1. A decision on the clearance of accounts relating to expenditure financed by the EAGGF is not required to contain a detailed statement of reasons 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 considers that the disputed sum may not be charged to the EAGGF.

2. The fact that Article 14(1) of Regulation No 1035/72 does not stipulate any period for the payment of start-up aid which may be granted to fruit and vegetable producers' organizations does not preclude the Commission, provided that it proceeds on the basis of general instructions drawn up in consultation with those concerned and communicated to them in time, from exercising the powers conferred on it as administrator of the EAGGF to stipulate such a period, so that the aforementioned aid may meet the purpose of start-up aid for which it is intended.

   Once a short, but none the less reasonable and not arbitrary, period has been stipulated in order to facilitate the attainment of the objective pursued by the Community rules, the national authorities, in accordance with the principle of genuine cooperation between themselves and the Community authorities laid down in Article 5 of the EEC Treaty, are obliged to observe that principle so as to ensure the correct implementation of Community law in the interests of the traders concerned.

3. In the context of the financing by the EAGGF of fruit and vegetable producers' organizations pursuant to Regulation No 1035/72 the decision by a Member State 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.

4. 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.

REPORT FOR THE HEARING
delivered in Case 14/88 *

I — Legal background and summary of the facts

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 in Article 13 for producers' organizations to be established on the initiative of producers of fruit and vegetables to serve the purpose:

* Language of the case: Italian.

(i) of promoting the concentration of supply and the regularization of prices at the producer stage in respect of one or more of the products referred to in the regulation,

(ii) of making suitable technical means available to producer members for presenting and marketing the relevant products,

and which require member producers:

(i) to sell their total output of the product or products by reason of which they have become members through the organization; the organization may, however, waive this requirement in respect of certain quantities,

(ii) to apply, with regard to production and marketing, rules which have been adopted by the producers' organization with a view to improving product quality and adapting the volume of supply to market requirements.

Pursuant to Article 14(1) of that regulation, Member States were entitled to grant aid to producers' organizations, during the three years following the date on which they were established, to encourage their formation and to facilitate their operation, provided that the organizations furnished adequate guarantees as regards the duration and effectiveness of their activities.

Article 36(2) of that regulation provides that the aid granted by Member States in accordance with the provisions of Article 14(1) is to be reimbursed by the Guidance Section of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as 'the EAGGF') at the rate of 50%.

Article 7(2) of Regulation (EEC) No 449/69 of the Council of 11 March 1969 on the reimbursement of aid granted by Member States to organizations of fruit and vegetable producers (Official Journal, English Special Edition 1969 (I), p. 101), stipulates that the Commission is to take a decision on requests for reimbursement after consulting with the Fund Committee. That regulation laid down the conditions and detailed rules for the reimbursement by the Guidance Section of the EAGGF of aid granted by Member States to producers' organizations in accordance with the provisions of Article 2(1) of Regulation (EEC) No 159/66 of the Council of 25 October 1966 laying down additional provisions for the common organization of the market in fruit and vegetables (*Journal officiel* L 192, p. 3286). The latter article is reproduced in the same terms in Article 14(1), referred to above.

Since experience had shown that in several Member States, including Italy, aid was being granted well beyond the three years following the formation of the various producers' organizations, the Commission drew up a working document, No 3949/VI/77 of 13 December 1977 in which it drew the attention of Member States to the difficulties created by the payment of aid after the three years following the formation of the organization and reminded them that 'to be eligible for reimbursement by the Guidance Section of the EAGGF under the heading of start-up aid, such aid must be granted during the three years

following the formation of an organization'. It also pointed out that the reminder was to be understood as meaning that a request for aid had accordingly to be made during that period of three years and that the Member State had to ensure that the aid was granted during the same period in order to safeguard the purpose of that aid as start-up aid, and that a strict application of that condition would be made by the EAGGF on the occasion of the next examination of requests for reimbursement.

