

JUDGMENT OF THE COURT (Third Chamber)

9 June 2005^{*}

In Case C-287/02,

ACTION for annulment under Article 230 EC, brought on 9 August 2002,

Kingdom of Spain, represented by L. Fraguas Gadea, acting as Agent, with an address for service in Luxembourg,

applicant,

v

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

defendant,

^{*} Language of the case: Spanish.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Borg Barthet, J.-P. Puissochet, S. von Bahr and J. Malenovský (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2005,

gives the following

Judgment

1 By its application, the Kingdom of Spain seeks the 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 (OJ 2002 L 160, p. 28; hereinafter ‘the contested decision’), so far as it concerns that Member State.

Law

² Articles 1(2)(b) and 2(2) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103; hereinafter ‘the basic regulation’) provide that the Guarantee Section of the EAGGF is to finance intervention intended to stabilise the agricultural markets, undertaken in accordance with Community rules within the framework of the common organisation of those markets.

³ The ninth recital in the preamble to the basic regulation states:

‘... two types of decisions should be 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’.

⁴ With regard to the first type of decision, those 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) thereof. That provision requires Member States periodically to submit to the Commission annual accounts of the approved paying agencies relating to transactions financed by the Guarantee Section, accompanied by the information required for clearance and an attestation regarding the integrality, accuracy and veracity of the accounts transmitted.

- 5 The second subparagraph of Article 7(3) of the basic regulation provides, in addition, that the account clearance decision is to cover the integrality, accuracy and veracity of the accounts submitted and is not to prejudice the adoption of a subsequent decision pursuant to paragraph 4 of that article.
- 6 With regard to the second type of decision, relating to compliance, the first subparagraph of Article 7(4) of the basic regulation provides that the Commission 'shall decide on the expenditure to be excluded from the Community financing ... where it finds that expenditure has not been effected in compliance with Community rules'.
- 7 The second and third subparagraphs of Article 7(4) also lay down the procedure to be followed before a decision to refuse financing is taken. It requires the results of the Commission's checks and the replies of the Member State concerned to be notified in writing, after which the two parties are to endeavour to reach agreement on the action to be taken. If no agreement is reached, the Member State concerned may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months.

- 8 Pursuant to Article 16(1) thereof, the basic regulation repeals and replaces 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). Article 16(2) provides that references to the repealed regulation are to be construed as references to the basic regulation and be read in accordance with the correlation table set out in Annex I thereto. In accordance with the second paragraph of Article 20 thereof, the basic regulation applies to expenditure effected as from 1 January 2000.
- 9 Commission 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 Commission Regulation (EC) No 2245/1999 of 22 October 1999 (OJ 1999 L 273, p. 5; hereinafter ‘the implementing regulation’), provides, in Article 4, that for the purpose of the clearance of the accounts pursuant to Article 7 (3) of the basic regulation the Member States are to submit to the Commission by 10 February following the end of the financial year concerned the annual accounts of the expenditure charged to the Guarantee Section, the reports established by each paying department or body and the certificates and reports established by the certification body or bodies.
- 10 Under the first subparagraph of Article 7(1) of the implementing regulation, the accounts clearance decision referred to in Article 7(3) of the basic regulation must determine, without prejudice to decisions taken subsequently in accordance with Article 7(4), the amount of expenditure effected in each Member State during the financial year in question recognised as being chargeable to the EAGGF Guarantee Section, on the basis of the accounts supplied and the reductions and suspensions of advances for the financial year concerned. The second subparagraph of Article 7(1) of the implementing regulation provides:

‘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. These amounts shall be deducted from, or added to, the advances payable from the second month following the month in which the account clearance decision took effect.'

- 11 In accordance with Article 7(2) of the implementing 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'.

- 12 Article 8(1) of the implementing regulation states as follows:

'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 ...

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.'

The facts and proceedings

- ¹³ After receiving the annual accounts of expenditure effected by the Spanish paying agencies for the 2001 financial year, the Commission notified the Spanish authorities of the results of its checks by letter of 27 March 2002. Whilst stating that that letter constituted a communication under both Article 7(2) and Article 8(1) of the implementing regulation, the Commission indicated that it would propose the clearance of several paying agencies, including that of Navarro, before 30 April 2002.

