JUDGMENT OF THE COURT (Sixth Chamber)
25 June 1997 *

In Case C-285/94,

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Service of the Ministry for Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, acting as Agent, assisted by Alexandre Carnelutti, of the Paris Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation (EC) No 1840/94 of 27 July 1994 fixing the olive yields and oil yields for the marketing year 1993/94 (OJ 1994 L 193, p. 1),

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray and G. Hirsch (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 3 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 5 November 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 October 1994 the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty for the annulment of Commission Regulation (EC) No 1840/94 of 27 July 1994 fixing the olive yields and oil yields for the marketing year 1993/94 (OJ 1994 L 193, p. 1, hereinafter 'the contested regulation').

2 That regulation forms part of the rules on Community aid to the producers of olives and olive oil.

3 Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221) provides for the grant of aid to producers of olives and olive oil. According to Article 5(2) of that regulation, as amended by Council Regulation No 3499/90 of 27 November 1990 (OJ 1990 L 338, p. 1),

'The aid shall be granted:

— to growers who produce on average at least 500 kilograms of olive oil in a given marketing year on the basis of the quantity of olive oil actually produced,

— to other growers, on the basis of the number and production of the olive trees which they grow and of the yields of those trees as fixed according to a flat rate and provided the olives produced have been pressed.'

4 Pursuant to Article 2(4) of Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules for the granting of aid for the production of olive oil and of aid to olive oil producer organizations (OJ 1984 L 208, p. 3), as amended by Council Regulation (EEC) No 3500/90 of 27 November 1990 (OJ 1990 L 338, p. 3), large growers within the meaning of the first indent of Article 5(2) of Regulation No 136/66, are to be granted aid on the basis of their actual production, whereas the other growers referred to in the second indent of Article 5(2) of the same regulation are to be granted aid 'equal to the amount obtained by applying the average olive yield and oil yields over the previous four marketing years, fixed according to the standard method in accordance with Article 18 of this regulation, with regard to the number of olive trees in production and provided the olives are processed into oil at an approved mill'.

5 Article 17a of Regulation No 2261/84, as amended by Regulation No 3500/90, lays down detailed rules to establish the various quantities needed for calculation of the different kinds of aid:

'1. The Commission shall determine the average olive yields and oil yields over the four previous marketing years, before 1 December in respect of the current marketing year.

2. The following shall be determined in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, before 1 April in respect of the current marketing year:

— estimated production,

— the unit amount of the production aid that can be paid in advance. That amount must be such, under the production conditions of the marketing year in question, as to avoid any risk of unwarranted payment to olive growers.

3. Not more than six months after the end of the marketing year, the following shall be determined in respect of that year in accordance with the procedure referred to in paragraph 2:

— the quantity actually produced in respect of which entitlement to aid has been recognized,

...

4. Member States shall, not later than 15 March, communicate to the Commission their olive oil production estimates for the current marketing year. The Commission may avail itself of other sources of information and, where necessary, have studies or surveys carried out relating to olive oil production.'

6 More specifically, the procedures for calculating olive and olive oil yields are set out in Article 18 of Regulation No 2261/84, which provides:

'The olive yields and oil yields mentioned in the second indent of the first subparagraph of Article 5(2) of Regulation No 136/66/EEC shall be fixed by homogeneous production zones, at the latest by 31 May of each year, on the basis of the figures supplied by producer Member States not later than 30 April of each year.'

7 Article 19 of the same regulation adds that the yields referred to in Article 18 are to be determined in accordance with the procedure provided for in Article 38 of Regulation 136/66, known as 'the management committee procedure'.

8 As regards the basic data needed for the Commission to establish such yields, Article 12 of Commission Regulation (EEC) No 3061/84 of 31 October 1984 (OJ 1984 L 288, p. 52) provides:

'1. For the purposes of fixing the olive yields and oil yields referred to in Article 18 of Regulation (EEC) No 2261/84, producer Member States shall supply the Commission with data on homogeneous production zones, taking account of:

— the geographical location and the agronomic characteristics of the terrain,

— the predominant varieties, the most common type of shape pruning and the age of the olive trees.

2. For each production zone, the data shall include at least the following:

(a) the geographical limits of the zone;

(b) the estimated area under olives;

(c) the estimated average number of olive trees per hectare of land used for olive growing;

(d) the average olive production per tree;

(e) the average oil production per 100 kilograms of olives.