By a letter dated 27 May 1980, the Italian Ministry of Agriculture and Forests informed the Commission of difficulties encountered in Italy in observing the period of three years, particularly as regards the payment of aid in respect of the third year, and drew the Commission's attention to the fact that the Community regulations stipulated neither an exact date for the payment of aid nor the penalties to be imposed in the event of a failure to observe the period in question. It also expressed the opinion that, in view of the fact that only the act of recognition was capable of constituting evidence that an association of producers of fruit and vegetables satisfied the conditions laid down in Regulation No 1035/72, it was in its view appropriate to take as the point of departure for that period not the date of formation of the association but the date of recognition, as was provided for in the case of other associations of producers in all the other sectors of agricultural production.

In a memorandum dated 30 July 1980, the Commission acknowledged that it was appropriate to take as the point of departure for the period in question the date of recognition. In order to take account of the difficulties encountered in Italy and in other Member States in observing that period the Commission stated, however, that with effect from 1981 requests for reimbursement would be allowed only on condition that the aid in respect of the first two years of operation had been granted and paid during the period of three years following the date of formation and that the aid in respect of the third year of operation had been granted and paid at the latest during the fourth year following the date of formation, but that by way of exception it would allow requests for reimbursement of payments made up to 1980, even if they did not comply with those new periods.

During the course of 1984 Italy paid a total of LIT 5 870 764 800 to various Italian producers' organizations by way of aid granted under Article 14(1) of Regulation No 1035/72 and, by letter of 12 December 1985, requested the Commission for reimbursement of 50% of that amount, namely LIT 2 935 382 400.

In reply to that request for reimbursement, the Commission informed the Italian Ministry of Agriculture by letter dated 3 June 1986 that, pursuant to the rules contained in its memorandum of 30 July 1980 concerning the periods of time which it deemed reasonable, it took the view that it was obliged on the ground of failure to observe those periods to decline to make the 50% reimbursement provided for by Community rules in 27 out of the 32 cases submitted.

By letter dated 18 July 1986 the Italian Ministry of Agriculture requested the Commission to reconsider its view and to allow reimbursement in all the requests submitted. In that connection it claimed principally that:

(i) the period of three years provided for in Article 14 of Regulation No 1035/72 did not seem to be capable of being

construed as a mandatory period to be observed at the risk of prescription, in particular because the provision used the expression 'may grant' and not 'may pay', and that no wording indicating a deadline was contained therein;

(ii) in paragraph 1a of Article 14, added to Regulation No 1035/72 by Council Regulation No 1154/78 of 30 May 1978 (Official Journal 1978, L 144, p. 5), the Community legislature interpreted start-up aid as aid granted during a period of five years following the date of formation of producers' organizations, which period of five years was confirmed by Council Regulation No 3284/83 of 14 November 1983 amending Regulation (EEC) No 1035/72 (Official Journal 1983, L 325, p. 1) which, in Article 3(2)(b), stated that 'the aid shall be paid in annual instalments for a maximum of five years following the date of recognition';

(iii) payment had had to be deferred because the fact-finding inquiries carried out by the Commission into the producers' organizations were still being carried out;

(iv) the examination of all the files was completed in 1981 but in the relevant section of the Italian budget the appropriations necessary for making the payments had not been approved. Those appropriations were entered in the budget by a decree of the President of the Republic dated 29 December 1983 and were available on 29 March 1984, the date on which the decree was published in the Italian Official Journal.

By a letter of 23 October 1986 the Commission confirmed its view on the application of Article 14(1) of Regulation No 1035/72. Following further objections from the Italian Ministry raised in letters of 21 February and 9 April 1987, it put an end to the discussion by two memoranda, No 53.941 of 20 March 1987 and No 61.000 of 17 July 1987, which preceded the decision of 5 November 1987 which is the subject of this application.

In those two memoranda the Commission confirmed its view that the periods mentioned in its memorandum of 30 July 1980, even if they were not expressly provided for in Regulation No 1035/72, were justified by the provisions of Article 14(1) according to which aid to producers' organizations was to be granted 'to encourage their formation and to facilitate their operation', with the result that aid paid four years later did not constitute start-up aid.