It added that it would not, however, propose clearance of the accounts of the paying agencies of the Fondo español de garantía agraria (FEGA) of Castilla-La Mancha, the Balearics, La Rioja and the Basque Region. In an annex to that letter were mentioned, in each case, the nature of checks and additional information required before clearance could be proposed and the results of the Commission's checks.

- 14 On 19 April 2002, at a meeting attended by the Spanish authorities of the EAGGF Committee referred to in Article 7(1) of the basic regulation, the Commission circulated a summary report containing the results of its checks (hereinafter the 'summary report') and a draft of the account clearance decision.
- 15 In a letter dated 22 April 2002, the Spanish authorities sent to the Commission their observations on the draft decision and on the summary report.
- 16 In a letter dated 25 April 2002, those authorities sent their observations to the Commission concerning the accounts of the Castilla-La Mancha paying agency, on the basis of a document issued inter alia by its certifying body on 23 April 2002 in response to the Commission's draft decision (hereinafter the 'document relating to the draft decision') and relating both to the clearance of its accounts and to the ongoing compliance procedure. The Spanish authorities noted that the certifying body claimed to have obtained sufficient guarantees that the accounts were complete, accurate and true. Moreover, they considered that the correction proposed by the Commission should not include compensatory allowances but should be limited to aid granted for the production of irrigated maize. Those

authorities therefore contended that the correction should be assessed at EUR 17 855 rather than at EUR 1 831 526.08.

- 17 On 11 June 2002, the Spanish authorities sent the Commission documents relating to the accounts of the Navarra paying agency.
- 18 The Commission adopted 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 FEAGA and the Basque Region, and included amendments to the cleared accounts.
- 19 Thereafter, the Spanish authorities continued to submit documents to the Commission and to raise arguments regarding questions of substance as part of the procedure leading to adoption of the decision on compliance provided for in Article 7(4) of the basic regulation.
- 20 By this action, the Kingdom of Spain asks the Court to annul the contested decision in so far as it includes amendments intended to correct errors in the accounts of the paying agencies of Castilla-La Mancha, Navarra and the Basque Region (hereinafter the 'paying agencies in question'). It also seeks an order that the Commission pay the costs.

- 21 The Commission asks the Court to dismiss the action and order the Kingdom of Spain to pay the costs.

The action

The first plea, alleging infringement of the implementing regulation

Arguments of the parties

- 22 By its first plea, the Spanish Government alleges that the Commission adopted the contested decision without following the consultation procedure laid down in Article 8(1) of the implementing regulation. In particular the Commission infringed that provision by adopting the contested decision without waiting for 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. That Government submits that its authorities were thereby prevented, in breach of the rights of the defence, from supplying evidence and the documents necessary to justify the expenditure effected.
- 23 In its defence, the Commission points out that the contested decision, adopted on the basis of Article 7(3) of the basic regulation, forms part of the phase of clearance of the accounts and not that of the decision on compliance under paragraph (4) of

that article. The Commission adds that Article 7(2) of the implementing regulation requires it to communicate to the Member State concerned the results of its verifications of the information supplied and any amendments it proposes before it may adopt an account clearance decision.

24 The Commission submits that, in accordance with the Court's established case-law relating to Commission decisions reducing the monthly advances paid to Member States as part of the expenditure financed by the EAGGF, there is a general rule according to which the Commission is not entitled, when managing the common agricultural policy, to commit funds which fail to comply with the rules governing the common organisation of the market in question (Case C-342/89 *Germany v Commission* [1991] ECR I-5031, paragraph 14, and Case C-346/89 *Italy v Commission* [1991] ECR I-5057, paragraph 14). Consequently, before accepting the accounts of the paying agencies, it has the power to adjust them by making the corrections required on finding that certain expenditure effected did not comply with those rules.

