and the EAGGF suffered no financial loss for 1997 on their account. Moreover, the re-performance of the inspections carried out by other inspectors had not revealed any anomalies.

- 13 By letter of 12 December 1997, the Commission's services, in accordance with Article 8 of Regulation No 1663/95, notified the United Kingdom of the anomalies discovered in the course of their audit and stated that there were deficiencies in the quality of the supervision of inspections. They acknowledged that the measures taken by the competent national authorities had prevented the Community from suffering financial loss for 1997 but requested details of the payments made in 1995 and in 1996 and of the measures taken to identify and correct any errors which might have been committed in those years. They stated that, given the seriousness of the irregularities discovered, they envisaged excluding part of the expenditure declared in 1995 and 1996 from Community funding.

- 14 The United Kingdom authorities replied by letter of 17 March 1998, stating that, following re-performance of all the inspections carried out by the inspector concerned, the value of the irregularities detected amounted to 9.45% of the total of claims for payment which that inspector had checked in 1997. With respect to irregularities which the inspector concerned might have failed to detect in 1995 and 1996, the United Kingdom authorities undertook to examine all the applications submitted to that inspector. They also stated that the potential value of the losses for the EAGGF could be calculated by applying the same rate of 9.45% to the total value of the applications for aid checked by the inspector

concerned in 1995 and 1996. Finally, by that letter, the United Kingdom authorities also supplied the details requested by the Commission with regard to the total expenditure made in those years under the EAGGF in the sector of arable crops in the region concerned.

- 15 By letter of 21 August 1998, the United Kingdom authorities supplied the Commission with details of the system of training and supervision of inspectors.

- 16 The bilateral discussion provided for in the second subparagraph of Article 8(1) of Regulation No 1663/95 ('the bilateral discussion') was held on 16 September 1998.

- 17 Following that meeting, the Commission's Agriculture Directorate-General ('the Agriculture Directorate-General') informed the United Kingdom, by fax of 4 November 1998, that it intended to propose a flat-rate correction of 9.45%, which was equal to the rate of irregularities found for 1997, and to apply that correction to the applications for aid for 1995 and 1996 which had been checked by the inspector concerned.

- 18 However, by letter of 2 August 1999, the Agriculture Directorate-General informed those authorities that, after an examination by and consultation of the Commission's services, it had decided, in accordance with the guidelines on the calculation of financial corrections laid down in Document VI/5330/97, to make a correction of 2% to all of the expenditure checked by the Bristol Regional Centre.

- 19 In that letter, the Commission explained that the deficiencies discovered related to a key control and could qualify for a higher correction. It stated that it had, however, taken into account the fact that, even though it was not of the same quality as that which was subsequently set up, MAFF had implemented a system of supervision in 1995 and 1996 and that effective measures had been taken to remedy the deficiencies as soon as they became apparent.
- 20 The United Kingdom then sought, by letter of 6 October 1999, initiation of the conciliation procedure under Decision 94/442. The meeting before the Conciliation Body was held on 3 February 2000.
- 21 In its final report of 8 March 2000, the Conciliation Body invited the services of the Commission to re-examine their assessment of the system of supervision applied in the region covered by the Bristol Regional Centre ('the region concerned'). It concluded that the three checks audited by the Commission were not representative of the quality of checks carried out in the whole of that region. In its view, the statements made by the United Kingdom authorities, explaining that the system of supervision had not yet detected the irregularities in question at the time of the audit but that it would not have failed to do so subsequently, were plausible.
- 22 Notwithstanding the view taken by the Conciliation Body in its final report, the Commission informed the United Kingdom authorities, by letter of 16 April 2000, that it maintained its previous position, relying, *inter alia*, on the deficiencies in the system of supervision of on-the-spot checks in the years prior to 1997. It pointed out, in particular, that, after introduction of a system entailing

the re-performance of on-the-spot checks, the level of anomalies detected in the region concerned had risen from 5.86% in 1996 to 15.07% in 1997. The Commission found that this was a strong indication that the quality of field inspections had improved in 1997 following the Commission's audit.

