

OPINION OF ADVOCATE GENERAL
FENNELLY

delivered on 16 December 1999 *

I — Introduction

1. The Federal Republic of Germany seeks the partial annulment of Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 on the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)¹ (hereinafter 'the contested Decision'). Its action relates to the denial of reimbursement of DEM 608 583.40 as part of the expenses for a campaign promoting milk consumption (item 2062) and of DEM 485 466.68 in respect of payments to farmers under a scheme of temporary withdrawal from cultivation of arable land (item 401).

2. The Commission conceded in its defence to the present action, lodged on 17 October 1997, that it was mistaken regarding the alleged breach of time-limits for the making of payments in the latter case, as Germany had provided proof in its application that payment had been effected in time, except for an amount which was already covered by the applicable reserve. The Commission

stated that it would adopt an *ad hoc* amendment to the contested Decision. This amendment had not yet been adopted when the oral hearing was held on 11 November 1999. None the less, Germany formally withdrew this part of its application on the explicit basis of an undertaking by the agent for the Commission that the requisite amendment would be adopted within two to three months. As a result, I shall only discuss the first part of Germany's application in this Opinion.

II — Legal and factual background

3. Article 8(1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy² states:

'The Member States in accordance with national provisions laid down by law,

* Original language: English.

1 — OJ 1997 L 139, p. 30.

2 — OJ, English Special Edition, Series I 1970 (I), p. 218.

regulation or administrative action shall take the measures necessary to:

- satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;
- prevent and deal with irregularities;
- recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.’

The first subparagraph of Article 9(1) of Regulation No 729/70 provides:

‘Member States shall make available to the Commission all information required for the proper working of the Fund and shall take all suitable measures to facilitate the supervision which the Commission may consider it necessary to undertake within the framework of the management of Community financing, including inspections on the spot.’

4. Article 2 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities,³ as amended by Council Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990 amending the Financial Regulation,⁴ provides:

‘The budget appropriations must be used in accordance with the principles of sound financial management, and in particular those of economy and cost-effectiveness. Quantified objectives must be identified and the progress of their realisation monitored.’

Member States and the Commission shall cooperate to ensure the adequacy of systems for decentralised management of Community funds. Such cooperation shall include the prompt exchange of all necessary information.’

5. In order to place the dispute in its proper setting, it is necessary to set out in some detail the regulatory and contractual framework in question and the contents of the pre-contentious correspondence between the parties.

3 — OJ 1977 L 356, p. 1.

4 — OJ 1990 L 70, p. 1.

6. The disputed milk-promotion expenditure arises from two campaigns, which were launched in 1992 and 1993 respectively pursuant to Commission Regulation (EEC) No 465/92 of 27 February 1992 on the implementation of measures to promote awareness of the health and nutritional value of milk and milk products⁵ and Commission Regulation (EEC) No 585/93 of 12 March 1993 on the implementation of promotional and publicity measures in respect of milk and milk products.⁶

submit proposals to conduct the promotional campaign or to the content of such proposals. Article 2(1)(c) states:

‘The promotional measures referred to in Article 1:

...

Article 1(1) of Regulation No 465/92 states that measures to promote an awareness of the health and nutritional value of milk and milk products, which are aimed at target groups such as medical staff, teachers and consumer categories selected on the basis of objective criteria, such as age, shall be financed under the Regulation and continues:

(c) must:

— make use of the means best suited to ensure maximum effectiveness of the measure undertaken,

‘The most effective means of information are to be used for these measures, including television.’

— take account of the particular conditions obtaining with regard to the marketing and consumption of milk and milk products in the Member State concerned,

...’

Subsections (a) and (b) and the last sentence of Article 2(1) of Regulation No 465/92 relate either to the experience and background of organisations which

Article 4(1) of Regulation No 465/92 requires proposals and tenders to participate in the promotional campaign to include

⁵ — OJ 1992 L 53, p. 8.

⁶ — OJ 1993 L 61, p. 26.

