JUDGMENT OF THE COURT
28 January 1986 *

In Case 130/84

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Oscar Fiumara, 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 its Legal Adviser, Alberto Prozzillo, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the partial annulment of Commission Decision No 84/203/EEC of 8 February 1984 on the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1979 (Official Journal 1984, L 110, p. 15),

THE COURT

composed of: Lord Mackenzie Stuart, President, K. Bahlmann (President of Chamber), G. Bosco, T. Koopmans, O. Due, Y. Galmot and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 23 October 1985,

gives the following

* Language of the Case: Italian.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 16 May 1984 the Italian Republic brought an action under the first paragraph of Article 173 of the EEC Treaty claiming that the Court should declare void Commission Decision No 84/203/EEC of 8 February 1984 on the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1979, in so far as the Commission thereby refused to accept as chargeable to the Fund the sum of LIT 1 621 239 160 as financial compensation for fruit and vegetables producers' organizations.

2 Council Regulation No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437) provides in Article 13 for the creation, on the initiative of fruit and vegetable producers, of producers' organizations for the purpose of (a) promoting the concentration of supplies and the regularization of prices at the producer stage in respect of one or more of the products referred to by the regulation and (b) making suitable technical means available to producer members for presenting and marketing the relevant products. Under the same article the producers' organizations must require their members to sell through them the total output of the product or products by reason of which they have become members; an organization may, however, waive that requirement in respect of certain quantities. In addition, the organizations must require their members to apply, with regard to production and marketing, the rules which they have adopted for the purpose of improving product quality and adapting the volume of supply to the market requirements.

3 Under Article 14 of the regulation, Member States may grant aid to producers' organizations, during the three years following the date on which they are established, to encourage their formation and to facilitate their operation, provided that

the organizations furnish adequate guarantees as regards the duration and effectiveness of their activities. Furthermore, under Article 18 Member States must grant financial compensation to producers' organizations which intervene in accordance with the arrangements for withdrawing their members' products from the market pursuant to Article 15. The expenditure thereby incurred is eligible for financing by the Guarantee Section of the Fund.

4 The dispute concerns the financial compensation paid by the Italian Government to four producers' organizations which, according to the Commission, do not fulfil the conditions laid down by Regulation No 1035/72. Those organizations are: the Associazione di Zona fra Produttori Ortofrutticoli delle Provincie di Matera e Potenza, the Associazione di Zona fra Produttori di Agrumi delle Provincie di Catanzaro, Cosenza e Reggio Calabria, the Associazione Interprovinciale Produttori Agrumicolo ed Ortifrutticoli 'AIPAO', of Catania, and the Associazione Consorzio Provinciale Cooperative Agricole 'ETNA', of Catania.

5 The Summary Report for 1978/79, prepared by officials of the Commission following discussion with representatives of the competent national authorities, states that, when clearing the accounts for the financial years 1973 to 1977, the Commission reserved its position on the eligibility of certain items of expenditure incurred in Italy in connection with the withdrawal of fruit and vegetables from the market, pending the outcome of an inquiry conducted jointly by its own officials and the Italian authorities. On the basis of that inquiry it concluded that, out of the 82 producers' organizations surveyed, the functioning of four did not comply with Community legislation. Financial compensation for the withdrawal of products from the market, on the other hand, could be granted only to organizations which operated in conformity with the provisions of Regulation No 1035/72.

6 The Summary Report also states that the Italian authorities had decided to withdraw recognition from the four organizations in question, such recognition being necessary under Italian legislation for conferring entitlement to the aid and financial compensation referred to by Regulation No 1035/72. None the less, the Italian authorities considered that the four organizations remained competent to carry out their appointed tasks until recognition was withdrawn from them in July 1981 and September 1982, and that they were therefore entitled to financial compensation for the earlier years. Indeed, the Italian authorities took the view that it was not possible *ex post facto* to deny the legality of the operations or the liability of the Fund to bear the expenditure thereby involved. The Commission did

not share that view, arguing that Community aid could not be disbursed unless the recipient fulfilled the conditions for payment.