- 23 On 5 July 2000, the Commission adopted Decision 2000/449, which is the subject of the present action. By that decision, the Commission confirmed that a flat-rate correction of 2% was to be applied to all of the applications for aid processed by the Bristol Regional Centre in 1995 and 1996.

The first plea: erroneous finding that supervision of on-the-spot checks was inadequate

Submissions of the parties

- 24 By its first plea, the United Kingdom submits that the Commission was wrong to find that it did not implement an adequate system of supervision of on-the-spot checks in the region concerned in 1995 and 1996.
- 25 The United Kingdom points out that Decision 2000/449 is based on the irregularities, discovered in the course of the audit, in the three cases selected by the Commission's services and on the increase in the rate of anomalies detected in the region concerned in 1997 as compared with the rate in 1996.

- 26 With respect to the irregularities discovered in the course of the audit, the United Kingdom asserts that the system of supervision which it had put in place would have uncovered those irregularities. It maintains that the reason why that had not yet been the case was that the Commission's audit took place at the end of the first month of the four-month period during which the national authorities carry out their inspections. The system of supervision had simply not yet been applied at the time of the audit.
- 27 The United Kingdom states that this system of supervision consists of an examination by a Field Team Manager of some of the inspectors' reports, relating, in particular, to the duration of the on-the-spot checks carried out by them. In the present case, the duration of the on-the-spot checks carried out by the inspector concerned was so much shorter than the normal duration that such an examination would undoubtedly have revealed the anomalies.
- 28 The system of supervision also consists of a number of inspections carried out jointly by an inspector and a Field Team Manager or a senior inspector. These inspections may take place either without warning or after having been announced. Supervision is weighted towards new and inexperienced inspectors. In the present case, since the inspector concerned was one of the most junior, she would have been the subject of such increased supervision. However, since only a small number of inspections had been carried out at the time of the Commission's audit, no joint inspections had yet been conducted.
- 29 The United Kingdom claims that the Commission cannot rely on the increase in the rate of anomalies revealed in 1997 after the introduction of a systematic supervision regime in order to argue that the previous system was inadequate. That would be to take into account events occurring after those of the period

concerned. Moreover, such reasoning is fallacious since the increased rate of anomalies subsequently detected can be explained by the deterioration in economic conditions and the tendency of farmers therefore to claim the maximum aid.

30 The Commission contends that, following the checks carried out by the United Kingdom in 1997 with the agreement of the Commission, errors were detected in respect of most of the other inspections carried out by the inspector concerned in that year.

31 The Commission also points out that, while the examination of the inspections carried out by the inspector concerned in 1995 and 1996 did not reveal any significant errors, the United Kingdom nevertheless concedes that it is not always possible to detect errors where the harvests in respect of which aid has been granted have long since taken place.

32 In the Commission's view, there can be no certainty that significant errors were not committed by the inspector concerned, or indeed by other inspectors, in 1995 and 1996.

33 The Commission contends that the work of the inspector concerned was so unsatisfactory that it is compelled to conclude that she must have committed significant errors in 1995 and 1996. The fact that none of the errors committed by that inspector in those two years was detected by the system of supervision in place at the time leads the Commission to conclude that this system was inadequate.

- 34 The Commission states that the fact that the number of detected anomalies increased markedly in 1997, as compared with previous years, as a result of the introduction of a system of increased supervision likewise leads it to conclude that errors went unnoticed in those previous years.

