JUDGMENT OF THE COURT
14 November 1989 *

In Case 14/88

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department of 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, Armando Toledano, acting as Agent, assisted by Professor Fausto Capelli, avvocato, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission's decision of 5 November 1987, reference C (87) 2027, on the reimbursement to the Italian Republic by the European Agricultural Guidance and Guarantee Fund, Guidance Section, of aid for 1984 granted to organizations of fruit and vegetable producers is void in part,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris and F. A. Schockweiler, Presidents of Chambers, T. Koopmans, G. F. Mancini, R. Joliet, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: W. Van Gerven
Registrar: D. Louterman, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 30 May 1989,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General delivered at the sitting on 4 July 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 14 January 1988, the Italian Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that the Commission's decision of 5 November 1987, reference C (87) 2027, on the reimbursement to the Italian Republic by the European Agricultural Guidance and Guarantee Fund, Guidance Section, ('the EAGGF') of aid for 1984 granted to organizations of fruit and vegetable producers is void in so far as it fixed the contribution of the Guidance Section of the EAGGF for that aid at LIT 700 924 892, whereas the Italian Republic had submitted a request for the reimbursement of LIT 2 935 382 400.

2 Article 13 of Regulation (EEC) No 1035/72 of the Council 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 for producers' organizations to be established, on the initiative of producers of fruit and vegetables, for the purpose of facilitating the attainment of the objectives of the common organization of the markets.

3 Under the terms of Article 14(1) of that 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'. Article 36(2) provides that '50% of the amount of aids granted by Member States in accordance with Article 14(1) shall be reimbursed by the Guidance Section of the European Agricultural Guidance and Guarantee Fund'. Decisions on applications for reimbursement are to be taken by the Commission after consultation with the Fund Committee.

4 Following delays which had been found in relation to compliance with the period of three years, the Commission, in a document dated 13 December 1977, reminded Member States that in order to be eligible for reimbursement by the EAGGF the application for such aid and the grant and payment thereof by a Member State had to take place within three years of the formation of an organization so as to preserve its purpose as start-up aid. In order, however, to take account of difficulties encountered particularly in Italy in complying with that period, the Commission, in a memorandum of 30 July 1980, agreed to accept as the starting point for the period the date on which the producers' organization was recognized, and stated that, as from 1981, reimbursement would be allowed on condition that, during the three years following the date of formation of the organization, aid had been granted and paid in respect of the first two years of its functioning and that aid for the third year of operation had been granted and paid not later than during the fourth year following the date of formation.

5 Having paid, in 1984, an amount of LIT 5 870 764 800 by way of aid granted pursuant to Article 14(1), the Italian Republic requested the Commission on 12 December 1985 for reimbursement of 50% of that amount. In the contested decision, the Commission agreed only to charge to the EAGGF an amount of LIT 700 924 892 on finding that in 27 out of 32 cases of aid granted the Italian authorities had not complied with the periods stipulated in its memorandum of 30 July 1980.

6 Prior to the contested decision, the Commission had confirmed to the Italian Government, in memoranda dated respectively 20 March and 17 July 1987, its view that the periods stipulated in its memorandum of 30 July 1980, although not expressly provided for in Regulation No 1035/72, were justified by the provisions of Article 14(1) pursuant to which aid is granted to producers' organizations in order to encourage their establishment and facilitate their operation, so that aid paid after four years no longer constituted start-up aid.

7 Reference is made to the Report for the Hearing for a more detailed account of the background to and the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 In support of its application, the Italian Government makes three main submissions: (1) absence of a statement of the reasons on which the contested decision is based, (2) infringement and misapplication of Articles 14 and 36 of Regulation No 1035/72 and (3) misuse of powers by the Commission, inasmuch as it exercised a power in regard to the stipulation of periods for payment which is not conferred on it by any provision of the regulation but which it derived from a misinterpretation of Article 14(1). Since the third submission is broadly similar to the second submission it will be examined together with the second submission.

9 In the alternative, the Italian Government further submits that, even if the period for payment of the aid stipulated by the contested decision were valid, the stipulated period should nevertheless begin to run from the date of recognition of the organizations and not from the date of their formation.

Inadequate statement of reasons

10 The Italian Government alleges that the contested decision, which does not even mention the amount of the reimbursement requested, contains an inadequate statement of the reasons on which it is based, inasmuch as it does not state why the reimbursement was lower than the amount which had been claimed. In that connection it considers that, although the penultimate recital in the preamble to the decision states that the amount charged to the EAGGF was determined according to criteria communicated to the Italian authorities in the Commission's memorandum of 17 July 1987, a statement of reasons consisting of a reference to another document is not sufficient in the present case.

