On those grounds,

THE COURT

hereby:

1. **Declares that, by neither adopting nor notifying within the prescribed period the measures provided for by Commission Regulation No 2785/80 of 30 October 1980, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;**

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

Mackenzie Stuart Koopmans Bahlmann

O'Keeffe Bosco Due Joliet

Delivered in open court in Luxembourg on 3 October 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 12 JULY 1984

My Lords,

Council Regulation (EEC) No 2967/76 of 23 November 1976 laid down common standards for the water content of frozen chickens with a view to improving the quality and promoting the sale of such products. Member States were required by Article 3 (2) to adopt practical measures for specified checks to

be conducted to ensure that such standards were met. By Article 6 compliance with the provisions of the regulation was to be verified by authorities designated by each Member State and Member States were to inform each other and the Commission as to the identity of those authorities. So far as relevant, the provisions in the regulation came into force on 1 December 1977.

Commission Regulation (EEC) No 2785/80 of 30 October 1980 introduced detailed rules for implementing that Council regulation. By Article 6 Member States were required to take all appropriate measures to impose penalties for any infringement of the Council regulation, and by Article 7 to inform Member States and the Commission before 1 March 1981 of the practical control methods adopted pursuant to Article 3 (2) of the Council regulation and of the measures adopted to impose penalties under Article 6 of the Commission regulation.

The Commission received no communication pursuant to Article 7 of the Commission regulation from the Italian Republic by the due date. On 14 August 1981 the Commission called on the Government of Italy to give this information by 1 October 1981. No reply having been received, on 30 August 1982 the Commission wrote to the Italian authorities pursuant to Article 169 of the EEC Treaty requesting them to submit their observations on this matter within two months. Again no reply was received and by reasoned opinion (undated but sent on 3 June 1983) the Commission recorded that Italy was in breach of its obligations in not having adopted the measures referred to in Article 7 of the Commission regulation and in not having informed Member States and the Commission of them. The conclusion of the reasoned opinion was simply that Italy was in breach of its obligations by not having communicated the necessary information, and Italy was required to put an end to that infringement within one month.

Again no reply was received and by proceedings commenced on 8 November 1983, the Commission asked the Court to declare, pursuant to Article 169, that Italy was in breach of its obligations in that it had neither adopted nor had communicated information to the Commission about the adoption of these measures.

The Italian Government's initial defence was that a law had been drafted to determine the competent authorities and the methods both for applying the rules and laying down the sanctions referred to. It was also stressed that sanctions could only be proposed by a law adopted pursuant to the legislative process. It now appears that the Italian Government has adopted the necessary measures to comply with Council Regulation No 2967/76 and the Commission no longer asks for an order to that effect.

It is clear that the Commission regulation has not been complied with and no communication has been made to the Commission or to Member States that it has.

It is, however, to be observed that in the letter giving the Italian Government the opportunity to submit its observations pursuant to Article 169 the only complaint made was that Member States and the Commission had not been

informed that the measures had been adopted. There was no specific complaint that the measures had not themselves been adopted.

It seems to me, as the Court has made clear on more than one occasion, (for example, in its judgment in Case 325/82) *Commission* v *Federal Republic of Germany* of 14 February 1984 (paragraph 8)) that both the letter giving Member States an opportunity to submit their observations and the reasoned opinion should state clearly what is the breach complained of.

It is true that in this case the reasoned opinion did refer both to the failure to adopt and to the failure to communicate but the final conclusion was limited to a failure to communicate. Obviously it is the failure to adopt which is critical, and, if so, it is all the more important that this should be stated clearly in the letter sent to give the government the opportunity to submit its observations (since the reasoned opinion is only to be delivered *after* the State has had such an opportunity) and in the concluding part of the reasoned opinion, which declares the actual breach to be remedied. It does not seem to me that the defect in the initial letter should be treated as being cured by the fact that both matters complained of are referred to in the reasoned opinion. It is in my view an essential part of the procedure, before a declaration should be made, that the Commission should have set out clearly its complaints in the initial letter.

Accordingly, in my opinion, in this case there should be an order that, in failing to communicate the methods of control adopted pursuant to Article 3 (2) of Regulation (EEC) No 2967/76 and the measures to impose penalties for any infringement of that regulation pursuant to Article 6 of Commission Regulation (EEC) No 2785/80, the Republic of Italy was in breach of its obligations under Article 7 of Commission Regulation (EEC) No 2785/80.

It is quite plain that the Italian Republic was in breach of its obligations at the time when the Commission began these proceedings and in my opinion the Italian Government should be ordered to pay the costs of the application in respect of both of the regulations.