Findings of the Court

- 35 Where the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of a breach of Community rules for which a Member State can be held responsible, the Commission is not required to demonstrate exhaustively that the checks carried out by the Member States are inadequate, but to provide evidence of the serious and reasonable doubt it entertains concerning the checks carried out by the national authorities. The reason for this mitigation of the burden of proof on the Commission is that it is the State which is best placed to collect and check the data required for the clearance of EAGGF accounts, and which is consequently required to adduce the most detailed and comprehensive evidence both that its checks are actually carried out and, if appropriate, that the Commission's assertions are incorrect (see, *inter alia*, Case C-377/99 *Germany v Commission* [2002] ECR I-7421, paragraph 95).
- 36 In the present case, the parties are agreed that serious errors were detected in the three cases selected by the Commission's services and, moreover, that significant errors were discovered in all of the files checked by the inspector concerned.

- 37 It follows that the Commission was entitled to entertain serious doubts as regards the quality of the checks carried out in the region concerned.
- 38 It was therefore for the United Kingdom to demonstrate, by as detailed evidence as possible, that the anomalies detected were not common to inspectors' checks in general and that there was an adequate system of supervision.
- 39 In that regard, the United Kingdom provided proof that no anomalies were apparent in the work of the other inspectors in 1997. However, it acknowledged that errors had been committed by the inspector concerned in 1995 and 1996. It took the view that these were only minor errors but at the same time conceded that, since the checks were carried out long after the harvests, it was more difficult to detect errors.
- 40 The Court finds that the fact that, following the checks carried out at the Commission's request, errors were detected in the cases examined by the inspector concerned in 1995 and 1996 which had not been not revealed by the system of supervision in place in those years confirmed the Commission's initial doubts.
- 41 Accordingly, it must be held that the Commission was right to find that the system of supervision in place in the region concerned in 1995 and 1996 was inadequate, and it is not necessary to examine whether the Commission's second argument, which relates to a comparison of the system of supervision prior to and after 1997, is well founded.

The second and third pleas: miscalculation of the loss allegedly suffered by the EAGGF, and financial correction contrary to the principle of proportionality

Submissions of the parties

42 By its second and third pleas, the United Kingdom submits, in the alternative, that, in any event, the Commission infringed Article 5(2)(c) of Regulation No 729/70 by miscalculating the amount to be excluded from Community funding and acted in breach of the principle of proportionality by imposing a financial correction which was disproportionate to the risk of loss run by the EAGGF.

43 The United Kingdom submits that the irregularities identified in 1997 were limited to just one inspector and that the imposition of a correction calculated on the basis of a flat-rate deduction of 2% to be applied to all the claims for aid processed by Bristol Regional Centre in 1995 and 1996 was therefore unjustified.

44 The United Kingdom observes that, with respect to 1997, the checks showed that 12 of the 13 inspectors had carried out their inspections correctly. Moreover, it has been acknowledged that, as a result of the corrective action taken by MAFF, the EAGGF suffered no loss in that year.

45 According to the United Kingdom, only minor errors were made in the inspections carried out by the inspector concerned in 1995 and 1996. The

checks revealed no irregularities in the work which that inspector had carried out in 1995 and only three applications claiming slightly excessive amounts in 1996, and the excess, which amounted to GBP 919.66, was subsequently recovered and paid into the EAGGF account. The fact that the United Kingdom is unable to explain why the efficiency of the inspector concerned declined markedly in 1997 as compared with 1996 does not entitle the Commission to conclude that she committed a number of errors in 1996 which were greater than those revealed by the checks.

- 46 In any event, the United Kingdom submits that, if, as a result of the limitations entailed in re-performing the checks a year later, it is held that a deduction is justified in respect of the previous years, that deduction should be limited to the payments relating to the applications checked by the inspector concerned. A flat-rate correction of 9.45%, which is equal to the rate of irregularities established for 1997, should be applied to the applications examined by that inspector in 1995 and 1996. The United Kingdom points out that this correction is also the same as the financial deduction initially proposed by the Agriculture Directorate-General.
- 47 The United Kingdom adds that the effect of the final deduction made by the Commission is to exclude from Community funding sums which are 23 times higher than the amount initially proposed by the Agriculture Directorate-General and that such a deduction must therefore be regarded as manifestly disproportionate.
- 48 The Commission submits that, having regard to the guidelines laid down in Document VI/5330/97, a flat-rate correction of 2% is reasonable.
- 49 The Commission states that two factors were of particular relevance in calculating the appropriate correction: first, the failure to carry out a key

control, namely the lack of adequate on-the-spot checks by the inspector concerned, and, second, the lack of ancillary controls, that is to say, the lack of adequate training at the Bristol Regional Centre and of adequate supervision to prevent errors such as those committed.