3. For each production zone, the data referred to in paragraphs 1 and 2 must be accompanied by a report on production conditions in the zone during the marketing year.

4. For the purposes of establishing oil yields, producer Member States shall determine, at mills equipped in various ways and representative of pressing capacity in the zone in question at various stages of the harvest, the olive-oil yield of each production zone.

For the purposes of establishing olive yields, Member States shall determine, at least for the largest production zones and at the beginning of the marketing year, the olive yields from trees representative of production conditions in the zone.

5. Persons designated by the Commission shall be involved in the determination of the abovementioned data.'

9 In order to ensure due and uniform application of the conditions for production aid and in view of the fact that experience had shown that the producer Member States' administrative structures were inadequate to implement the controls provided for by the Community rules, Article 1(1) of Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil (OJ 1984 L 208, p. 11) provides: 'Each producer Member State shall, in accordance with its legal structure, set up an agency for the purpose of carrying out certain checks and duties in connection with the olive oil production aid scheme'. For that purpose, the Italian Republic set up Age-Control SpA (hereinafter 'Age-Control').

10 Specifically for the marketing year 1993/94, with which these proceedings are concerned, Article 1 of Commission Regulation (EC) No 1187/94 of 26 May 1994 fixing the estimated production of olive oil and the amount of the unit production aid that may be paid in advance for the 1993/94 marketing year (OJ 1994 L 132, p. 4), laid down the following figures:

'For the 1993/94 olive oil marketing year:

— the estimated production shall be 1 283 000 tonnes,

...'.

11 Finally, the contested regulation fixed, in Annex I, to which Article 1(1) refers, the flat rate yields of olives and olive oil according to the production zones indicated therein.

12 In that connection, the first recital in its preamble refers to Article 18 of Regulation No 2261/84, according to which olive and olive oil yields are to be fixed by homogeneous production zones on the basis of the figures supplied by the producer Member States, and states that, having regard to the information received, it is appropriate to fix the yields as indicated in Annex I.

13 With regard to the Italian yields, that recital states more particularly that 'the figures given in Annex I have been adjusted in relation to the information supplied by that Member State in order to bring them into line with the production estimated in Commission Regulation (EC) No 1187/94'.

14 In support of its application, the Italian Government puts forward three pleas in law, alleging:

— infringement of the fourth indent of Article 155 of the EC Treaty, of Article 18 of Regulation No 2261/84, of Article 12 of Regulation No 3061/84, of Article 1 of Regulation No 2262/84 and failure to observe the principle of legal certainty,

— infringement of Article 190 of the EC Treaty, and

— misuse of powers.

The first plea in law

15 In support of its first plea the Italian Government states that, in order to establish the yields set out in the contested regulation, the Commission relied not on information from Age-Control but on its own data, which were not collected in accordance with the procedures laid down by the Community rules. In its view, the Commission used market information selectively, in particular by referring only to virgin olive oil.

16 According to the Italian Government, by virtue of the fourth indent of Article 155 of the Treaty, of Article 18 of Regulation No 2261/84, of Article 12 of Regulation No 3061/84 and of Article 1 of Regulation No 2262/84, and, likewise, of the principle of legal certainty, the Commission is precluded from using, for the calculation of average yields of olives and olive oil under Article 18 of Regulation No 2261/84, a method by which it substitutes for the information and figures given by the special national agencies provided for in Article 1(1) of Regulation No 2262/84, in this case Age-Control, figures freely arrived at on the basis of other criteria.

17 In its view the Commission is also bound, in compiling the basic figures, by the relevant Community rules. If that were not so, the national agencies which the Member States were required to set up in order to collect and check, at national level, the information needed to determine olive and olive oil yields, which work on the basis of a programme approved in advance by the Commission, under the supervision and instructions of Commission officials, would serve no purpose.

18 The Italian Government nevertheless concedes that the Commission is in a position, within the bounds of the discretion which it enjoys in determining yields, to correct data supplied by Member States, provided that it shows that the national data were not established in accordance with the objective criteria laid down in Article 12 of Regulation No 3061/84 for fixing yields.