'(b) all details concerning the measures proposed together with detailed descriptions, giving reasons and indicating the time required for completion, the expected results and any third parties who may be involved' and '(c) a detailed presentation of the planned strategy for the whole programme'. Article 4(2) provides for the Commission to lay down selection criteria, which parties submitting proposals must undertake to observe and which shall be attached to the contract.

Article 6 of Regulation No 465/92 states:

'(1) The contract referred to in Article 5(1)(b) shall include the details referred to in Article 4(1) and (2) or make reference to them and supplement those details, where necessary, by additional conditions.

(2) The competent authorities shall:

(a) send a copy of the contract to the Commission forthwith;

(b) ensure compliance with the agreed conditions, in particular by means of on-the-spot checks.'

7. Regulation No 585/93 envisages a promotional campaign of a more general character for human consumption of milk and milk products. Article 2(1) and (2) of Regulation No 585/93 is worded in terms similar to those of Article 2(1) of Regulation No 465/92; the above-quoted part of Article 2(1)(c) of the latter regulation is essentially reproduced in the first two indents of Article 2(2) of the former. Article 4(1)(b) and (c) of Regulation No 585/93 is couched in similar terms to the same provision of Regulation No 465/92, while Article 4(2) of Regulation No 585/93 contains similar obligations to those in Article 4(2) of Regulation No 465/92 regarding implementation criteria to be laid down by the Commission. Article 5(1) of both regulations states that the competent authorities shall use standard contracts to be provided by the Commission to conclude contracts with interested parties for the relevant promotional campaigns. Article 6 of Regulation No 585/93 provides:

'(1) Contracts shall include the details referred to in Article 4 or make reference to them and supplement those details, where necessary, by additional conditions.

(2) The competent authorities:

(a) shall send a copy of the contract to the Commission forthwith;

(b) ensure compliance with the conditions of the contract, in particular by means of the following checks:

- administrative checks and audits to verify the costs financed and compliance with financing rules,
- checks to verify that measures are implemented in accordance with the provisions of the contract,
- other on-the-spot checks, where necessary.

Contracting parties must be subject to at least two inspections during the period of validity of the contract.'

8. Much of the dispute centres on the extent of the reporting obligations imposed by the contracts, in particular as regards the contents of the interim reports. The second subparagraph of point 6.1 of the standard contract accompanying Regulation No 465/92 provides that the contracting partner and any subcontractors shall submit a monthly report (hereinafter 'the interim report') to the competent authority on the work completed, along

with copies of receipts in respect of costs incurred for the implementation of the contract. Point 6.4 provides for the contracting partner to submit a final report to the competent authority within four months of the termination of the contract regarding the use of the Community funds provided and on the foreseeable results of the measures adopted, in particular regarding the development of sales of milk and milk products. Points 6.1 and 6.4 of the standard contract under Regulation No 585/93 contain identical obligations, save that the interim report is required to be submitted on a quarterly basis.

9. Point 18 of the selection criteria adopted by the Commission under Regulation No 465/92 and annexed to the relevant standard contract states that in examining proposals regard must principally be had to the completeness of the information referred to in Article 4 of that regulation and specifies, *inter alia*, that the objectives of the detailed measures contained in the proposal must be clearly set out. Point 19 states that, in the scrutiny of the final report, special weight is to be attached to compliance with the original proposal, statements on the achievement of the objectives pursued and statements on the development of sales of milk and milk products. The implementation criteria laid down under Regulation No 585/93 do not contain any equivalent provisions.

10. After having obtained the Commission's approval, the German Federal Office

for Agricultural Market Organisation, the Bundesanstalt für Landwirtschaftliche Marktordnung (hereinafter 'BALM'),⁷ concluded standard contracts with Centrale Marketing Gesellschaft (hereinafter 'CMA') pursuant to Regulations Nos 465/92 and 585/93 on 30 November 1992 and 13 August 1993 respectively, terminating on 29 November 1994 and 14 August 1995 respectively. The period of application of the former contract was later extended until 22 May 1995.