50 The Commission maintains that the application of a flat-rate correction is justified where, as in the present case, it is impossible to evaluate, *ex post facto*, the impact on Community expenditure of the inadequacies in the quality of supervision. It points out that, in view of the serious irregularities identified in the performance of the key controls, it could have applied a 5% correction. Nevertheless, it considered that a rate of 2% was appropriate because the chief inadequacy concerned an ancillary control and corrective measures were rapidly and effectively taken as soon as the problem was identified.

51 The Commission rejects the argument of the United Kingdom concerning the alleged disproportionality of the correction applied, namely that it is 23 times higher than that which would have been applied if solely the work of the inspector concerned had been taken into account. The Commission contends that that comparison is meaningless and points out that flat-rate corrections are determined with a view to reflecting the probable impact on Community expenditure of the inadequacies identified.

Findings of the Court

52 By its second and third pleas, the United Kingdom Government is challenging the application of a flat-rate correction to all of the expenditure examined in the region concerned in 1995 and 1996 and also the 2% level of the correction.

- 53 As regards the type of correction applied, it should be noted that, in the light of Document VI/5330/97, a flat-rate correction may be applied where it is not possible to determine precisely the losses suffered by the Community.
- 54 As is clear from the checks requested by the Commission in 1997, it was not possible to determine the precise extent of the errors committed by the inspector concerned in 1996 or whether any errors might have been committed by her in 1995 or by other inspectors over the course of those two years.
- 55 Accordingly, the Commission rightly applied a flat-rate correction to all of the applications for aid inspected in the region concerned in 1995 and 1996.
- 56 The correction rate of 2% is the lowest of the applicable rates. As the Commission pointed out, it could have applied a 5% correction in view of the guidelines laid down in Document VI/5330/97 but it took into account, in particular, the measures which the United Kingdom authorities had taken as soon as the errors committed in 1997 were discovered.
- 57 In light of the seriousness of the anomalies found and of the fact that the United Kingdom was unable to provide sufficient proof that no errors of the same kind

had been committed in 1995 and 1996 by the inspector concerned or the other inspectors, the rate of 2% is not disproportionate.

- 58 It follows that the second and third pleas raised by the United Kingdom must be rejected as unfounded.

The fourth plea: infringement of essential procedural requirements

Submissions of the parties

- 59 The United Kingdom submits that the Commission failed to observe the procedural rules laid down in the second subparagraph of Article 8(1) of Regulation No 1663/95 which require that the Commission and the Member State concerned hold a bilateral discussion on the basic expenditure which the Commission proposes to exclude from Community funding and endeavour to reach an agreement.
- 60 The United Kingdom takes the view that the Commission's action in proposing the exclusion of modest sums from Community funding following the bilateral discussion but in then deciding, nine months later, to exclude a much larger sum, which was calculated on an entirely different basis and as a result of the

intervention of other Commission services which did not participate in the bilateral discussion, runs counter to those procedural rules. It adds that, in such circumstances, the bilateral discussion ceases to have any point.