19 The Court points out *in limine*, in relation to Regulation No 1187/94 and the contested regulation, concerning the 1993/94 marketing year, that the Commission, after reducing, under Regulation No 1187/94, the Italian production estimates, determined, in the contested regulation, the flat rate yields in kilograms of olives per tree and kilograms of oil per 100 kilograms of olives at a level which, by reference to the estimated production, is about 30% below the level arrived at by a calculation based solely on the figures from Age-Control. The fact of that 30% reduction is not in dispute.

The powers of implementation of the Commission and the Member States and the latitude available to them

20 As regards the respective powers of the Commission and the producer Member States in relation to management of the aid scheme for the producers of olives and olive oil, it must be borne in mind that, under the fourth indent of Article 155 of the Treaty, the Commission, with a view to ensuring the proper functioning and development of the common market, is to exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

21 Thus, by Articles 17a and 18 of Regulation No 2261/84, as amended by Regulation No 3500/90, the Council entrusted the Commission with fixing, during and after a marketing year, in accordance with the management committee procedure, the

various quantities of olives and olive oil, namely the average of the yields of the four last marketing years, the estimated production, the yields per marketing year and the actual production, that information being needed for the grant of aid to growers in accordance with Article 5(2) of Regulation No 136/66.

22 It follows from the Treaty context in which Article 155 must be placed and also from practical requirements that the concept of implementation must be given a wide interpretation. Since only the Commission is in a position to keep track of agricultural market trends and to act quickly where necessary, the Council may find it necessary to confer on it wide powers in that sphere. Consequently, the limits of those powers must be determined by reference among other things to the essential general aims of the market organization (Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraph 30).

23 The Court has held that that discretion also applies to some extent to the finding of the basic facts (see in that regard Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25). As the Advocate General observed in paragraph 30 of his Opinion, the Court confirmed more recently, in its judgment in *Netherlands* v *Commission*, cited above, that the Commission may verify the accuracy of the figures supplied by the national administrations and correct them on its own initiative if necessary. However, that power must not be exercised in a manner conflicting either with the basic regulations or with the implementing rules, which in this case are contained in particular in Regulation No 2261/84.

24 In that regard, it must be noted that a literal interpretation of Article 18 of Regulation No 2261/84 does not preclude the Commission from declining to rely solely on the information supplied by the producer Member States and adjusting them if it does not consider that they reflect the true market position.

25 First, in such circumstances the yields are calculated 'on the basis' of the information provided by the producer Member States, as laid down by that provision.

That term does not exclude either adjustment of the information given by the producer Member States or the taking into account of other information, as is confirmed by Article 12(2) of Regulation No 3061/84. The latter lists only a limited number of items of information to be collected and notified by the producer Member States to the Commission and does not exclude data from elsewhere.

26 Secondly, the fact that Article 19 of Regulation No 2261/84 refers to the management committee procedure for the fixing of yields under Article 18 of that regulation shows that that operation is not confined to a straightforward calculation based on data notified by the competent bodies of the Member States but implies some degree of independent decision making on the part of the Commission, assisted if need be by the management committee.

27 Indeed, if the yields were fixed simply by making a calculation in accordance with strict and clearly defined rules on the basis of unalterable figures from the producer Member States, the involvement of the Management Committee for Oils and Fats and of the Commission would be superfluous and, as the Advocate General pointed out in paragraph 37 of his Opinion, each Member State would be directly entrusted with the definitive determination of the yields.

28 Thus, in order to ensure attainment of the essential objectives of the aid scheme for producers of olives and olive oil, namely equal treatment for all producers of olives and olive oil in all the Member States, and to ensure that the aid scheme for producers operates properly on the basis of correct information, the Commission must be in a position to verify and, if need be, correct the data notified to it by each Member State.

29 That interpretation is borne out by the fact that, under the scheme in question, the Commission alone is responsible, in accordance with the management committee procedure, for establishing and fixing the various quantities to be taken into account for the grant of aid. Consequently, pursuant to Article 17a(2) of Regu-

lation No 2261/84, it establishes the estimated production before 1 April and, in accordance with Articles 18 and 17a(3) of the same regulation, fixes the yields before 31 May and the actual production no later than six months after the end of the marketing year.