25 The Commission takes the view that the contested decision is purely provisional in the sense that establishment of the non-compliance of the expenditure in question with the Community rules and a final refusal of Community financing depend on the adoption of a decision on compliance which, following the consultation procedure laid down in Article 7(4) of the basic regulation and Article 8 of the implementing regulation, confirms, if appropriate, the financial adjustments already made. Finally, the Commission disputes the allegation made by the Spanish Government that the rights of defence of the Kingdom of Spain have been infringed.

26 In its reply, the Spanish Government alleges, firstly, that in its letter of 27 March 2002 the Commission makes no mention of financial corrections to be made at the stage of clearance of the accounts of the paying agencies in question and, secondly,

that the amount of expenditure to be excluded from the financing was quantified only in the summary report and in the corresponding Commission draft decision which were discussed at the meeting of the EAGGF Committee on 19 April 2002. It also alleges that the summary report does not exist in Spanish.

- 27 Furthermore, the Spanish Government takes the view that, notwithstanding the case-law referred to by the Commission, the financial corrections should not have been implemented as part of the clearance of accounts. Firstly, the expenditure effected which did not comply with the rules for the common organisation of the market in question was below the threshold of significant error as defined by the Commission. Secondly, according to the certifying bodies, sufficient guarantees as to the integrality, accuracy and veracity of the accounts were obtained. Thirdly, that case-law relates to Commission decisions reducing monthly advances, which have a different legal basis from the contested decision. Fourthly, that Government challenges the unilateral imposition of an account clearance decision which is not merely limited to the application of 'financial adjustments' and which is not adopted in accordance with the formal procedures laid down for that purpose, although the procedure leading to adoption of the decision on compliance had already been commenced. Finally, the Spanish Government describes as 'premature' the financial corrections made to the accounts of the paying agencies in question before the end of the procedure leading to adoption of the decision on compliance, especially as in the case of the Basque Region the contested decision has not led to clearance of the accounts.

- 28 In its rejoinder, the Commission refutes the allegation that the adjustments made to the accounts of the paying agencies in question are premature. The information available permitted general conclusions to be drawn as to the integrality, accuracy and veracity of the accounts submitted, following which the expenditure which they showed was either accepted or excluded where it had not been effected in compliance with the Community rules.

- 29 Furthermore, the Commission takes the view that the objections raised in the reply of the Spanish Government regarding the communication, by letter of 27 March 2002, of the amendments which the Commission proposed to make to the accounts submitted constitute a new plea which must be declared inadmissible. In the alternative, the Commission asks that that plea be rejected as unfounded.
- 30 Finally, the Commission alleges that what is at issue in the present case is its power to make adjustments to the annual accounts of the paying agencies for undue expenditure, which is attributable to problems in the quality of the accounts and, what is more, problems regarding compliance with the Community legislation in force. Recognition of that power is in any case essential if the annual account clearance procedure is not to be largely deprived of meaning.

Findings of the Court

- 31 As a preliminary point, it should be considered whether the Commission has power to make financial corrections to the annual accounts of the paying agencies as early as the stage of its decision on clearance of the accounts.
- 32 In the first place, Article 7(3) of the basic regulation provides that such a decision, which covers the integrality, accuracy and veracity of the accounts submitted, is not to prejudice the adoption of a subsequent decision pursuant to paragraph 4 of that article and concerning the expenditure to be excluded from the Community financing where it was not effected in compliance with the Community rules. Article 7(1) of the implementing regulation reiterates that point and specifies that the

amounts which, as a result of the above decision, are recoverable from each Member State are to be established by deducting the advances paid in respect of the financial year concerned from the expenditure recognised for the same year. It follows that, on adoption of the account clearance decision, the Commission may draw consequences from the deficiencies found in the quality of the accounts submitted, independently of the decision on compliance provided for in Article 7(4).

- 33 Secondly, pursuant to Article 7(2) of the implementing regulation, amendments based on the verifications of the annual accounts may be proposed before clearance, provided that the proposals are submitted to the Member State concerned before 31 March of the year following the end of the financial year under consideration. In that regard, it is apparent from the letter of 27 March 2002 and its annex that the corrections proposed to the annual accounts of the paying agencies of Castilla-La Mancha and the Basque Region were communicated to the Kingdom of Spain.
- 34 Finally, it is evident from the Court's case-law that the Commission is not entitled, when managing the common agricultural policy, to commit funds which fail to comply with the rules governing the common organisation of the markets in question and that the rule is of general application (see Case C-342/89, paragraphs 14 and 15, and Case C-346/89, paragraphs 14 and 15, both cited above).
- 35 Consequently, when the Commission finds that the accounts of paying agencies include expenditure effected in breach of the Community rules governing the common organisation of the market in question, it has the power to draw all the necessary consequences and thus to make financial corrections to the annual accounts of the paying agencies at the stage of its decision on clearance of the accounts pursuant to Article 7(3) of the basic regulation.

36 Since the Commission has power to make such corrections as part of the clearance decision, it must be determined whether in this case the rights of the defence were observed with regard to the Kingdom of Spain, a matter expressly disputed by the Spanish Government.

37 It is apparent from the Court's case-law that respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. 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 (see, *inter alia*, Case C-32/95 P *Commission v Lisrestal and Others* [1996] ECR I-5373, paragraph 21, and Case C-462/98 P *Mediocurso v Commission* [2000] ECR I-7183, paragraph 36).

38 In the present case, the opportunity given to the Spanish authorities to put forward their view of the proposed account clearances, both during the exchange of correspondence which took place between those authorities and the Commission and at the meeting of the EAGGF Committee held on 19 April 2002, both of which preceded the adoption of the contested decision, satisfies the requirements of the principle that the rights of the defence must be observed.

39 The argument put forward by the Spanish Government that the Commission should have called a bilateral meeting and allowed the Kingdom of Spain the opportunity to request the initiation of a conciliation procedure, if relevant, must be rejected. The procedure laid down in Article 8(1) of the implementing regulation for the

finalisation of corrections to be effected had not run its course at the time that Member State brought its action. As a result, those arguments have no bearing on the legality of the contested decision.

40 With regard to the objections raised by the Spanish Government in its reply relating to the alleged failure by the Commission in its letter of 27 March 2002 to communicate to it the financial corrections proposed in connection with the clearance of accounts, the application includes a principal plea alleging infringement of the implementing regulation in that the complex consultation procedure laid down in Article 8(1) of that regulation was not followed. Those objections, which in no way relate to that consultation procedure, cannot be linked to that plea and must therefore be considered as constituting a new plea put forward for the first time in the reply.

41 In the present case no new factor has come to light during the proceedings to justify the Spanish Government's late submission of such a plea, which it could have put forward in its originating application. Consequently, that plea must be declared inadmissible pursuant to the first subparagraph of Article 42(2) of the Rules of Procedure of the Court. The same is true of the plea alleging the absence of a version of the summary report in Spanish, since that plea is also put forward for the first time in the reply.

42 In the light of the foregoing, the first plea must be rejected.

The second plea, submitted in the alternative and challenging the recoverable amount fixed in Annex I to the contested decision

43 The Spanish Government alleges, should the Court not accept that there was a failure to comply with the procedure relating to the financial corrections applied to the accounts of the paying agencies in question, that, with regard to the accounts of the Castilla-La Mancha paying agency, the financial correction appearing in Annex I to the contested decision is incorrect both in principle and in its amount.

The first part of the second plea, relating to the proper foundation of the financial correction made to the accounts of the Castilla-La Mancha paying agency

— Arguments of the parties

44 The Spanish Government relies on the observations of the certifying body in the document relating to the draft decision in order to challenge the foundation of the financial correction. It submits that, in that document, the certifying body stated

that the only principal observation, which as such should have been examined immediately by the senior officials of the paying agency, made in its audit report for the certification of the accounts for the 2001 EAGGF financial year (hereinafter the 'certification report'), relating to the failure of coordination between the management centre and the IT department, refers to a financial error caused by an incorrect application of the coefficient for penalisation for set-aside in the case of irrigated maize. The certifying body takes the view, firstly, that it is an error which was not found in previous years and which affects only one of the numerous budget headings grouped under the title 'arable sector' and, secondly, that the error is systematic, which enables the mechanism which gave rise to it to be identified and, therefore, its consequences to be determined precisely.