- 61 The Commission contests the fourth plea relied on by the United Kingdom and contends that it did not infringe the rules laid down in Article 8 of Regulation No 1663/95. It submits, in particular, that, by letter of 12 December 1997, it duly notified the United Kingdom of the irregularities found. It adds that that letter stated its intention to apply a correction in respect of the preceding 24 months in accordance with Article 5(2)(c) of Regulation No 729/70 and that the United Kingdom must therefore have known that a correction of 2%, or even greater, might be applied.
- 62 The Commission submits that a bilateral discussion was organised, in accordance with the applicable procedure, with the representatives of the Agriculture Directorate-General. It acknowledges that, as a result of that discussion, the Agriculture Directorate-General took the view that the financial correction should be applied only to the applications for aid inspected by the inspector concerned. Nevertheless, the Commission maintains that this was simply a point of view which that Directorate intended to submit to the Commission and not a final decision.
- 63 The fact that the Commission collectively decided that the irregularities justified a more stringent correction than that initially envisaged does not render the bilateral discussion meaningless. That discussion allowed an in-depth exchange of views between the United Kingdom and the Commission, which served to clarify the legal issues and the facts.

Findings of the Court

- 64 By this plea, the United Kingdom claims that the Commission infringed the procedural rules laid down in Article 8 of Regulation No 1663/95 by rendering meaningless the obligation to hold a bilateral discussion in accordance with that article.
- 65 The parties do not dispute that a bilateral discussion took place between the representatives of the Agriculture Directorate-General and the representatives of the United Kingdom.
- 66 The disputed point is whether the purpose of the bilateral discussion was rendered meaningless because other Commission services, which had not participated in the discussion, were consulted after that discussion and because, following that consultation, the Commission presented conclusions which differed from those reflecting the common point of view which the parties to the discussion appeared to have reached.
- 67 Following the bilateral discussion, the Commission, by fax of 4 November 1998, stated that it intended to propose a correction limited to 9.45% of the applications for aid checked by the inspector concerned. By that fax, in which it was expressing an opinion, the Agriculture Directorate-General referred to the same correction amount as that which the United Kingdom itself had suggested in its letter of 17 March 1998 and seemed therefore to indicate that the parties shared a common point of view. However, in its letter of 2 August 1999, the Agriculture Directorate-General proposed a much greater correction, namely 2% of all the applications for aid checked in the region concerned.

- 68 The fact that the conclusions in the letter of 2 August 1999 were not consistent with either those contained in the fax of 4 November 1998 or the common point of view reached by the parties during the bilateral discussion does not necessarily mean that the purpose of the discussion was rendered meaningless.
- 69 The bilateral discussion is merely a preliminary stage in the Commission's decision-making process and any opinion which it expresses at the end of such a discussion does not bind it in the future. Before formally communicating its findings, the Agriculture Directorate-General may consult other Commission services. Where, as in the present case, the Agriculture Directorate-General alters an opinion which it has previously expressed, it must be pointed out that no agreement has been reached between the parties and the Member State concerned may still request initiation of a conciliation procedure.
- 70 What is important is that the bilateral discussion enabled both parties to debate all the issues in dispute and that all the issues discussed were taken into account by the Commission when it formally presented its findings. Nevertheless, the Commission may arrive at an assessment of the extent of the risk for the EAGGF which differs from its assessment at the bilateral discussion and as a result of which it proposes a different correction from that initially envisaged.
- 71 In the present case, there was a debate during the bilateral discussion, relating, in particular, to the deficiencies identified, the loss suffered by the EAGGF and the level of the correction to be applied, and the Commission took the issues discussed into account when it formally presented its conclusions.

- 72 Thus, the mere fact that the conclusions which the Agriculture Directorate-General reached after consultation of other Commission services are inconsistent with the opinion which it expressed following the bilateral discussion and with the position of the United Kingdom does not mean that the Commission infringed the second subparagraph of Article 8(1) of Regulation No 1663/95 by rendering meaningless the obligation to hold a bilateral discussion in accordance with that subparagraph.
- 73 It follows that the fourth plea raised by the United Kingdom is unfounded.
- 74 Since the United Kingdom has been unsuccessful in all of the pleas raised, the application must be dismissed.

Costs

- 75 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the United Kingdom has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Edward

La Pergola

Jann

von Bahr

Rosas

Delivered in open court in Luxembourg on 18 September 2003.

R. Grass

M. Wathelet

Registrar

President of the Fifth Chamber