30 It is therefore clear that, under the aid scheme for producers of olives and olive oil, the Commission and the Member States are required to play complementary roles: the producer Member States are required to provide certain information to the Commission, which the latter is entitled to check in order to establish definitively the olive and olive oil yields.

The Commission's authority to use other data

31 The Italian Government complains that the Commission used data not obtained in accordance with the relevant Community rules. It is therefore necessary to examine the scope of the Commission's authority to correct data provided by the producer Member States.

32 Where the data compiled by the competent national authorities and transmitted by the producer Member States give a picture which differs significantly from the true market position, the Commission is not required to confine itself to minor adjustments to those data but may, where necessary, replace them with data which it has obtained directly from the various economic agents, using its own parameters, provided however that such data faithfully reflect the real situation and developments in the olive and olive oil market.

33 If it was not empowered to substitute data in that way, the Commission would not be in a position to guarantee the proper functioning of the aid scheme for olive and olive oil producers on the basis of correct data and thereby ensure attainment of one of the essential objectives of Community policy in that area, which is to secure equal treatment for all olive and olive oil producers in all the Member States.

34 Moreover, that interpretation does not conflict with Article 18 of Regulation No 2261/84 or Article 12 of Regulation No 3061/84. It is true that, by contrast with Article 17a(4) of Regulation No 2261/84, no provision of those articles expressly envisages recourse to other sources of information or the possibility of undertaking, where necessary, studies or surveys of olive oil production. However, as paragraph 25 of this judgment has already made clear, the wording of Article 18 of Regulation No 2261/84 does not exclude recourse to sources other than the information gathered and notified by the producer Member States in accordance with Article 12 of Commission Regulation No 3061/84.

35 Consequently, when the data compiled by a Member State can be corrected only by putting in their place other data which reflect more accurately than the national data the market situation and the yields for the marketing year concerned, the Commission's authority to carry out that substitution does not conflict with Article 18 of Regulation No 2261/84.

36 Recourse to other sources of information, as provided for in Article 17a(4) of Regulation No 2261/84, is even more clearly permitted in connection with yields since the latter are, taken together, the expression of the actual production which the Commission is required to fix, under the first indent of Article 17a(3) of the same regulation, no later than six months after the end of the marketing year.

37 Furthermore, although the correcting of the data from the producer Member States differs from the operation by which such data are replaced by data from other sources, both operations are likely to arrive at the same basic figures for calculation of the yields so that it will be impossible to determine subsequently from which operation those yields are derived.

The substitution of data in the context of the contested regulation

38 Accordingly, in order to decide whether the Commission was entitled in this case to substitute its own data for those supplied by the competent Italian authorities, it is necessary to verify whether the parameters applied by it to the data from the various economic operators on the Italian market were likely to reflect more accurately than the data provided by the Italian authorities the real Italian market situation and whether they were capable of contradicting the Italian Government's claim that the production of the 1993/94 marketing year exceeded actual production in the previous year.

39 In so far as an assessment of a complex economic situation is involved, it must be borne in mind at the outset that, as the Court has held, where, as in this case, the Commission enjoys significant freedom of assessment, the Community judicature, when examining the lawfulness of the exercise of such freedom, cannot substitute its own assessment of the matter for that of the competent authority but must restrict itself to examining whether the assessment of the competent authority contains a manifest error or constitutes a misuse of power (Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 34).

40 In this case, the Italian Government has not proved that any such error was made.

41 First, having regard to past experience regarding the fixing of yields, the Commission was prompted to verify and correct the Italian data. The Italian authorities' forecast of Italian production which was included in the estimate made in accordance with Regulation No 1187/94 had already been adjusted downwards. And even if there is no link of cause and effect between Regulation No 1187/94 and the contested regulation, the Commission could not, save at the risk of failing to fulfil its role in managing aid for olive and olive oil producers, ignore a discrepancy of about 30% between estimated production in the context of the first of those regulations and the yields that would have resulted from the original data notified by Age-Control.

42 Next, the parameters used by the Commission, including wholesale prices, the relationship between the market price and supply, the quantities held in private storage, the quantities put up for intervention, the date of sales of private stocks at the start of the marketing year and the weather conditions in certain Italian regions are, taken together, such as to provide an accurate picture of the real market position and market developments.