7 In its application to the Court the Italian Government maintains, in the first place, that for each of the four organizations in question the conditions laid down in Article 13 of Regulation No 1035/72 were satisfied. In that connection it complains in particular that the Commission failed to undertake further inspections of the four organizations, whereas other producers' organizations in Italy had been subjected to repeated inspections which finally established that they were operating in conformity with Community legislation. In the second place, the Italian Government observes that the withdrawal of recognition occurred after the financial years covered by the present action had ended, and that consequently the operations whereby the four organizations in question had removed products from the market during the years preceding withdrawal of recognition were still in conformity with the Community regulations.

8 On the first point the Italian Government maintains that the Commission's initial findings on the four organizations were based on the view that every producers' organization had to concentrate the supply of products from its members and to market those products itself. That view was, however, abandoned by the Commission, which finally conceded that sales might be transacted by the producers themselves if they observed the conditions laid down by the organization. That being so, the operations of the four organizations complied with Article 13 of Regulation No 1035/72. In any event, the withdrawal of products from the market, in respect of which the financial compensation was granted, contributed fully to the attainment of the objectives pursued by the regulation.

9 The Commission begins by expressing its surprise at the Italian Government's position, inasmuch as the Italian Government itself withdrew recognition from the four organizations on the ground that they did not satisfy the conditions enabling them to ensure that their appointed tasks were being properly discharged. The Commission admits that, in some cases, it revised its initial position after realizing that the complete application of the criteria adopted by the regulation to the widely differing circumstances of the various regions of the Community could not be other than gradual. It nevertheless holds to the view that operations in which products are withdrawn from the market are not eligible for Community financing unless they form part of a wider programme of activities designed to improve market conditions; Regulation No 1035/72 lays down a full set of provisions governing producers' organizations.

10 In that regard the Commission points out that Article 15 of the regulation provides that, for the purpose of financing withdrawal operations, producers are to set up an intervention fund maintained by contributions assessed on quantities of products offered for sale. According to the Commission, Community legislation thereby creates a close link between the various activities of the organizations, which must seek to improve product quality, concentrate sales and, in exceptional cases, withdraw products from the market (financing such withdrawal out of their sales revenue). Only associations which engage in all those activities are properly constituted for the purposes of Community law, and associations which only undertake the withdrawal of products — as is the case with the four organizations in question — cannot fall into that category.

11 It appears from the correspondence between the Italian Government and the Commission, as contained in the documents before the Court, that at the time it was common ground between the parties that certain producers' organizations in Italy, including the four organizations in question, did not satisfy the conditions laid down by Community rules. In particular, their operations were fragmentary in the sense that they carried out operations to withdraw fruit and vegetables from the market without engaging in any other activity. Thus the Italian Government's letter of 27 May 1980, which gives an account of the inquiry into producers' organizations, states that five organizations, including the four organizations in question, failed to undertake a rationalization of marketing activities, inasmuch as they were not in a position to inspect the products marketed by their members. The letter adds that it is doubtful whether those organizations would adapt themselves to Community legislation.

12 At the hearing the Italian Government, whilst acknowledging the shortcomings of the four organizations in question and the doubts which might exist as to their ability to adapt themselves to Community rules, confined itself to stating that they were subjected to regular inspections so that they could be progressively brought into line, but that the Commission had unilaterally terminated that process of adaptation by calling for the withdrawal by the Italian Government of its recognition of the four organizations. That is therefore the point which should be considered.

13 In that regard the following points emerge from the documents laid before the Court and the explanations given by the parties: The abovementioned letter of the Italian Government of 27 May 1980, in which it conceded that the four organizations in question had not been operating in accordance with the Community

rules, expressed the Italian authorities' wish to refrain for the time being from adopting any measures withdrawing recognition from them; the organizations were being subjected to continuous monitoring and the Commission would be informed of the final decisions adopted in the matter. In the meantime the Italian Government had taken a number of steps to ensure greater compliance with the Community rules, such as the issuing of a circular containing detailed provisions concerning the functioning of the producers' organizations and the setting-up of regional supervisory commissions. A letter from the Italian Ministry of Agriculture and Forestry of 15 September 1980 supplied the Commission with the findings of an inquiry into the operation of producers' organizations, carried out jointly by Italian civil servants and agents of the Commission. By letter of 11 November 1980 from the relevant Director-General, the Commission informed the Italian Government of the conclusions which it had drawn from the inquiry; the Commission took the view that 16 organizations which did not operate properly but were capable of improvement should be kept under observation for a year, but that seven other organizations — including the four involved in this dispute — did not conform to Community rules and offered no apparent prospect of adapting themselves so as to comply with them. The letter added that the Commission considered that the national authorities should adopt all the measures which followed from the failure on the part of the organizations to comply with the requirements of Regulation No 1035/72; in particular, no initial aid or financial compensation could be paid pursuant thereto.

14 The Italian Minister replied by letter of 27 December 1980, expressing his regret that the Commission had not given sufficient consideration to the existence of certain adverse factors in the south of Italy which had resulted in more time being needed to overcome the initial operating difficulties than in the northern regions; the task was a long-term one which was not yet fully accomplished. By telex of 16 June 1981 the Italian Government communicated its decision to withdraw recognition from three of the four organizations; in the case of the fourth, AIPAO (Catania), the telex stated that the inspections carried out had disclosed that it was operating in conformity with Community legislation, adding that it would consequently be desirable to conduct a joint on-the-spot inspection later on. By a letter of 22 June 1981 the Commission replied that a subsequent inspection was pointless. The Italian Government withdrew its recognition from the organizations in question on 25 July 1981 in the case of ETNA (Catania) and, in the case of the other three organizations, on 10 September 1982.

15 The correspondence reveals that the Italian Government, after initially conceding that the four organizations did not conform to Community legislation and did not appear capable of adapting themselves, then asked that they be allowed a further period to enable them to do so; subsequently it concluded that only one of the four, AIPAO (Catania), was operating in conformity with the Community provisions. For its part, the Commission had made it clear in a letter as early as 11 November 1980 that it refused to accept that the operations of the four organizations were in conformity with Community law, and had indicated that its refusal also meant that it refused to finance any compensation which might be granted to those organizations. If therefore the Italian Government thought that it had sound reasons for requesting a further period for adaptation, it should have justified its request either by supplying evidence to show that the four associations — or AIPAO (Catania) alone — were operating better, or else by explaining in what respect their operations had improved.

16 It should further be observed that the Italian Government claims to have based its opinion concerning that improvement on a report of 16 December 1980 prepared by the Ministry of Agriculture and Forestry, but it is not disputed that the report was never drawn to the Commission's attention before legal proceedings were commenced. Moreover, the Commission observes that the report adds no relevant evidence to the facts as known at the time.

17 The Commission was therefore entitled, after an extended period for adjustment and inspection, to refuse to organize new inquiries solely on the strength of the claim from the Italian Ministry of Agriculture and Forestry that the operation of one of the four organizations, AIPAO (Catania), had proved to be in conformity with the Community rules.

18 Consideration remains to be given to the Italian Government's argument that the operations involving the withdrawal of goods from the market by the organizations in question continued to be conducted in conformity with Community law until official recognition was withdrawn from those organizations. The Italian Government maintains that a producers' organization is obliged, from the date of its recognition until such time as recognition is withdrawn, to perform the functions assigned to it by the regulations on food and vegetables Entitlement to compensation cannot therefore be forfeited in respect of withdrawals carried out when the organization still enjoyed recognition.

19 The Commission, referring to the provisions regarding the financing of the common agricultural policy and to the case-law of the Court, observes that reimbursement by the Fund of expenditure occasioned by the implementation of the common agricultural policy cannot be envisaged except where the conditions laid down by the applicable Community provisions are complied with.

20 It should be observed that Regulation No 1035/72 imposes a number of conditions on producers' organizations, but that those conditions do not entail 'recognition' by the national authorities. Thus, if the Italian Government, for reasons of its own, decides formally to recognize the organizations which, in its opinion, satisfy the conditions required by the regulation, to enter the recognized organizations on a list and to delete from that list those which, in its opinion, no longer satisfy the conditions, thereby withdrawing their recognition, such administrative formalities cannot in any way affect the position under Community law.

21 In this instance, since the Court has found that the Commission was entitled to conclude that the four associations in question had never qualified as 'producers' organizations' within the meaning of Article 13 of Regulation No 1035/72, their expenditure was not at any time chargeable to the Fund.

22 It follows that the Italian Government's submissions cannot be accepted.

Costs

23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, 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.

Mackenzie Stuart Bahlmann Bosco

Koopmans Due Galmot O'Higgins

Delivered in open court in Luxembourg on 28 January 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President