CMA to adapt the form of advertising employed.⁹ Although it appeared from an earlier questionnaire that CMA had described the envisaged individual measures by reference to objective and cost, there was a lack of quantified objectives which would permit an assessment of the effect on consumer behaviour of advertisements in print and broadcast media and at exhibitions and of the reaction in health-professional circles to literature on research results. Thus, the requirement of cost-effectiveness was not taken into consideration. In particular, there was a lack of information on the relationship between attitudes to the advertising campaign and related consumer behaviour.¹⁰

11. During the period of application of the contracts, the Commission requested BALM to furnish it with copies of the interim reports regarding the two campaigns. After an inspection visit from 19 to 23 September 1994, the Commission stated in a letter of 27 October 1994 to the Bundesministerium für Ernährung, Landwirtschaft und Forsten (Federal Ministry of Food, Agriculture and Forestry, hereinafter 'the Ministry') that the interim reports contained insufficient information regarding the nature and scale of the campaign and the correct implementation of the contractual obligations.⁸ It added that the lack of detailed information made it difficult for BALM to assess the success of the promotional measures. BALM should have pursued its earlier recommendations to

12. The Ministry replied, in a letter to the Commission of 20 February 1995, that the form of the interim reports had until then been found to be acceptable and that more detailed information was normally provided in the final report, at which time the campaign as a whole was assessed and a decision could be reached on outstanding payments and on the return of the contractor's deposit. An alteration in the content of the interim reports would require the insertion of more specific requirements in the regulations and the standard contracts, which did not refer to any such analysis of cost-effectiveness at this stage. BALM's role during the performance of the contract was

7 — The competent authority is now the Bundesanstalt für Landwirtschaft und Ernährung ('BLE'), but for convenience I use the term BALM throughout this Opinion.

8 — Point C of the Annex to the Commission's letter of 27 October 1994.

9 — Op. cit., point D.

10 — Op. cit., point E.

simply to supervise the performance of contractual obligations. Furthermore, more detailed assessments of sales would entail increased costs not provided for in the relevant regulations.

drawn for reasons not material to the present case. This letter stated that reports on the milk sector had not yet been submitted, although CMA's final reports, pursuant to Regulations Nos 465/92 and 585/93, which contained analyses of cost-effectiveness and consumer reactions, had in fact been forwarded to the Commission on 8 July 1996 and 30 July 1996 respectively.

13. In a letter of 2 May 1996 to the Permanent Representative of Germany to the European Union,¹¹ the Commission proposed that the reimbursement of costs for the two milk-promotion campaigns be reduced by 2%, on two grounds. First, under the heading of financial regularity (*'finanzielle Ordnungsmäßigkeit'*), the Commission stated that CMA's interim reports did not reveal whether sufficient progress (*'ausreichend Fortschritte'*) was being achieved through the operation of the contract. Secondly, under the heading of cost-effectiveness (*'Kosten-Nutzen'*), it stated that nothing had been done to quantify the achievement of objectives through measures such as advertising in periodicals, on television and at exhibitions and the distribution of brochures on research results regarding the qualitative aspects of milk products. Furthermore, insufficient details were given about the reaction of the public to the advertising campaigns and about their actual effect on consumption. This assessment and the recommended 2% reduction were repeated verbatim in a letter of 26 November 1996, that of 2 May 1996 having been with-

14. On 10 March 1997, the Commission forwarded to the Ministry an internal note from the head of the relevant unit in the Directorate-General for Financial Control to the acting director of the relevant directorate at the Directorate-General for Agriculture. This note stated that the control mission to Germany of 19 to 23 September 1994 had revealed that the requirement in Article 6 of both regulations of administrative checks on implementation of measures by CMA in accordance with the contracts was not being met. The interim reports by CMA did not contain enough information to show that the contracts were progressing properly, which should have prompted BALM to take corrective management action pursuant to its monitoring obligation. The level of financial correction was therefore based on an overall assessment of the risk that the promotional measures could not be adjusted during the period of the contract to ensure achievement of the campaign's objectives. This could not be redressed after presentation of the final report.