- 45 Furthermore, the Spanish Government, basing its argument on Commission guideline No 8, set out in Document No VI/5331/98, entitled 'Guidelines for the certification of accounts of EAGGF paying agencies' and relating to the sampling and assessment of errors by the national certifying bodies, submits that there are no grounds to make a financial correction, at the very least not during the account clearance stage, since the result of extrapolation from the total errors found in the audit of the reference accounts amounted to EUR 7 725 640.85, which is below the threshold of significant error, estimated at 1% for all expenditure. For that reason, the certifying body could have certified the integrality, accuracy and veracity of the accounts submitted by the Castilla-La Mancha paying agency for the 2001 financial year.

- 46 In its submissions, the Commission sets out the reasons for the conclusion reached by its staff that the accounts of the paying agency should not be approved without prior adjustment. In that regard, it relies, inter alia, on the certification report. Like the certifying body, it compared the information contained in that report with that in the report of that body containing the conclusions of the audit of the accounts for the preceding year.

47 The Commission observes that the certification report, as cited by it, includes, under 'Observations uncorrected in their entirety for the present financial year', a principal observation relating to the arable sector, which refers to coordination between the management centre and the IT service with a view to modifying the computer aid management applications.

48 The Commission adds that, according to the certifying body, that main observation refers to observations relating to two types of error in the accounts for the preceding financial year and appearing in the report of that body. The first is a computer error which resulted in the payment of incorrect amounts of aid to beneficiaries of the supplement granted to durum wheat producers in special areas. The second error, which remains unexplained, is related to the computer programme for detecting deficiencies in cross-referencing 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.

49 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. The Commission alleges that it is clear from the certification report that their occurrence is random. It refers to errors relating to durum wheat and to difficulties in recalculating the variables to be taken into account for calculating area aid which was necessary following repeated errors in the computer applications.

- 50 The Commission makes specific reference to the fact that an incorrect application of the reduction of surface area subject to set-aside in the case of irrigated maize led to erroneous payments in the 2001 financial year. It also submits, on the basis of the certification report, that the results of inspections were not correctly entered in the computer system and that failure to record those results was not detected by the computer system.

— Findings of the Court

- 51 Under Article 7(1) of the implementing regulation, the accounts clearance decision determines the amount of annual expenditure effected in each Member State during the financial year in question and recognised as being chargeable to the EAGGF. It follows that the Commission inevitably carries out an assessment of the amounts which are not recognised.
- 52 Furthermore 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 various agricultural sectors (see, inter alia, Case 327/85 *Netherlands v Commission* [1988] ECR 1065, paragraph 24; Case C-197/90 *Italy v Commission* [1992] ECR I-1, paragraph 38; and Case C-118/99 *France v Commission* [2002] ECR I-747, paragraph 38) and requires it to refuse financing of expenditure when it finds that irregularities have occurred (Case C-157/00 *Greece v Commission* [2003] ECR I-153, paragraph 44).

- 53 It is also established case-law that the Commission, in order to prove an infringement of the rules on the common organisation of the agricultural markets, is required not to demonstrate exhaustively that the checks carried out by the national authorities are inadequate or that the data submitted by them are incorrect, but to adduce evidence of serious and reasonable doubt on its part regarding the checks or data. 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 and consequently it is for that State to adduce the most detailed and comprehensive evidence that its checks or data are accurate and, if appropriate, that the Commission's statements are incorrect (see Case C-278/98 *Netherlands v Commission* [2001] ECR I-1501, paragraphs 39 to 41; *Greece v Commission*, cited above, paragraphs 15 to 17; and Case C-344/01 *Germany v Commission* [2004] ECR I-2081, paragraph 58).
- 54 Furthermore, the Court has repeatedly held that the Member State concerned, for its part, cannot refute the Commission's findings without making its own allegations, in the form of evidence of the existence of a reliable and operational system of checks (*Greece v Commission*, paragraph 18).
- 55 In the present case, the Commission has adduced in its submissions significant evidence of doubt on its part as to the reliability of the checks carried out in 2001 by the Spanish authorities. Firstly, it has claimed that errors made in the context of the 2000 financial year were not corrected for the following year, including errors due to the computer applications which led to payments of erroneous amounts in respect of durum wheat and the minimum surface area for declarations of land subject to set-aside. Secondly, it has noted, on the basis of the certification report, on the one hand, that the incorrect application of the reduction of the surface area of land subject to set-aside with regard to irrigated maize led to the payment of erroneous amounts for the 2001 financial year, differences which became apparent on checking

of the files, and, on the other hand, that the checks intended to ensure registration of the results of inspections had not been carried out. Finally, according to the extracts from the certification report annexed to the Commission's defence, those checks were lacking in several sections of the arable sector.

56 Spain does not adduce evidence either that such checks were carried out, or that the assertions made by the Commission are incorrect. Moreover, it has not shown that the deficiencies found in the monitoring system for the 2000 financial year were corrected in order to make the system reliable for the 2001 financial year. A mere assertion that the error affected only the budget heading corresponding to irrigated maize in no way fulfils the requirements relating to the burden of proof on the Member State concerned, as those requirements have been defined in the case-law referred to in paragraph 54 of the present judgment.

57 Furthermore, it cannot be alleged that the result of extrapolation from the total errors found is below the threshold of significant error fixed by Commission guideline No 8. Those guidelines relate to sampling and assessment of errors by the national certifying bodies. They cannot stand in the way of the Commission's power to amend the annual accounts at the stage of their clearance.

58 It follows from the foregoing that the Commission's arguments are sufficient to constitute evidence of serious and reasonable doubt as to the results of the checks carried out by the Spanish authorities, which have not succeeded in refuting those arguments. Consequently, the Commission was justified in finding that there was an infringement of the Community rules on EAGGF expenditure and, without

prejudice to the question of assessment of the amount of the undue expenditure, in making a financial correction.

- 59 The first part of the second plea advanced by the Kingdom of Spain in support of its action must therefore be rejected.

The second part of the second plea, relating to the calculation of the financial correction made to the accounts of the Castilla-La Mancha paying agency

— Arguments of the parties

- 60 Firstly, the Spanish Government alleges that the financial correction can relate only to the budget heading corresponding to the arable sector in which the error was caused by lack of coordination between the services, namely the budget heading corresponding to the set-aside of land for irrigated maize, on which the Commission's proposed correction is based.

- 61 The Commission replies that because sampling is random the problem of coordination between the services may cause different types of error. By establishing a link between the errors found for the 2000 and 2001 financial years, the certification body thus confirmed that the coordination problem affected not only irrigated maize but also durum wheat or the minimum surface area declared for set-aside.

62 Secondly, the Spanish Government submits that even taking, as the Commission does, the most likely value of the extrapolation from the random errors relating to aid to the arable sector, that amount would be EUR 1 380 043.53, since the extrapolation made by the Commission includes the budget heading corresponding to the compensatory allowances, which do not form part of the aid to the arable sector.

63 The Commission refers in the rejoinder to the terms of its communication of 10 December 2002, annexed to the rejoinder, according to which ‘in effect the budget heading for compensatory allowances should not have been taken into account in the extrapolation’ and ‘that allegation will be taken into account in the final correction’, and observes that that shows, in its view, that the account adjustments in the contested decision were provisional. The Commission also considers that in the context of the procedure for clearing accounts the burden of proof cannot be more onerous than that required in the context of the decision on compliance, which finally determines any financial corrections to be applied.

— Findings of the Court

64 With regard to the burden of proof, the principles established by the Court’s case-law have been set out in paragraphs 53 and 54 of this judgment. More particularly, where the Commission had assessed the amount of EAGGF permitted expenditure on the basis of the results of the checks carried out, the Court upheld the validity of such an assessment where the Member State provided no evidence that the Commission relied on incorrect facts, nor 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 (Case C-130/99 *Spain v Commission* [2002] ECR I-3005, paragraphs 90 and 91).

⁶⁵ In that regard, the mere assertion, which is not substantiated by any evidence of the existence of a reliable and operational supervisory system, that the error made by the Spanish authorities affects only irrigated maize in no way undermines the assessment made by the Commission.

⁶⁶ However, it should be noted that, according to its own words, set out in the rejoinder and in paragraph 63 of this judgment, the Commission wrongly included compensatory allowances in its own extrapolation. It must therefore be accepted, as the Advocate General observes in paragraph 56 of his Opinion, that the Commission wrongly included those compensatory allowances in the assessment of the amount of the errors.

⁶⁷ Moreover, there are objective elements which confirm the existence of that error. Thus it is apparent from the list of the most likely value of the errors extrapolated by the certification body from the accounts of the Castilla-La Mancha paying agency, which appears in the extracts from the certification report annexed to the Commission's defence, that the compensatory allowances are included in the financial correction made.

- 68 It follows from the foregoing that the contested decision is unlawful in seeking to recover sums which the Kingdom of Spain does not owe to the Guarantee Section of the EAGGF.
- 69 Since the Kingdom of Spain has asked that the amount of the compensatory allowances included in the financial correction made to the accounts of that paying agency be cancelled, the Court must rule on those pleas.
- 70 Despite the fact that the Commission has expressed the intention of taking account of the error made at the time of the finalisation of the correction in the decision on compliance taken pursuant to Article 7(4) of the basic regulation, the Court is required to draw the necessary consequences from that unlawfulness already at the stage of its review of the contested decision.
- 71 The question therefore arises whether the entire financial correction made to the accounts of the Castilla-La Mancha paying agency by the contested decision should be annulled or whether partial annulment thereof may be ordered.
- 72 The Spanish Government's alternative plea, seeking the removal of the sums relating to the compensatory allowances, must be regarded as seeking partial annulment of

the financial corrections made to those accounts, in so far only as they relate to those allowances.

⁷³ The Community Courts do not have jurisdiction to order the annulment of a decision in full where the applicant merely requested the partial annulment thereof. However, there is also no justification for partially annulling the contested decision where its provisions are not divisible.

⁷⁴ It must therefore be determined whether the amount of the compensatory allowances can be separated from the account relating to the arable sector, thus permitting a correction of the latter which relates only to that amount.

⁷⁵ In that regard, the list of the most likely value of the errors extrapolated by the certification body, which appears in the extracts from the certification report annexed to the Commission's defence, enables the Commission's error to be identified by means of detailed figures and the amounts relating to the two parts of the correction to be determined separately. As a consequence, it is possible to limit the financial correction to the amount actually relating to the arable sector.

⁷⁶ Thus, given the fact that the amount of the compensatory allowances is separable, it is not necessary to annul the financial correction made to the accounts of the

Castilla-La Mancha paying agency in full as it is possible to order the partial annulment thereof.

- 77 It follows from all the foregoing that the contested decision must be annulled in so far as Annex I thereto includes in the amount recoverable from the Kingdom of Spain a financial correction of the accounts of the Castilla-La Mancha paying agency corresponding to the amount of the compensatory allowances and that the remainder of the action must be dismissed.

Costs

- 78 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. However, the first subparagraph of Article 69(3) provides that the Court may order that the parties are to bear their own costs if each party succeeds on some and fails on other heads. Since the Kingdom of Spain has been unsuccessful in respect of its first plea and the Commission was partially unsuccessful in respect of the second plea, each should bear its own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Annuls 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 in so far as Annex I thereto includes in the amount recoverable from the Kingdom of Spain a financial correction of the accounts of the Castilla-La Mancha paying agency corresponding to the amount of the compensatory allowances;**
2. **Dismisses the remainder of the action;**
3. **Orders the Kingdom of Spain and the Commission of the European Communities to bear their own costs.**

[Signatures]