11 In that connection it should be recalled that the Court has already held that decisions on the clearance of accounts are not required to contain a detailed statement of the reasons on which they are based, where the government concerned was closely involved in the process by which the decision came about and is therefore aware of the reason for which the Commission considered that the disputed sum might not be charged to the EAGGF (see judgment of 27 January 1981 in Case 1251/79 *Italian Republic* v *Commission* [1981] ECR 205 and, most recently, the judgment of 24 March 1988 in Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749).

12 In the present case, it should be pointed out that the penultimate recital in the preamble to the contested decision refers to the memorandum of 17 July 1987 in

which the Commission reiterated with regard to the period for payment the view which it had already expressed in a memorandum of 30 July 1980. As the documents in the file show, that memorandum brought to an end an abundant exchange of correspondence on that subject between the parties which had gone on for more than seven years. It cannot therefore be disputed that the Italian Government was closely involved in the process by which the contested decision came about and that it was therefore aware of the reason for which the Commission considered that the disputed sum might not be charged to the EAGGF.

13 In those circumstances, the submission that the decision was based on an inadequate statement of reasons must be rejected.

Infringement and misapplication of Articles 14 and 36 of Regulation No 1035/72

14 The Italian Government puts forward two arguments in this respect. First, it asserts that Article 14 stipulates no period for the payment of the aid. The three-year period mentioned in that article is only a point of reference for determining the amount of the contribution. It goes on to state that, even if it is appropriate for the payment to be made as swiftly as possible in order to facilitate the initial period of the organization's existence, that does not mean that it must take place within a predetermined period of three years, since subsequent payment also permits the objective of the Community rules to be attained.

15 The Commission replies that it has always regarded itself as bound to comply with the three-year period, not because that is a mandatory period laid down by the Community rules, but because observance of that stipulated period is the only way in which the objectives pursued by Article 14(1) may be achieved. It stresses that, in order to take account of the difficulties reported by the Italian authorities, it relaxed in its memorandum of 30 July 1980 the conditions relating to the starting point and the duration of the payment period. Finally, it emphasizes that, if it were to agree to a period of six, seven or eight years after the formation of the producers' organizations, such a period could in no event be regarded as a reasonable period.

16 In this respect, although it is undeniable that Article 14(1) does not expressly stipulate any period for the payment of the aid in question and that the expression

'... grant ... aid ...' is not unequivocal, it is clear from the very terms of that provision that the aid in question is intended to facilitate the commencement of operations of producers' organizations whose formation is encouraged by Regulation No 1035/72, as is stated in the 10th and 11th recitals in the preamble to the regulation, in order to facilitate the attainment of the objectives of the common organization of the market in fruit and vegetables. The provision in question refers in fact to aid which may be granted by Member States to producers' organizations during the three years following the date of their formation, im order 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.

17 That objective may, however, only be attained if the aid is not only granted within a brief period but is also paid swiftly to the organizations concerned in such a way that they may in fact avail themselves of it, thus increasing the likelihood of effective action on their part. The stipulation of a short period for payment of this aid thus appears to be necessary in order to achieve the aim assigned thereto by Regulation No 1035/72.

18 As regards the possible Community financing of the aid up to the amount of 50% by the EAGGF, it should be observed that the Commission is entrusted with the management of the EAGGF in pursuance of Article 11 of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218), whose provisions are applicable to the markets in fruit and vegetables by virtue of Article 36(1) of Regulation No 1035/72, which makes express reference to the former regulation. The Commission also has the power to impose rules on the Member States in the context of the EAGGF accounts, in pursuance of Article 7 of Regulation No 729/70.

19 It should therefore be recognized that in the present case the Commission did have the power, by stipulating a period for payment, to specify the scope of a provision of a general nature such as Article 14(1), given that that was necessary in order to preserve the purpose of the aid in question, namely that of start-up aid. It should, however, be stressed that such a power must be exercised on the basis of general instructions which must be established in consultation with the parties concerned and communicated to them in time. That requirement was observed in the present case, as is apparent from the memoranda of 13 December 1977 and 30 July 1980 which are contained in the file.

20 It should also be observed that, in accordance with the principle of genuine cooperation between the Community and the national authorities laid down in Article 5 of the EEC Treaty, the national authorities must ensure that the objective of the Community aid scheme in question is achieved, so as to ensure the correct implementation of Community law in the interests of the traders concerned. They are therefore required to effect the payment within a brief period which accords with the objective of start-up aid laid down in Regulation No 1035/72, on condition that the period stipulated by the Commission is reasonable and not arbitrary.

21 In that connection it should be pointed out that, at the hearing, the representative of the Italian Government conceded that it was necessary to observe a reasonable period for payment but persisted in challenging the duration of the period stipulated by the Commission in its memorandum of 30 July 1980. It remains, therefore, to examine whether the duration of that period was stipulated in a manner which was reasonable and not arbitrary.

22 In that connection it should be considered that the payment period stipulated in this case by the Commission, namely a period of three years for the first two years of operation and four years for the third year, those periods beginning to run from the date of formation of the organization, is a reasonable period given that its duration seems sufficiently long to enable the Member State concerned to obtain the information necessary for calculating the amount of aid to be granted to a specific organization, without altering the nature of that aid as start-up aid.

23 Article 14(1) in fact provides that the value of production marketed by an organization, which is the criterion on the basis of which the amount of aid is calculated, is to be calculated on the basis of members' average marketed production during the three calendar years immediately preceding the year in which they became members and on average producer prices obtained by those members over the same period. Since such figures are in principle available in respect of each producer at the time of initial membership or shortly afterwards, the Member State concerned had at least one year in which to carry out the various administrative steps prior to payment of the aid, so that the period undoubtedly constitutes a reasonable period.

24 It remains to examine the argument put forward by the Italian Government that, even were a mandatory period applicable, certain delays in the payment of aid were due to a fact-finding investigation carried out by the Commission or to subsequent verifications decided upon by the Italian authorities on the basis of the results of that investigation, in order to check whether the organizations were meeting the conditions laid down by Article 14(1).

25 That argument cannot be accepted. As far as the Commission's investigation which ended in 1981 is concerned, the Italian Government has not been able to adduce, even in response to a question asked by the Court on this point, any evidence of the existence of a causal link between the delays noted in the payment of aid and the conduct of that investigation. As regards the checks carried out by the Italian authorities, it should be recalled that the Court has already held, in its judgment of 28 January 1986 in Case 129/84 *Italy* v *Commission* [1986] ECR 309, that a government's decision to arrange for formal national recognition by national authorities of the organizations concerned and entry of the recognized organizations on a list is not a decision capable of affecting the application of Community law. Any delays attributable to checking procedures relating to conditions for national recognition cannot therefore be taken into consideration.

26 The final argument put forward by the Italian Government, that the delays noted in the payment of aid may be explained by payment difficulties occurring on account of the budgetary unavailability of funds, cannot be accepted either. The Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community rules.

27 It follows that the submissions based on infringement and misapplication of Articles 14 and 36 of Regulation No 1035/72 must be rejected.

The alternative submission

28 The Italian Government submits last of all that, even if the period allowed for payment of aid in the contested decision was valid, it should begin to run from the

date of recognition of the organizations, and not from the date of their formation, on the ground that the Commission's memorandum to the Italian Government of 30 July 1980 had aroused a legitimate expectation that that would be the case. It argues that, if the Commission had taken into account the date of recognition, the amount to be reimbursed ought to have been increased by LIT 158 524 000.

29 In reply to a question asked by the Court on this point, the Commission acknowledged that this submission was well founded and confirmed, in a letter dated 14 June 1988, that after examining the documentation received from the Italian authorities, it was prepared to pay to them the sum of LIT 158 524 650.

30 In those circumstances, and regard being had to the legitimate expectation which the Italian Government was reasonably entitled to rely upon following the position taken by the Commission in its memorandum of 30 July 1980, the alternative submission must be upheld.

31 On the basis of the foregoing considerations, the contested decision must be declared void inasmuch as it did not recognize as being chargeable to the EAGGF, Guidance Section, the amount of LIT 158 524 650 under the heading of aid granted to fruit and vegetable producers' organizations.

Costs

32 Under the terms of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for. Nevertheless, under the terms of paragraph 3 of that article, where each party succeeds on some and fails on other heads, the Court may order the parties to bear their own costs in whole or in part. Since the Italian Republic's application has been successful in part, each party should be ordered to bear its own costs.

On those grounds,

THE COURT

hereby declares:

(1) Commission Decision C (87) 2027 of 5 November 1987 on the reimbursement to the Italian Republic by the European Agricultural Guidance and Guarantee Fund, Guidance Section, of aid for 1984 granted to organizations of fruit and vegetable producers, pursuant to Article 14(1) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972, is declared void in so far as the Commission did not allow a sum of LIT 158 524 650 to be charged to the EAGGF in connection with such aid.

(2) The remainder of the application is dismissed.

(3) Each party shall bear its own costs.

Due Slynn Kakouris Schockweiler

Koopmans Mancini Joliet Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 14 November 1989.

J.-G. Giraud
Registrar

O. Due
President