11 — This letter was the formal notification of the Commission's conclusion that certain items are not chargeable to the EAGGF Guarantee Section for the purposes of Article 1 of 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.

15. Point 4.3.2.1 of the Commission's consolidated summary report of 15 April 1997 on the results of inspections concerning the clearance of the EAGGF Guarantee Section accounts for 1993¹² (hereinafter 'the summary report'), which underlies the contested Decision, justifies the 2% reduction in the amount chargeable for the German milk promotion campaigns by stating that the competent authority had failed to check on the implementation of the relevant contracts and, in particular, to ensure that the objectives of the programmes were achieved. The different language versions of the report are not perfectly consistent in this respect. While the German version refers *in particular* to the latter alleged failing ('*Die Zahlstelle hat es unterlassen, die Durchführung der betreffenden Verträge zu überwachen und insbesondere zu gewährleisten, daß die Ziele des Programms erreicht wurden*'), the French refers to the two items disjunctively ('*L'organisme payeur n'a pas contrôlé la mise en œuvre des contrats en cause ni veillé à l'application des objectifs des programmes*') and the English mentions them conjunctively ('The paying agency failed to monitor implementation of the contracts concerned and to ensure that the objectives of the programmes were met').¹³ This conclusion is explained under the two headings of financial regularity (*finanzielle Ordnungsmäßigkeit*) and cost-effectiveness (*Kosten-Nutzen-Verhältnis*). Under the first heading, the Commission stated that CMA's interim reports to BALM did not 'show whether the contracts were progressing properly' or, in German, whether or not they were being properly implemented ('*ob die Verträge ordnungsgemäß durchgeführt wurden*'). Under the second, the Commission essentially reiterated, with only minor textual variations, its observa-

tions in its letters of 2 May 1996 and 26 November 1996.

III — Arguments of the parties

16. It should be noted at the outset that it appears that the Commission accepts that the promotional campaigns achieved their stated objectives (although, somewhat confusingly, its written pleadings cast doubt on this conclusion at one point). Germany submits that it is not lawful for the Commission to reduce the amount chargeable to the EAGGF in the light of a merely abstract risk, which failed to materialise, that Community funds might not be used in an optimal fashion. The Commission responds that the insufficiency of Germany's surveillance of CMA's implementation of its contracts was, in itself, a breach of Article 8(1) of Regulation No 729/70, applied in conjunction with Article 6(2)(b) of Regulations Nos 465/92 and 585/93. Germany contends that there was nothing in the exchanges leading to the adoption of the contested Decision to suggest that the reduction concerned a general lack of surveillance of the type required by Article 6(2)(b) of the latter two regulations. The Commission counters that it raised the general insufficiency of checks by BALM in its letters of 27 October 1994 and 26 November 1996 and in the summary report for the financial year 1993.

12 — Doc. VI/5210/96 - EN consolidated.

13 — Emphasis added in both cases.

17. Germany submits that BALM concluded contracts in the precise terms provided for by the two Regulations and that the interim reports were prepared in accordance with point 6.1 of these standard contracts. They all contained a short description of measures adopted to date, accompanied by receipts for expenditure. No obligation was imposed regarding a cost-effectiveness assessment in such reports, as distinct from the case of the final report, for which such an assessment was expressly required. Interim reports on similar lines were submitted without objection under previous schemes, although the terms of the relevant Community rules had not been altered in the meantime. Instead, the express requirements regarding the content of interim reports under later schemes have been expressly altered to reflect the concerns raised by the Commission in the present case. Germany also cited a fax from the Commission of 27 January 1993, indicating that interim reports need not be more than half a page in length. Furthermore, the proposals on the basis of which CMA was awarded the contracts, which included details such as the titles of periodicals in which advertisements would be placed, had been approved by the Commission. BALM could not impose additional obligations on CMA which were not contained in the contracts.

18. The Commission considers that the need for an interim assessment of cost-effectiveness and of the progress made in executing the contract can be implied from

the general obligations imposed by Article 2 of the Financial Regulation, as amended, and by Articles 8 and 9 of Regulation No 729/70, allied with the fact that Community funds could be wasted if it were not possible to abandon a promotional strategy which failed to reach or to have an effect on its target audience. Even a short interim report could give the numbers of persons attending presentations or the readership levels of publications which carried advertisements, without having to engage in actual market studies at this stage.

19. Germany submits that, in any event, BALM conducted all the inspections required by Article 6(2)(b) of Regulations Nos 465/92 and 585/93, and gives details of two inspection visits in an annex to its application. The Commission responds that the insufficiency of the interim reports should have prompted BALM to make more than the minimum two inspections. In addition, it criticises BALM for failing to assess qualitative aspects of CMA's activities during its inspections in order to ascertain that Community funds were being used correctly. It also asserts that BALM accepted non-itemised invoices from one of CMA's subcontractors and did not even check if television advertisements for which CMA produced invoices had actually been broadcast.

20. Germany replies that the two inspection reports annexed to its application were merely samples and that a considerably larger number of on-the-spot inspections actually took place: 46 under one contract, 306 under the other. Germany also furnishes evidence to contradict the Commission's contentions regarding the lack of checks on subcontractors and on broadcast advertising and argues, more generally, that these contentions are part of an attempt by the Commission to widen the scope of its criticisms to include complaints which do not appear in the summary report for the financial year 1993. The Commission counters that this evidence has been presented late and should not be taken into account by the Court, and that the insufficiency of BALM's inspections was expressly mentioned in that report. The criticisms set out under the two subheadings of financial regularity and cost-effectiveness were stated to be particular examples of this insufficiency.

engage in qualitative assessments of CMA's activity, or was also based on a more general failure by BALM to conduct proper and sufficiently numerous checks of the expenses invoiced by CMA and its subcontractors. In my view, the former is clearly the case, with the result that much of the Commission's defence is immaterial.

22. It is settled case-law that the extent of the duty to state the reasons on which a decision is based, laid down in Article 190 of the EC Treaty (now Article 253 EC), depends on the nature of the act in question and on the context in which it was adopted. A decision relating to the clearance of the accounts in respect of expenditure financed by the EAGGF and refusing to charge to the EAGGF a proportion of the expenditure declared does not require a detailed statement of reasons where the government concerned has been closely involved in the process of drawing up the decision and is well aware, from a report to which reference is made and which has been communicated to it, of the reason for which the Commission considers that it should not charge the contested amount to the EAGGF.¹⁴

IV — Analysis

21. It is necessary, first of all, to determine the scope of the grounds on which the Commission decided to reduce by 2% the amount chargeable to the EAGGF in respect of the German milk-promotion campaigns under Regulations Nos 465/92 and 585/93. In particular, I wish to determine whether that reduction was attributable exclusively to BALM's failure to

23. Thus, the laconic character of the reference at point 4.3.2.1 of the summary report for the financial year 1993 to the competent authority's failure to check on the implementation of the relevant contracts could be understood as referring to other problems, in addition to those

¹⁴ — See, for example, Case 819/79 *Germany v Commission* [1981] ECR 21, paragraphs 19 to 21; Case C-59/97 *Italy v Commission* [1999] ECR I-1683, paragraph 55; Case C-44/97 *Germany v Commission* [1999] ECR I-7177, paragraph 21.

expressly mentioned under the subsequent two subheadings, provided that such additional problems had, in fact, been discussed in earlier exchanges between the Commission and the German authorities. However, there is no reference in the earlier correspondence to the Commission's concerns about the number of inspections made by BALM under the two contracts, the manner in which subcontractors' invoices were checked and the verification of expenses for broadcast advertising. The closest the Commission came to voicing such concerns was in the internal note forwarded to the German authorities on 10 March 1997, in which it said that the lack of information in the interim reports should have prompted BALM to take corrective management action. However, this statement did not identify the three alleged problems outlined immediately above. Furthermore, it was made in the context of a reference to the inspection visit of 19 to 23 September 1994, the report of which, annexed to the Commission's letter of 27 October 1994, did not mention any such problems, and of a discussion of the role of the interim reports in alerting the authorities to the need to adjust the means employed in the campaigns.

24. It is not possible, in my view, to include these three issues under the subheading of financial regularity employed both in the Commission's consolidated final report and in its letters of 2 May 1996 and 26 November 1996. Although they relate to financial regularity in the sense in which that term is normally used, nothing in the earlier exchanges between the parties suggests that the Commission's conclusion under this subheading was drafted in contemplation

of these three alleged problems. Furthermore, it is clear that the Commission was using the term financial regularity in a much wider sense, which is difficult to distinguish from the term cost-effectiveness in the second subheading. This is demonstrated by the reference in its letters of 2 May 1996 and 26 November 1996 to the qualitative criterion of sufficient progress, rather than to mere compliance with projected spending plans.

25. As a result, the two issues referred to 'in particular' in point 4.3.2.1 of the summary report are the only two issues which Germany needs to address in its application for the annulment of the Commission's decision to reduce its chargeable expenditure. Germany argues, essentially, that the contracting partner's interim reports are not required to contain information necessary for a qualitative assessment regarding the achievement of the promotional campaigns' objectives and that, in consequence, BALM was under no obligation to conduct checks regarding such matters in the absence of such information. In my view, its case is well founded. In reaching this conclusion, I am not influenced by the Commission's departure from a practice regarding the content of interim reports which Germany alleges was well established during previous campaigns. The Court has held that the principles of legal certainty and of the protection of legitimate expectations do not require that past toleration by the Commission of irregularities

be maintained in subsequent financial years.¹⁵ The point of central importance is that Regulations Nos 465/92 and 585/93 and the accompanying standard contracts and selection or implementation criteria do not in any way advert to the existence of an obligation regarding the content of interim reports of the type invoked by the Commission and that such an obligation cannot be implied from Articles 8 and 9 of Regulation No 729/70 or from Article 2 of the Financial Regulation.

26. The Commission implicitly relies on the provisions of the latter two regulations cited immediately above by employing the subheadings of financial regularity and cost-effectiveness. I have already indicated that the Commission has, in my view, placed upon the former term a construction much wider than would normally be used. While it merely stated in the German version of the summary report that the interim reports did not indicate whether or not the contracts were implemented in a *regular* fashion, it is clear from the preceding correspondence (and, for example, from the English and French versions of the summary report) that the Commission included under this rubric the achievement of a satisfactory level of progress in communicating the benefits of milk products to consumers or chosen target groups. In a context where the broad lines of the campaigns to be conducted by CMA, as laid down in its proposals, had been approved in advance by the Commission, the question of the specific appropriateness of the speakers, material and media

employed by CMA, as opposed to that of whether or not the measures at issue were actually taken and the expenses claimed were incurred, does not, to my mind, relate to the surveillance of financial regularity required by Article 8(1) of Regulation No 729/70. In particular, the requirement in that provision that Member States satisfy themselves that transactions are 'executed correctly' does not extend to an ongoing assessment of the appropriateness from a policy perspective of a programme already approved in principle. Similarly, the requirement in Article 6(2)(b) of Regulation No 465/92 that competent authorities 'ensure compliance with the agreed conditions' and that in Article 6(2)(b) of Regulation No 585/93 that they 'verify that measures are implemented in accordance with the provisions of the contract' do not, in my view, entail any such obligation, which goes substantially beyond checking adherence to the contractual terms actually agreed on the basis of the proposals.

27. I have already said that the criterion employed by the Commission under the subheading of financial regularity is difficult to distinguish from that of cost-effectiveness. In the light of the foregoing, it is more useful to examine the Commission's approach exclusively under the latter rubric. I would note, in passing, that there is a certain level of inconsistency in the Commission's arguments. In its pleadings before the Court, it denied that it wished CMA to conduct any sort of market study for the purposes of its interim reports. However, it is difficult to comprehend the reference in the consolidated final report to the lack of information on the actual effect

15 — Case C-54/95 *Germany v Commission* [1999] ECR I-35, paragraph 12.

of CMA's campaigns on consumption in the absence of such a requirement.

28. More generally, however, I take the view that the Commission's approach is inconsistent with the terms and scheme of the two regulations governing the milk-promotion campaigns and the accompanying standard contracts and criteria and is in no way bolstered by reference to Article 2 of the Financial Regulation. The latter provision establishes an obligation of a general character which does not necessarily (and, in practical terms, probably cannot) apply with equal intensity at all stages of the implementation of Community-funded programmes. In my view, that obligation to observe the principle of cost-effectiveness and to monitor the achievement of quantified objectives, which is mirrored in part in Article 1(1) of Regulation No 465/92, is given concrete expression at two stages in the procedure governing the milk-promotion campaigns at issue in the present case: the assessment of proposals and the submission of the final reports on the campaigns. As a result, it is not, in my view, permissible for the Commission to seek to derive supplementary substantive obligations from the Financial Regulation itself.

29. It is clear from the context of Article 2(1)(c) of Regulation No 465/92 and of the first two indents of Article 2(2) of Regulation No 585/93 that their requirements that the most effective means be used and that account be taken of local market conditions relate to the proposals to be

submitted by interested organisations. Furthermore, the detailed proposals are required by Article 4(1)(b) and (c) of both regulations to justify the measures proposed, to indicate the expected results and to outline a detailed strategy, while point 18 of the selection criteria in respect of Regulation No 465/92 stresses the need for a clear statement of objectives in the proposal.

30. Upon the completion of the campaigns, it is clear from point 6.4 of both standard contracts that the contracting partner must give an account of the likely results of the measures adopted. Point 19 of the selection criteria under Regulation No 465/92 indicates that the final report should advert to compliance with the original proposal, the achievement of its objectives and the development of milk sales. In contrast, point 6.1 of the contracts merely requires the interim reports to refer to work completed and to be accompanied by the relevant receipts.

31. The express requirements regarding the interim reports seem to be related exclusively to the control of financial regularity in the narrow sense of checking on expenditure and the performance of the agreed programme. The scheme of the two regulations suggests that these reports are submitted in the framework of a procedure where qualitative assessments of the likely and actual success of the contracting partner in achieving the promotional objectives are undertaken (and are expressly provided

for) at the initial and final stages. In contrast to the detailed requirements regarding the content of the proposal, there is no hint that information should be provided in the course of the campaign which might, if necessary, prompt a change of strategy. It may represent a positive step, from the point of view of sound financial management, to impose such an additional requirement. However, in a regulatory framework which already makes express provision for checks on cost-effectiveness and the achievement of quantified results at other stages, such an additional obligation cannot, without more, be derived directly from the terms of Article 2 of the Financial Regulation. That would be an affront to the principle of legal certainty and would cast an unnecessary doubt on the adequacy

of the detailed provisions of Regulations Nos 465/92 and 585/93.

32. As a result, I conclude that the Commission erred in law in characterising the response of the German authorities to the interim reports submitted by CMA as a breach of the applicable Community rules, which merited a reduction in the expenses chargeable to the EAGGF because of the attendant risk that Community funds would be improperly employed. In these circumstances, there is no need to address Germany's distinct argument that the Commission is not entitled to make such reductions in respect of an abstract risk which does not, ultimately, materialise.

V — Conclusion

33. In the light of the foregoing, I recommend that the Court:

- (1) Annul Commission Decision 97/333/EC of 23 April 1997 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1993 on the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it reduces by 2% the expenditure chargeable to the EAGGF in respect of item 2062;
- (2) Order the Commission to pay the costs.