43 Despite the criticisms rightly made by the Italian Government concerning certain details of those parameters and certain conclusions drawn from them by the Commission, it must be held that the data from the various economic agents show, as a whole and by contrast with the data compiled by Age-Control and notified by the Italian authorities, a downward trend in production as compared with the previous year.

44 As the Advocate General made clear in paragraph 54 et seq. of his Opinion, the data used by the Commission to fix the yields, which themselves make up actual production within the meaning of Article 17a(3) of Regulation No 2261/84, corresponded more closely to the economic reality of the Italian market in olive oil than the figures submitted by the Italian administration.

45 As regards the principle of legal certainty, it must be borne in mind more particularly that that principle cannot be regarded as contravened if the Member State concerned was aware of the reasons for which the Commission decided to rely on its own data and of the method chosen for their compilation and itself had access to the data used. That information enabled it to compare the data and, if necessary, to review its own figures. As regards more specifically the 1993/94 marketing year, the Advocate General stated in paragraph 51 of his Opinion that the Italian Government was in possession of all the information, so that the principle of legal certainty was observed.

46 In those circumstances, the plea alleging infringement of the fourth indent of Article 155 of the EC Treaty, of Articles 18 of Regulation No 2261/84, 12 of Regulation No 3061/84 and 1 of Regulation No 2262/84, and breach of the principle of legal certainty, must be rejected as unfounded.

The second plea in law

47 The Italian Government submits that the contested regulation does not contain an adequate statement of the reasons on which it is based and that the Commission therefore contravened its obligation to state reasons under Article 190 of the Treaty.

48 It is settled case-law that the statement of reasons required by Article 190 of the EC Treaty must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court of Justice to exercise its powers of review. It is not necessary, however, for details of all relevant factual and legal aspects to be given, in so far as the question whether the statement of the grounds for a decision meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (*Netherlands* v *Commission*, cited

above, paragraphs 48 and 49, and Case C-22/94 *The Irish Farmers Association and Others* [1997] ECR I-1809, paragraph 39).

49 In this case it is sufficient to refer to the wording of the first recital in the preamble to the contested regulation which, with regard to the Italian yields, clearly and unequivocally indicates that the figures in Annex I have been adjusted in relation to the information supplied by the Member State in order to bring them into line with production estimated in Commission Regulation No 1187/94. It must be stated that, irrespective of the merits of its contention that there is no link of cause and effect between estimated production and yields, the Italian Republic could not in those circumstances have been unaware of the reasons which prompted the Commission to correct the data provided by Italy.

50 The plea in law alleging inadequacy of the statement of reasons for the contested regulation must therefore be rejected.

The third plea in law

51 In its third plea in law the Italian Government, relying on the first recital in the preamble to the contested regulation, claims that the Commission misused its powers by fixing the level of the yields with a view to bringing them into line with the production estimated in Commission Regulation No 1187/94 and thus upholding its restrictive production forecast for the marketing year 1993/94.

52 It is settled case-law that an act of a Community institution is vitiated by misuse of powers if it was adopted with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty

for dealing with the circumstances of the case (Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 69).

53 That did not occur in the case of the contested regulation.

54 As regards the objective of the contested regulation, the Commission makes clear in the first recital in the preamble to that regulation that the olive and olive oil yields are to be fixed by homogeneous production zones on the basis of the figures supplied by the producer Member States and that, in view of the information received, it is appropriate to fix those yields as specified in Annex I. There is thus no doubt that the contested regulation is intended to attain the objective described in Article 18 of Regulation No 2261/84, namely the fixing of yields.

55 In the case of the Italian production, the Commission goes on to set out in the last sentence of that recital the reasons for which it made adjustments to the Italian figures, in contrast to the figures from the other Member States which it used unchanged. As the Advocate General observed in paragraph 80 of his Opinion, the Commission is thereby referring only to a change made to a means of fixing yields and it is not seeking to attain any objective other than that mentioned in the first two sentences of that recital.

56 Since the Italian Government has not established that the contested regulation pursues an objective other than that of establishing yields, the fixing of yields is not vitiated by any manifest error. The plea alleging misuse of powers must therefore be rejected.

57 The application must therefore be dismissed in its entirety.

Costs

58 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Dismisses the application;

2. Orders the Italian Republic to pay the costs.

Mancini Murray Hirsch

Delivered in open court in Luxembourg on 25 June 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber