administration and the judicial authorities. Rules which in the national systems of criminal law prevent the communication to certain persons of documents in the criminal proceedings may therefore be relied upon against the Commission in so far as the same restrictions may be relied upon against the national authorities.

In Case 267/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Giancarlo Olmi, Deputy Director-General of the Legal Department, and Gianluigi Campogrande, a member of the Legal Department, acting as Agents, assisted by Giorgio Gregori, of the Trento Bar, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its ambassador, Adolfo Maresca, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a ruling that the Italian Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty and Article 14 of Regulation No 2/71 of the Council of 2 January 1971 (now replaced by Article 18 of Council Regulation No 2891/77 of 19 December 1977),

THE COURT

composed of: A. O'Keeffe, President of the First Chamber, Acting as President, A. Touffait (President of the Second Chamber), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

A — Community rules applicable

Article 2 of the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition 1970 (I), p. 224) provides that the Communities' own resources shall be constituted by "agricultural levies", that is to say "levies, premiums, additional or compensatory amounts . . .".

Article 6 (1) of the decision provides that the Communities' own resources "shall be collected by the Member States in accordance with national provisions imposed by law, regulation or administrative action, which shall, where necessary, be amended for that purpose."

Article 2(1) of Regulation No 2/71 of the Council of 2 January 1971 implementing the aforementioned decision (Official Journal, English Special Edition 1971 (I), p. 3), replaced by Council Regulation No 2891/77 of 19 December 1977 (Official Journal L 336, p. 1) provides that

". . . an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State."

Article 14 of Regulation No 2/71 (replaced by Article 18 of Regulation No 2891/77) provides:

"(1) Member States shall carry out the verifications and inquiries concerning established entitlements and the making available of own resources . . .

(2) Accordingly, Member States shall:

— Carry out any additional measures of control the Commission may ask for in a reasoned request;

— Associate the Commission, at its request, with the measures of control which they are carrying out.

. . .

Although that association is conducted by the participation of officials appointed by the Commission in the verifications made by the Member States, Regulation No 165/74 of the Council of 21 January 1974 (Official Journal L 20, p. 1) determines the conditions subject to which they are to act.

B — Facts

The Commission was informed in April 1976 that fraudulent transactions relating to 6 000 tonnes of butter from non-member countries had been effected on the terms of intra-Community trade. The goods had been transported by lorry to Italy from a warehouse in Rotterdam in 248 loads. The dispatch from port was effected regularly under the external

Community transit system. Nevertheless, the documents relating to this system (termed "T 1") were improperly cleared both during transit and in Italy by means of false or forged documents relating to internal Community transit which allowed considerable amounts of agricultural levies to be avoided.

By letter dated 26 July 1976 and signed by Mr Cheysson, the Italian Permanent Representative was informed that the Commission had "information" justifying "a request for additional measures of control within the meaning of Article 14 of Regulation No 2/71". It was requested not only that Italy should carry out additional measures of control but also that the Commission might be associated therewith.

Meetings were thereupon arranged in Milan and in Como between Italian customs officers and officials of the Commission. It appears from a letter from the Commission dated 18 October 1976 that the central administration of the Italian customs had undertaken:

— To arrange a meeting with the Guardia di Finanza, the fiscal police force, and to inform the Commission of the results of that meeting;

— To initiate an inquiry itself.

The Commission stressed that it

"... is closely concerned with the subsequent course of the inquiry. Even though it does not have the facilities to be constantly associated therewith, it considers it indispensable to be informed of the programme and results of the inquiry ... the findings made ... will lead the Commission to ask the other Member States concerned to carry out a verification programme similar to that requested of Italy."

By letter dated 20 December 1976 the Italian Permanent Representation confirmed the first results of the investigation and intimated that there was probably a link between the fraudulent transactions in question and certain transactions which had been the subject of inquiry since 1975 by the Guardia di Finanza following a fortuitous occurrence which had given cause to suspect the existence of irregular traffic on a large scale, namely a road accident in which one of the lorries in question was involved. There was a promise of "... subsequent communications, bearing in mind nevertheless that aspects involving facts capable of giving rise to criminal proceedings fall, in the last resort, within the jurisdiction of the judicial authorities".

A request on 24 January 1977 from the Financial Controller of the Commission for a meeting between the officials of the Commission and the Guardia di Finanza drew the following answer from the Permanent Representation:

"The meeting requested ... seems to go outside the scope of the additional measures of control in question".

On 22 March 1977 a letter from the Commission signed by Mr Tugendhat was sent to the Italian Permanent Representative stating:

"The Commission is bound to inform you that it cannot accept your answer as satisfactory ... (it) is all the more sensitive since the press has concerned itself on a number of occasions with this case and has published from time to time detailed information on the progress of the criminal inquiries ... The Commission would like to know the progress

achieved in determining the ultimate destination of the goods and any estimate of the amount of customs duties or levies evaded . . ."

On 15 July 1977 the Permanent Representation replied:

"Since it appeared . . . (that there was) another investigation conducted by the Ufficio Istruzione Penale, Turin, the Italian customs administration requested a copy of the documents . . . (which was refused) since the documents in question were privileged as falling within the judicial inquiries . . .".

The Permanent Representative doubted moreover whether the Commission's request fell

"within the scope of the rules on own resources, having regard to the fact that the administrative documents or police reports made so far contain no 'establishment of entitlement' in the accounting sense."

According to the Italian customs it seemed established that the goods had left the Netherlands accompanied with T1 documents stating "butter". During transit the dealers had substituted for the T1 documents T2 documents which were substantially false and specified other goods. The production of the false T2 documents issued, it seems, by the customs at Roubaix, allowed import duties to be avoided together with checking at the Italian frontier (Piedmont); 327 vehicles were involved in these transactions. The clearance documents for the forged T1 documents wrongly certified that there had been customs clearance at Como (Lombardy) so that the Netherlands customs might have proof that the certificates had been used.

From the start of the inquiries the Italian customs had notified the Netherlands customs that the clearance documents were false. The Netherlands customs never replied.

On 19 January 1978, following a further unsuccessful approach, the Commission gave Italy "the opportunity to submit its observations" within the meaning of Article 169 of the Treaty before delivering the reasoned opinion referred to by the same article.

The Permanent Representative replied on 2 February 1978 stating that:

— The commitments of Italy in respect of the Community are confined to activities of an administrative nature;

— The measures of control with which the Commission may be associated relate only to the establishment of entitlements and the making available of own resources but not to the truth and substance of facts upon which there has not yet been an established entitlement to own resources;

— Entitlement must be established in accordance with the rules and to the extent determined by municipal law;

— Documents issued by the judicial police force are privileged in accordance with Article 230 of the Code of Criminal Procedure.

There were annexed to that letter:

— The letter notifying the facts to the Netherlands customs;

— The two orders of the Turin Examining Magistrate rejecting requests for copies of the documents;

— The "report" dated 22 November 1976 from the Guardia di Finanza stating that the customs authorities had known since then that 306 consignments of butter had crossed the Italian frontier and that the fiscal police had asked the Examining Magistrate to issue warrants to seize 29 vehicles, including 28 registered abroad and warrants of arrest in relation to ten persons including nine aliens suspected of having committed various offences, including smuggling. The Turin customs estimated that butter worth more than 4 500 million lire had been unlawfully imported and that more than 10 300 million lire in levies had remained unpaid. Details of suspects and vehicles impounded were given in a list annexed thereto.

The reasoned opinion referred to in Article 169 of the Treaty was sent to the Italian Republic by the Commission on 20 April 1978. That opinion particularly stresses the Commission's power to make thorough investigations in respect also of the "facts giving rise" to the liability for levy, by reason of the precedence of Community law over municipal law and of the obligation of Member States to collaborate by all means available to them in the exercise of the right to investigate. More specifically the Commission observes that the privilege of non-disclosure in relation to judicial inquiries is not unlimited since the provisions of municipal law make more than one derogation from the said privilege. Accordingly, the Commission, which has a direct interest by reason of the fact that it has "directly" suffered damage, ought, without even having to make itself a civil party, to have its interests defended in the criminal proceedings in Turin and in the interests of the Community the Italian Ministry of Finance, which has been made a civil party through the intermediary of the Avvocatura dello Stato, ought to be able to obtain all the documents and forward them to the Commission.

By letter dated 7 June 1978 the Permanent Representation stated that it was prepared to forward the documents to which the Ministry of Finance could lawfully have access. This was done following a meeting arranged at Rome on 21 July 1978 between Italian representatives and officials of the Commission.

By letter dated 5 October 1978 the Commission stated that it considered the documents which had been forwarded to it to be incomplete and insufficient (in particular there were no documents showing the charges against each of the accused) and requested that the documents should be completed before 20 October.

On 7 November 1978 the Italian Permanent Representative stated that the Turin Examining Magistrate was on the point of issuing his order and that then the Italian finance administration would be able to obtain the whole file since the privilege would no longer apply.

On 16 December 1978 the Italian customs authorities made an application to the Examining Magistrate setting out

the content of the letter from the Commission dated 5 October 1978.

By order dated 20 December 1978 the Examining Magistrate authorized the issue only of a copy of the charges as redrafted by the Public Prosecutor of the Republic. Those documents were forwarded to the Commission and are annexed to the defence.

The Commission received a copy of the final charges relating to all the accused on 19 January 1979.

In February 1979 before the Examining Magistrate took a decision closing the inquiry the Avvocatura dello Stato saw the final report drawn up by the Guardia di Finanza on 16 October 1976 and the statement of charges by the Pubblico Ministero. Those documents and others are annexed to the rejoinder.

In the meantime, on 21 December 1978 the Commission commenced this action.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

(a) Declare that the Italian Republic, by refusing to associate the Commission with inspection measures on the establishment of entitlement and making available of own resources of the Communities and to notify it of the results obtained, has failed to fulfil its obligations under Article 5 of the EEC Treaty and under Article 14 of Regulation No 2/71 of the Council of 2 January 1971 (now replaced by Article 18 of Council Regulation No 2891/77 of 19 December 1977);

(b) Order the Italian Republic to pay the costs.

The *defendant* contends that the Court should:

(a) Recognize that the documents annexed to the defence were also delivered;

(b) Declare that the Italian Republic has not failed to fulfil its obligations under Article 5 of the EEC Treaty, Article 14 of Regulation No 2/71 of the Council and Article 18 of Council Regulation No 2891/77;

(c) Order the Commission to pay the costs.

In its rejoinder the *Italian Republic* contends that the Court should:

(a) Recognize that the documents annexed to the rejoinder were also made available to the Commission;

(b) Declare that there is no further purpose in the proceedings; and/or

(c) Declare in any event that the Italian Republic has not failed to fulfil its obligations under Article 5 of the EEC Treaty, Article 14 of Regulation No 2/71 of the Council and Article 18 of Council Regulation No 2891/77.

III — Submissions and arguments of the parties

A — In its application the *Commission* first of all observes that the object of the

investigatory powers which it has under Regulation No 2/71 is to allow it to perform the duties which it has as an institution under Article 155 of the Treaty:

— To ensure that the Member States have performed properly and in due time their principal obligations in the matter, that is to say the obligation to establish all the amounts due as own resources and to make the whole available to the Commission, and the instrumental obligation to specify all facts giving rise to the Communities' own resources occurring within their territory and consequently to carry out all the necessary checks and inquiries to prevent and bring to light any evasions;

— To ensure that other competent national administrations take the measures necessary to ensure collection of the duties;

— To co-ordinate the investigations of the various national bodies involved in one and the same inquiry;

— To draw conclusions in good time from the methods employed in frauds in order to improve where necessary the rules and methods of supervision.

The Commission claims that its investigatory powers extend over all acts of the Member States. This follows:

— From the wording of the provisions governing investigations (cf. Article 14 of Regulation No 2/71): there is no limit placed on the extent of these investigations, which thus cover all the verifications and inquiries carried out by the State as is shown by the last paragraph of the said Article 14 where it is stated with regard to officials appointed by the Commission to carry out checking that they exercise "powers of investigation" and that they "carry out the verifications provided for in this article"; the expressions used are the same for the general supervisory acts performed by the Member State and the investigations entrusted to the Commission. Further the recitals and operative part of Regulation No 165/74 confirm that the Commission's power extends to any activity undertaken by the Member State to ascertain the facts giving rise to the charge and that its power also covers all acts and facts giving rise to the charge and that its power also covers all acts and facts giving rise to the collection of own resources prior to the formal establishment thereof provided for in Article 2 of Regulation No 2/71;

— From the system of the division of powers between the Member States and the Commission and the purpose in giving the latter its investigatory powers. The fact that it is for each of the Member States to establish, collect and verify the resources produced within its territory confirms the Commission's view of the role given it by Article 155 of the Treaty as a guarantor of the interests both of the Community and of the Member States as a whole.

Only investigations extending from the identification of the originating fact to

the making available of the resources collected allow the Commission effectively to perform at the proper time its role of co-ordinating the supervision and verification of the various Member States when, as in the present case, irregular transactions have been effected within the territorial jurisdiction of more than one of them, to expose in good time lacunae in the system, continually to verify whether the Community provisions suffice to attain the objectives pursued by the legislature and finally to take in good time the initiative in improving the said provisions and adapting them to the actual practices adopted by traders.

It is nowhere stated in Regulation No 2/71 that control by the Commission is excluded from the phases preceding the establishment of own resources or which follow the commencement of criminal proceedings. Moreover there is no reason to exclude the exercise by the Commission of its powers of control whenever criminal proceedings are begun, for such proceedings are necessarily brought in all cases of serious fraud in relation to customs duties or agricultural levies. If it were so supervision at the Community level would be abolished in the most serious cases — the very cases requiring the greatest speed in intervention.

In addition, by reason of the principle that Community law has precedence, the provisions of Regulation No 2/71 would make any conflicting national provision *ipso jure* inapplicable and in particular, in the event of any genuine conflict, the provisions of the Code of Criminal Procedure.

The Commission draws attention to the lack of basis for the principle that the existence of national provisions, under which documents of the judical police and documents connected with the preparatory inquiry are privileged, allows Italy not to supply the information requested by the Commission in the exercise of its power of investigation.

It follows from Article 223 of the Treaty that the powers of a Member State which desires to escape its obligation to the Community to collaborate, and to refuse to supply information requested by the institutions of the Community, affect at most only information which, if divulged, might be contrary to the essential interests of its security. It is not possible to classify amongst such information matters in court files which are privileged (cf. Italian Law No 303 of 24 October 1977 on the establishment and organization of the information service and on security and rules governing State secrets).

In the Commission's view privilege in relation to preliminary investigations is the most tangible expression in Italian criminal procedure of the strictly inquisitorial nature of the Code in force; the specific aim of the latter is to allow the bodies responsible for inquiries to obtain all evidence without outside interference and as easily as possible and to have access to all sources of evidence which become available during the course of the inquiries relating to the truth of a charge.

The Commission thinks however that if the Italian authorities had forwarded all the documents relating to the criminal proceedings commenced in Italy in respect of offences the major features of

which coincide with evasions in relation to the Community's own resources, they would not have jeopardized the aims for the achievement of which certain provisions of municipal law making certain documents in criminal proceedings privileged were instituted.

Moreover, the obligation to collaborate with the institutions of the Community (based on Article 5 of the Treaty and on Regulation No 2/71) is linked with the duty to respect the privilege of non-disclosure laid down by municipal law both in respect of the parties and those subject to the law of the Member State and in respect of other Member States or foreign nationals. Since professional secrecy is guaranteed by Article 214 of the Treaty and Article 5 of Regulation No 165/74, to supply to the Commission information for which it asks in the common interest in recovering own resources is thus compatible with the Italian system itself.

The Commission is of the opinion that if Italy could retreat behind the shield of privilege in respect of preliminary investigations in order not to comply with its Community obligations, it would create an obvious disequilibrium between the Member States of the Community, since certain of them have legal systems which rule out the inquisitorial principle in favour of the "accusatory" principle or of certain main implications of that principle. Moreover, in Italian legal practice the preliminary investigation is very lengthy and in any event longer than in the other European legal systems.

The Commission asserts that any acquittal of the accused would have in respect of the Italian administration and indirectly for the Community the effect of *res judicata* and would give rise to an estoppel or a negative effect in relation to the *res judicata* as regards any civil proceedings for the offence and civil proceedings could no longer be commenced, continued or recommenced before the civil or administrative court. It is not possible to accept that the Community should be prejudiced solely because the rules of domestic procedure of the various Member States are so defined. In other words the Community should not be regarded as a "party" in the strict sense, but as a legal entity interested in the same way as the Italian State in having access to any document in criminal proceedings commenced in Italy. This fact ought to have encouraged and allowed at least a "wide" interpretation of the powers of the civil party thus allowing the principles of municipal law to be reconciled with the rights of the supra-national body.

In the Commission's view there is another way of looking at the matter, which, if only as a second line of approach, would have achieved a successful result in the present case. The Community could have been "lawfully apprised of the documents and facts within the knowledge of the Italian public authorities not as collaborators with the judicial authorities but in their capacity as a private party in the criminal proceedings". In the light of this the Italian Ministry for Finance could have obtained a copy of all the documents relating to the preliminary criminal investigations in Turin and Como, apart from the transcript of the hearing of evidence and of the examination of witnesses; once it was lawfully in possession of these documents it would have had to forward them to the Commission, which is what it did but

tardily and partially. It ought in addition to have insisted on obtaining copies of all the summonses in order to know the precise terms of the charges made. Finally, as a party with an interest in the proceedings the financial administration could have more satisfactorily and completely fulfilled its duty towards the Community if it had requested that the information to be supplied to interested parties by way of the procedural notice should be such as might be inferred from Article 6 (3) (a) of the European Convention for the Protection of Human Rights ("nature" and "cause" of the accusation made).

As regards the inquiries made before the criminal court was involved, in respect of which the Commission had already shown interest, the Commission observes that the transition from the administrative to the judicial stage of proceedings is neither sudden nor accidental. Criminal proceedings in a case such as this begin with a "report" from the Guardia di Finanza which, after administrative investigation, finds that an offence has been committed. Since the Italian authorities knew the obstacles which the commencement of criminal proceedings would put in the way of giving the necessary information to the Community, it would have been correct and useful and naturally consistent with the spirit of collaboration if, before the "report" had been drafted involving the criminal court and privilege as respects the preliminary inquiries, the facts assembled had been made available to the Community.

The Commission concludes that Italy has not collaborated fully and effectively in the legitimate interests of the Commission in conducting a thorough investigation of the serious acts of evasion in relation to the levies set out in the statement of facts and that the reasons cited by it to justify its conduct are without substance.

B — In its defence the *Italian Republic* answers the Commission's complaints as follows:

— The Italian administration was not a party to the investigation carried out by the Guardia di Finanza, nor could it take part in it or know the results. During the second stage, that of the criminal investigation, the administration could not send the Commission the documents in connexion with the investigation (in particular the transcript setting out the final findings of the Guardia di Finanza) because it was prevented by the privilege attaching to criminal investigations.

— A copy of the charges was supplied to the Commission so that this is no longer at issue. Information relating to the action taken following the results of the interrogatories put in hand by letters rogatory by the Examining Magistrate in Turin and information capable of throwing light on the roles played in the criminal transactions as a whole by Belgian, French, German, Netherlands and Swiss natural and legal persons had not been supplied by the Italian administration simply because it did not have it;

— As for the complaint that the Italian administration did not ask for a copy of the summonses and did not ask the Magistrate to ensure that the

notice announcing the opening of the criminal proceedings should include the most important factors and in particular the "nature" of and the "causes" for the charge, the Italian Government recalls that the first stage of the proceedings, that of the preliminary investigation, is concerned exclusively with the preliminary collection of evidence in order to establish whether or not the charges against the accused must be pursued and thus the customs administration could not satisfy the requests of the Commission either physically or legally.

The Italian Republic is of the opinion that the Commission is using the present case as a pretext and seeking a theoretical definition of scope of its own powers rather than a resolution of the actual problems arising in the present case.

It cites the judgment of the Court of 5 May 1977 in Case 110/76 *Pretore of Cento* v *A person or persons unknown* [1977] ECR 851 which states that "In the present state of Community law only the Member States and their authorities are empowered to take proceedings before national courts for the purpose of claiming payment of Community revenue constituting own resources" and rejects the Commission's contention that "the national court is required to give notice to the Community of the initiation of criminal proceedings for smuggling if the provisions of national law require it to give such notice not only to those parties which are themselves entitled to take proceedings against the accused, but also to parties whose interests could justify an intervention in the case, provided that national law makes provision for intervention in such proceedings."

The Community provisions provide that in the first place the claim shall be "determined" by the appropriate department or agency of the Member State. "An entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined" (Article 2 of the regulation). Only then may the Commission exercise its supervision which may extend also to the earlier stages including the finding of the facts. This interpretation of the scope of the Commission's supervision is apparent on the one hand from the logic of the system and on the other:

— From a comparison of the provisions of Article 14 (1) and (2) of Regulation No 2/71; whereas Article 14 (1) states that "Member States shall carry out the verifications and inquiries concerning established entitlements", Article 14 (2), referring clearly to the work of finding the facts, speaks, as regards the Commission's function, only of "measures of control", an expression which has a restrictive sense and shows clearly that the previous stage of finding the facts has terminated;

— From the reference in Article 2 of Regulation No 165/74 to the definition of establishment referred to in Article 2 of Regulation No 2/71;

— From the last paragraph of Article 14 (2) of Regulation No 2/71 which speaks of placing "at its disposal the

supporting documents referred to in Article 3" and assuming that the stage of determining the claim, which is the sole responsibility of each Member State, is terminated;

— From the saving clause regarding "the measures of control undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action" referred to in Article 14 (3) (a) of Regulation No 2/71 which would indicate a distinction between the verification of the substance of the facts and measures of control (cf. also the last recital to Regulation No 165/74);

— From the distinction made in Article 4 of Regulation No 165/74 between national "departments or agencies responsible for establishing and making available" and the national authorities which have been "instructed to carry out measures of control";

— From Article 4 (2) (a) of the same regulation to the effect that the measures of control relate to "establishment, based on information available to the national departments", which implies that there is a stage during which that "information" is collected preceding the measures of control regarding the documents establishing the "own" resources;

— The new wording in Article 1 of Regulation No 2891/77 which henceforth stipulates that "'own resources' ... shall be established by Member States ... and shall be made available to the Commission and inspected as specified in this regulation", so that once again it is apparent that the measures of control take place after the stage of establishment has been concluded.

In a document which is no less significant because it is intended for internal purposes only (*Vade-mecum* to the Control of Own Resources (except Value Added Tax) dated June 1978 and prepared by the Directorate General of Budgets) the Commission states:

"— Each category of resources must be checked to see that: every chargeable event for the category of resource in question has indeed been established as soon as the debt has been duly substantiated ...".

"— The primary aim of the method adopted on associated inspection visits is to ascertain from the vouchers kept by the Member States: that the own resources procedural route adopted by the authorities and agencies in the Member States comprises calculation of the revenue in accordance with the Community rules; that the application of these procedures by the national departments in accordance with the current national provisions does not prevent Community revenue from being calculated regularly and in accordance with the Community rules.

— The procedures are reviewed on the basis of the vouchers."

In this case the Commission was not able and is still unable to be associated in the inspection since the Italian customs (which at the present stage still does not have the necessary facts to pay the entitlement and pursue the debtors) has not yet "determined" the claim. It is therefore not possible to speak of non-fulfilment by the Italian Republic of its obligations.

The restriction of the Commission's powers of supervision to the administrative work of the Member States follows from the Community provisions which assume that the measures of control are above all the direct responsibility of the States. It is the States who "associate" the Commission (at its request) and who "carry out" (still at the Commission's request) any additional measures of control. The measures of control are carried out by the national authorities (first paragraph of Article 2 of Regulation No 165/74), with which the Commission may be associated, over the (national) departments or agencies responsible for establishing and making available the Communities' own resources (Article 4 of the same regulation). The Community is associated only with supervision of administrative departments carried out by other administrative departments which the Commission may be called upon to complement. The Commission cannot, therefore, in any way interfere in the judicial process (any more than can the administrative departments of the Member States concerned with supervision and therefore such departments cannot associate the Commission with activities from which they themselves are excluded) by the indirect means of an investigation of the work of the examining magistrate during the preparatory inquiry. The Commission's supervision (in association with the national administrative departments) cannot take place until the ultimate stage when, after the criminal inquiry has ended, it is a question of establishing the Communities' own resources on the basis of the results of the criminal inquiry and making them available to the Commission. A principle to the effect that the examining magistrate is bound to associate the Commission as a collaborator in his preparatory inquiry is thus quite unacceptable.

Likewise there is no foundation for the Commission's alternative claim to the effect that supervision is carried out always at the administrative level and that it is not possible to plead against the national administration and the Community departments associated with such supervision provisions of municipal law capable in any way of restricting the Commission's knowledge of the inquiries in progress relating to determining the substance of the facts on which the establishment of the Communities' own resources may be based. The Community provisions state that the Communities' own resources shall be established by Member States "in accordance with their own provisions laid down by law, regulation or administrative action" and thus in any event are designed to guarantee the sovereignty of the Member States in carrying out their tasks. Thus the question of the precedence of Community law does not arise.

Privilege as regards disclosure of the work of the preparatory inquiry does not cause incompatibility with the Treaty and the negative consequences of which the Commission speaks:

— There is no incompatibility with Article 223 of the Treaty because privilege in relation to the work of the preparatory inquiry does not involve any refusal on the part of the Member State to transmit information but postpones the moment in time at which it is possible to have access to such information.

— The rights of the defence of the parties are not restricted because the privilege applies only to a stage in the criminal procedure and is removed even before the preparatory inquiry is finished;

— Not only may any order of the examining magistrate dismissing the

charge be challenged but the preparatory inquiry may be re-opened where fresh evidence comes to light; such an order does not have the effect of *res judicata* either in civil or criminal law.

As regards the Commission's contention that the Italian magistrate ought to have adopted a broader interpretation of the "powers of the civil party", the Italian Republic says that all the facts to which it has been possible to have access having regard to the provisions at present in force in relation to privilege concerning criminal investigation have been supplied to the Commission.

The Italian Republic concludes as follows:

— So far the Italian customs authorities have informed the Commission of all the important facts of which it has had possession during the course of the administrative inquiries relating to the case and of all the important facts to which it has been possible to have access as a civil party in the criminal proceedings pending.

— As it has stated on several occasions it will pass on all the other facts and information it obtains especially when the Examining Magistrate makes his report and this will finally allow a full and not merely partial examination of the whole case.

— This attitude on the part of the Italian administration shows in a tangible fashion its willingness to afford the greatest collaboration possible, even going beyond its obligations under the Community provisions.

The Italian Republic annexes to its defence a copy of the application by the Avvocatura dello Stato of Turin made to the Examining Magistrate on 16 December 1978 and the order of the Examining Magistrate dated 20 December 1978.

C — In its reply the *Commission* first of all observes that it has still not received the letter from the Guardia di Finanza dated 10 December 1975, or the letter from the Guardia di Finanza to the Turin customs, or the document drafted by the Turin customs relating to the assessment of the amounts evaded, or "particulars" of the persons and vehicles involved in the smuggling referred to in the annex to the "Notice".

In the Commission's view, if its powers of supervision had no substance as would be the position if the defendant's case were conceded, there would no longer be any reason for giving the various Member States sole power to act. It is not possible to accept a system in which the true claimant not only has to have recourse to third parties to enforce his claim, but does not even have a right to inspect their documents. Since the powers given to the Commission are the logical complement of the duty of the States to establish the Communities' own resources and of their consequent responsibilities, the powers should necessarily have the same scope as the responsibilities. The Commission's duty to check not only the recovery of the resources established but also that of the resources which ought to have been established and have not been, as far back as what may be called the originating event, can thus scarecely be contested.

The Commission does not directly supervise the activities of those who owe the charges in question. On the contrary it checks the activities of the States in recovering such sums, that is to say the "verifications and inquiries concerning established entitlements and the making available of own resources" which the Member States are required to carry out in accordance with the provisions of Article 14 of Regulation No 2/71.

The restrictive interpretation of the Commission's power of supervision put forward in the defence is not confirmed by the working of the regulation:

— The supervision with which the Commission may be associated covers all measures which the Member State is entitled to carry out on the basis of municipal law in order correctly to fulfil its obligations under Community rules and in the first place to establish all the Communities' own resources which are owing.

— The words "concerning established entitlements" used in Article 14 of Regulation No 2/71 have been explained by Regulation No 165/74 as refering to "measures of control relating to: (a) establishment... of own resources...; (b) conformity of the operations establishing... own resources with the Community rules laid down in the Decision of 21 April 1970...".

— The words of Article 2 of Regulation No 165/74 ("all those required for the establishment and the making available of own resources, both being provided for in Regulation (EEC, Euratom, ECSC) No 2/71") do not mean literally or *a fortiori* in that context "as soon as it has been established", but "as it must be carried out on the basis of Regulation No 2/71".

— As to the second part of Article 14 (2) of Regulation No 2/71 it provides only that the Member States are bound to place at the Commission's disposal when it carries out its measures of control "the supporting documents referred to in Article 3". However, on the one hand, it does not seem that Article 3 must be interpreted as necessarily referring to an establishment of own resources which has already been carried out and on the other hand, and especially, Article 14 (2) in no way limits the Commission's powers of supervision to the documents in question.

— As for the argument relating to Article 4 of Regulation No 165/74 it shows that both the national authorities instructed to carry out measures of control and all the other departments or agencies which have any responsibility for such establishment must co-operate with the Commission for the purpose of the supervision which it carries out.

— The argument relating to Article 4 (2) (a) is unfounded: the aim of the measures of control is "establishment, based on information available to the national departments", "conformity of the operations establishing ... own resources with the Community rules" and "the existence of the supporting documents ...and their conformity with the above operations".

— As for the "*Vade-mecum* to the Control of Own Resources", the sentence cited in the defence is taken

from a context which states precisely the contrary of what the Italian Republic says;

— Finally, Article 1 as amended by Regulation No 2891/77 can in no way be interpreted restrictively.

As for the extension of its powers of supervision the Commission adds:

— The Italian Republic agreed to carry out in association with the Commission additional measures of control relating precisely to the facts at the origin of the present case. Those facts had not yet, in the view of the Italian Republic, been established in the accounts as involving the Communities' own resources.

— That is quite contrary to what the Italian Republic is maintaining today.

— The Commission's settled practice (which has never been challenged) is to carry out measures of control in all Member States relating to transactions which have not yet been established in the accounts as the Communities' own resources.

— When Regulation No 165/74 was approved it was stated that measures of control by the Commission could not relate to national proceedings to counteract fraud but that statement was possible only because Regulation No 165/74 related solely to the dispatch into the Member States of officials appointed by the Commission and that it was considered that if the Commission were fully informed by the Member States as provided for in Article 14 of Regulation No 2/71 it would be possible to avoid sending officials in particularly difficult cases.

The Commission states that it did not intend in this case to supervise the work of the courts in considering the criminal aspects of the offences. Moreover, consideration of the conduct of the Italian Finance Administration seems to show that it alone is responsible for the offence, full liability for which is in any case borne by the Member State: the plea of privilege as regards criminal investigations and the position adopted by the magistrate seem to have been only an excuse for the obstructionist attitude adopted from the beginning and a pretext for continuing it.

In support of this statement the Commission considers in detail the Italian provisions laid down by law, regulation or administrative action in relation to establishing customs offences from which it draws the following inferences:

— The Italian Finance Administration had or ought to have had from the beginning full knowledge of what the Guardia di Finanza reported to the magistrate. It was moreover empowered in accordance with ministerial instructions to draft notes and make observations to facilitate not only an objective application of the law but also a proper and fair safeguard of the financial interests prejudiced by the infringement of the customs system.

— The Italian Republic cannot rely on the fact that a department of State did not perform its obligations properly and in due time by keeping from the Finance Adminsitration matters which it ought to know.

— The Turin customs authorities had all the information allowing them to assess the nature, quantity and value of the goods on which the Guardia di Finanza found levies had not been paid and to determine the amount of duty owing. The Commission observes that on the one hand the fine for smuggling is determined on the basis of the amount of duty evaded and consequently any judgment may have the effect of *res judicata* especially as regards the precise amount of the duty. On the other hand, the precise assessment of the duty has had a special importance from the beginning of the proceedings since it is on the basis of such assessment that the Pubblico Ministero under Article 616 *et seq.* of the Code of Criminal Procedure may, from the beginning of the proceedings, lawfully attach and sequestrate the goods of the accused to guarantee the sums which may be due from him. From this arises the special interest of the Community in checking the technical assessment of the duties which have been evaded as made by the national Finance Administration, not only before the charges against the accused have been finally notified, thus restricting the court's decision regarding the amount ultimately found to have been involved, but as soon as possible in order to allow the departments of State to commence proceedings in due time before the institutions which the national law entrusts with recovering the duties which have been evaded.

— As soon as the customs administration receives from the Guardia di Finanza the information allowing it to classify the goods and determine the duty, it considers all the information which it has in order to take a decision on the wisdom of immediately proceeding by administrative means to collect the duties evaded (naturally within the limits of what has been found and subject to reimbursement or compensation according to the outcome of the criminal proceedings) or to await the outcome of those proceedings.

— That is a particularly important decision since the coercive procedure for recovery by administrative means allows the speedy sequestration of the goods of persons other than the accused who are liable for payment of the duty, against whom it is not possible to adopt measures of attachment by operation of law or in criminal proceedings, and thus provides at least a guarantee in respect of such persons. The interest of the Community and through it of the Commission, in supervising at the proper time the use which the customs administration makes of this power seems beyond dispute.

As regards the scope and limits of privilege in matters of criminal investigation the Commission adds that the report which it requires in order to establish in particular the facts giving rise to the liability for the levy is not in the possession of this or that body or department of the State but of the State itself together with all its administrative and judicial machinery. It is therefore not possible to claim that the Commission must deal solely with the Italian customs administration and not on the contrary directly with the Italian courts.

Moreover, it is important for the Commission, whatever kind of inquiry is conducted, to be informed speedily and completely: to delay the receipt of this important information until long after

the unlawful events occurred means that the information received will be completely useless.

As for the claim that the privilege attaching to criminal investigation could in no way prejudice the interests of the parties since "it relates solely to a stage of the criminal proceedings", the Commission stresses that the inquiries prior to the investigation itself are vitally important for the subsequent course of the whole of the criminal proceedings and moreover until the investigation is terminated by the lodging of the documents at the registry, the "parties" in the strict sense are forbidden access to the decisive evidence which constitutes the most patent part of the probatory factors required to reach a decision, that is, the statements of witnesses and the documents impounded. Finally, as for the comment that an examining magistrate's decision that there is no case in no way bars the civil party, the Commission observes that it is unusual for new evidence to be revealed or new avenues of inquiry opened up during the proceedings in court and that the preparatory inquiry determines the whole proceedings.

D — In its rejoinder the *Italian Republic* observes first that the documents and exhibits in the criminal proceedings were lodged at the registry of the Turin court. It is now for the Examining Magistrate to make a decision closing the preparatory inquiry, that is to say a committal order regarding the persons against whom he considers there is sufficient evidence for charges and an order that there is no case against the others. In the meantime the Avvocatura dello Stato has examined the documents in the criminal file and asked for a copy of such as it considered most important, that is to say the final report from the Turin Guardia di Finanza and the statement of charges drawn up by the Pubblico Ministero. A copy of these documents has been sent to the Commission and is annexed to the rejoinder. Since there is no longer any purpose in the proceedings, the Italian Republic invites the Commission not to pursue its application.

The Italian Republic once again rehears the facts which appear to it to show clearly that far from adopting a negligent and obstructionist attitude, the Italian administration passed all the information to the Commission as soon as it came to its knowledge, "thus revealing a readiness to co-operate going beyond its strict Community and national obligations".

Against the arguments contained in the reply the Italian Republic contends:

— Supervision by the Commission must be carried out after and not during the inquiry stage for otherwise the supervision would have the appearance of a power to direct the inquiry.

— The conclusions arrived at in a definitive finding may also be negative and the Commission may certainly ask why there has been no positive finding. On the other hand it is not possible for it to interfere during the inquiry: during that stage it is moreover not sufficient to point out any omissions or deficiencies, for

they can become relevant for liability only at the final stage, that is, the final finding.

— The "Vade-mecum to the Control of Own Resources" of the Commission fully supports the case put forward by the Italian Republic.

As regards the "subject-matter" of the measures of control the Italian Republic does not accept that the Examining Magistrate may be regarded as a department or agency responsible for establishing own resources of which above all the Commission has to be informed in accordance with Article 4 (1) of Regulation No 2/71. In view of the clear provision in Article 3 (1) (a) of Regulation No 165/74 (where there is reference to "officials" of the Member States, which certainly does not include judges), it must be accepted that there is in fact a limit to the powers of control of the Commission. No legal system moreover allows supervision of the work of the courts by administrative bodies.

It is apparent today that the only document of any importance originating from the Guardia di Finanza which the administration did not send to the Commission, namely the final report of 16 October 1976 annexed to the rejoinder, was never sent to the finance administration which never had knowledge of it until now. This is because the Guardia di Finanza is not bound to forward to the customs reports, which relate not only to customs offences but also to offences of a very different nature. The reason is that while it is a question of the infringement of purely customs laws the treasury interests are paramount so that the report may be forwarded to the customs to be completed immediately by the addition of the technical data which will subsequently be used for the determination of the penalty (which is basically proportionate to the duty which has been evaded). On the other hand when the customs offences are combined with other serious offences, the overriding interest changes and the necessity to safeguard the treasury interests is tempered by the necessity rigorously to establish all the accompanying offences so that it is worth while to wait a certain time (until the end of the preparatory inquiry) to have all the customs information in order to calculate the penalties. The national rules were therefore correctly applied.

As regards the claim to obtain information by asking the Examining Magistrate to send more detailed notices, the Italian Republic states that the notice sent to a party who may be interested in becoming a civil party is a summary notice intended to inform a person who may be interested of the existence of the proceedings and is not a document setting out, as the Commission would like, "the content of the report forwarded by the Guardia di Finanza to the judicial authorities"; otherwise it is difficult to see what the point of the privilege relating to the preparatory inquiry would be.

As regards such privilege, the Commission accepts that in so far as national provisions in relation thereto may be invoked against the national department responsible for establishing

the Communities' own resources, they may also be invoked against the Commission, but it does not accept the condition that the Commission may deal directly only with the customs adminsitration. The Italian Republic states that in its opinion the premise is in no way open to challenge. Even if the Commission had the power to carry out its supervision even at the level of the work of the court, which would be absurd, it would still be met by the privilege in respect of the preparatory inquiry in so far as the Examining Magistrate would remain bound by the national "provisions laid down by law" from which the Community provisions do not derogate.

The Italian Republic therefore reiterates:

— That there can be no question of any failure on its part in any respect;

— That the Italian administration has so far passed on to the Commission as soon as possible all important information as and when received by it;

— That it will forward upon receipt a copy of the decision (order of committal and order that there is no case) of the Examining Magistrate and that it will periodically inform the Commission of the course of the criminal proceedings and any important administrative matters which may arise in the case.

It is persuaded that the Commission, after taking note of the most recent documents forwarded, and noting that there is no, or at least no further, matter at issue, will not wish to pursue its application.

The Commission, represented by G. Olmi, Deputy Director General of the Legal Department and G. Campogrande, a member of the Legal Department, acting as Agents, assisted by A. Giarda of the Milan Bar, and the Italian Government, represented by O. Fiumara, Avvocato dello Stato, presented oral argument at the sitting on 27 September 1979.

The Advocate General delivered his opinion at the sitting on 7 November 1979.

Decision

1 By application dated 21 December 1978 and registered at the Court on 22 December 1978 the Commission sought a declaration pursuant to the second paragraph of Article 169 of the EEC Treaty that the Italian Republic, by refusing to associate the Commission with certain measures of control on the establishment and making available of the Communities' own resources and

to notify it of the results obtained, has failed to fulfil its obligations under Article 5 of the Treaty and under Article 14 of Regulation No 2/71 of the Council of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition 1971 (I), p. 3) now replaced by Council Regulation No 2891/77 of 19 December 1977 (Official Journal L 336, p. 1).

2 In April 1976 the Commission was informed that fraudulent transactions relating to 6 000 tonnes of butter from non-member countries had taken place on the basis of intra-Community trade. The goods had been taken by lorry to Italy from a warehouse in Rotterdam. On leaving the port the consignments were dealt with regularly under the external Community transit system. However, the (so-called "T 1") documents relating to that system had been improperly cleared both during the journey and in Italy by means of false or forged documents relating to internal Community transit so as to allow considerable amounts of agricultural levies to be avoided.

3 By letter dated 26 July 1976 the Commission informed the Italian Permanent Representative that "information" at its disposal justified "a request for an additional measure of control within the meaning of Article 14 of Regulation No 2/71". A request was made not only that Italy should carry out an additional measure of control but also that the Commission should be associated therewith.

4 The central customs authorities in Italy agreed to the request and meetings were arranged in Milan and Como between officials of the Italian customs and those of the Commission. Following those meetings it was decided that there was probably a link between the fraudulent transactions in question and certain transactions which had been the subject of inquiries since 1975 by the Guardia di Finanza. According to the Italian authorities aspects of the inquiry associated with facts likely to give rise to criminal proceedings came in the last resort within the jurisdiction of the judicial authorities.

5 Since the Italian customs authorities took the view that there was a connexion between the inquiry conducted by the Turin Ufficio Istruzione Penale [Criminal Investigation Office] and the imports in question, they asked the Turin Examining Magistrate for a copy of the report from the Guardia di Finanza, but the Examining Magistrate on 2 February 1977 dismissed the application on the ground that the matters with which the report was concerned were the subject of criminal investigations so that the report along with all the other documents relating to the investigations were privileged.

6 A further application made on 24 January 1978 by the Minister for Finance was dismissed by the Turin Examining Magistrate for the same reasons.

7 In view of the dismissal of those applications it appears that the Italian customs authorities could not obtain the information in the file of the criminal proceedings or, therefore, pass it on to the Commission.

8 On 20 April 1978 the Commission sent to the Italian Republic a reasoned opinion as referred to in Article 169 of the Treaty. That opinion stresses in particular the Commission's power, because Community law has precedence over municipal law, to carry out a thorough investigation of the "facts giving rise" to the fiscal claim which had been evaded; it also stresses the duty of the Member States to co-operate with all means available to them in the exercise of the right of supervision. In the Commission's view the direct applicability of Regulation No 2/71 must be understood as meaning that the rules of Community law must have full effect as an immediate source of rights and duties for all those whom they concern whether they be individuals or Member States. That effect also applies to all courts which, as part of their jurisdiction, must, as organs of a Member State, have regard to powers given by Community law to the institutions. Further, by the very fact of their entry into force the provisions of Community law *ipso jure* render inapplicable any previous provision of national law to a contrary effect, including the provisions of the Code of Criminal Procedure which cannot therefore be invoked against the exercise by the Commission of its power of supervision given it by Regulation No 2/71.

9 In answer to that opinion the Italian Government maintained that the Commission could not claim to be associated with judicial acts (over which the administrative departments of the Member States concerned with measures of control have themselves no authority and they cannot therefore associate the Community in activities from which they are themselves excluded.) The Italian Government states that the Commission cannot therefore rely on the alleged infringement in the present case of Article 14 of Regulation No 2/71 in respect of delay resulting from the verifications' being transferred from the administrative level to the judicial level.

10 On learning on 6 November 1978 that the preparatory inquiry had been terminated the Italian customs authorities made on 16 December 1978 a fresh application to the Examining Magistrate.

11 By order dated 20 December 1978 the Examining Magistrate authorized only a copy of the heads of charges as drafted by the Procuratore della Repubblica [Public Prosecutor]. That document was forwarded to the Commission and is annexed to the defence.

12 On 19 January 1979 the Commission received a copy of the final charges against all the accused.

The Commission's power of supervision

13 The Italian Government contends that the power of supervison given to the Commission by Regulation No 2/71 can be exercised only after the national administrative body has finished its task of establishing the Communities' own resources, that is to say has determined the claim and made it available to the Communities. The procedure laid down by the Community rules in fact comprises three stages: "establishing" the Communities' own resources, "making available" the resources which have been established and carrying out "measures of control". Before the stage of measures of control, in which the Commission has power to intervene, can begin, the national administrative departments must have completed the previous stages. Only then can the Commission co-operate with those departments to check whether the Communities' own resources have been properly established and paid over.

14 Against this argument the Commission maintains that to be effective it must be able to effect its supervision as soon as a fact giving rise to the Communities' own resources has been established. This is apparent from the provisions governing measures of control and in particular Articles 6 and 14 of Regulation No 2/71.

15 The Court cannot accept the arguments of the Italian Government which would mean robbing the applicable provisions of their substance. On that basis the Commission's powers would be confined to a simple subsequent verification of the accounts of the Communities' own resources which the Member States are required to keep. Article 6 of Regulation No 2/71 provides for a monthly statement of accounts and Article 9 (2) provides that any delay in making an entry shall give rise to the payment of interest by the Member State concerned. The fact that in accordance with the said Article 6 the established entitlements are to be entered in the accounts of the Communities as revenue to be collected requires that from then onwards the Commission shall have a right to ask for additional measures of control and to be associated with the measures applied by the Member States themselves as from the time when the resources ought to have been established.

16 The Italian Government is thus not justified in contesting the Commission's power to exercise its supervision as soon as the Communities' own resources have been "established" by the competent authority in the Member State in question.

The question of privilege as regards criminal investigations

17 From a consideration of the arguments put forward in support of the application it is apparent that the Commission's main complaint is the refusal by the Italian administration to pass on information relating to the criminal proceedings and as such privileged. The question accordingly arises whether Community rules in the matter may be interpreted as requiring Member States to transmit such information in derogation, if necessary, from the rules of national judicial procedure.

18 Article 14 of Regulation No 2/71 as re-enacted by Article 18 of Regulation No 2891/77 [1] provides as follows:

"(1) Member States shall carry out the verifications and inquiries concerning the establishment and the making available of own resources. The Commission shall make use of its powers as specified in this article.

(2) Accordingly, Member States shall:

— Carry out any additional inspection measures the Commission may ask for in a reasoned request,

— Associate the Commission, at its request, with the inspection measures which they carry out.

Member States shall take all steps required to facilitate these inspection measures . . ."

19 It is necessary to observe first of all that the applicable Community regulations do not empower the Commission itself to carry out inspections but provide that the Commission shall be "associated" with the inspection measures carried out by the Member States. It follows that the regulations do not modify the actual procedures for inspection applicable in the various Member States.

20 It is proper further to recall that the Community regulations do not mention the relationship between the powers of inspection in relation to establishing the Community's own resources on the one hand and the guarantees provided by municipal law for the proper conduct of criminal proceedings on the other.

21 It follows from these considerations that in the present state of Community law the inspection measures which the Commission may request and with which it must be associated cover all those which the national authorities

1 — *Translator's Note:* In the 1977 version the expression "measures of control" is replaced by the expression "inspection measures".

may carry out but it is not possible to infer from the regulations in question an intention to alter the relations between the administration and the judicial authorities.

22 Rules which in the national systems of criminal law prevent the communication to certain persons of documents in the criminal proceedings may therefore be relied upon against the Commission in so far as the same restrictions may be relied upon against the national authorities.

23 It appears from consideration of the file that the Italian Government co-operated with the Commission as far as was legally possible during the proceedings and transmitted to the Commission the information which was privileged as relating to criminal investigation as soon as the privilege was lifted by the Examining Magistrate.

24 It is therefore necessary to find that Italy did not fail to fulfil its obligations under the Treaty.

25 The application must therefore be dismissed.

Costs

26 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs.

27 Since the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

O'Keeffe Touffait Mertens de Wilmars

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 10 January 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber,
Acting President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 7 NOVEMBER 1979

My Lords,

Introductory

In this action, which is brought by the Commission under Article 169 of the EEC Treaty against the Italian Republic, the Commision seeks a declaration that, in refusing to associate it with "inspection measures" concerning the establishment and the making available of the Communities' own resources, or