In its decision, the Commission calculated at LIT 700 924 892 the 50% share to be borne by the Guidance Section of the EAGGF of the aid of LIT 1 401 849 734 paid by Italy to organizations of fruit and vegetable producers in 1984, that amount having been determined on the basis of the criteria communicated to Italy by memorandum No 61.000 of 17 July 1987 and deemed to be the only amount granted in conformity with the provisions of Article 14(1).

II — Written procedure and conclusions of the parties

The application made by the Italian Republic was lodged at the Court Registry on 14 January 1988.

Upon 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. However, it asked the Commission and the Italian Government to reply in writing to a certain number of questions. That request was complied with within the period prescribed.

The applicant contends that the Court should:

(i) on the grounds set out in its application, declare void Decision C (87) 2027 of the Commission of 5 November 1987, inasmuch as it disallows from reimbursement by the EAGGF, Guidance Section, the greater amount claimed by Italy;

(ii) order the defendant to pay the costs.

The Commission claims that the Court should:

(i) dismiss the action brought by the Government of the Italian Republic and affirm the validity and lawfulness of the decision of 5 November 1987 against which the action is brought;

(ii) order the applicant to pay the costs.

III — Summary of the submissions and arguments of the parties

1. *The statement of reasons*

The Italian Government maintains that the contested decision is manifestly vitiated by an inadequate statement of reasons inasmuch as it does not state the reasons for which reimbursement was fixed at only LIT 700 924 892 instead of LIT 2 935 382 440, as the Italian authorities claimed, and no mention at all is made of that claim for a greater sum.

In that connection it submits that although the Commission stated in the fifth recital that 'the amount was determined according to the criteria communicated to Italy by Commission memorandum No 61.000 of 17 July 1987', reasoning supplied by reference to another document is not sufficient in the present case, and that even if it were to be acknowledged to be adequate, that memorandum does not fulfil the requirement to provide a statement of reasons since it justifies the reduction applied to the request for reimbursement made by the Italian authorities by reasoning based on the belatedness with which those authorities paid the aid to the producers' organizations, which is entirely unjustified.

The Commission replies that the penultimate recital in the preamble to the contested decision refers specifically to Commission memorandum No 61.000 of 17 July 1987, which terminated a voluminous correspondence exchanged between the Commission and the Italian Ministry of Agriculture for more than seven years by definitively stating the Commission's views prior to the adoption of the decision.

The Commission cites the judgments of the Court of 14 January 1981 in Case 819/79 *Federal Republic of Germany* v *Commission* [1981] ECR 21, 36, paragraphs 20 and 21, and of 16 May 1984 in Case 9/83 *Eisen und Metall AG* v *Commission* [1984] ECR 2085, paragraph 29, in which the Court held that

a succinct statement of reasons including one given 'by reference' was sufficient where the recipient was already aware of the reasoning on which it was based. It considers that, since the Italian Ministry of Agriculture was directly involved in discussions with the Commission over a period of several years, it is clear that that case-law applies to the present case and that the contested decision must be regarded as containing a sufficient statement of the reasons on which it was based.

In its reply, the Italian Government emphasizes that in its opinion the reference made by the Commission to the Court's settled case-law as regards a defect in the statement of reasons is not relevant, because the results of the procedure prior to the adoption of the decision, in which both the Community and the Italian authorities were heard, have not been accurately reflected in the contested decision.

2. *Infringement and misapplication of Articles 14 and 36 of Regulation No 1035/72 in conjunction with Regulation No 449/69*

The Italian Government claims that a time-limit for payment (or 'grant') is stipulated neither expressly nor by implication in the Community rules, which mainly provide that 'payment' is to take place in respect of the first three years as from the formation of the organizations in order to encourage their formation and facilitate their operation.

Since the aforesaid Article 14(1) does not refer to the initial functioning or setting up of an organization but merely to its operation, the Italian Government considers that the aid is not intended solely to be start-up aid, so that there is no absolute and imperative need to tie aid entirely to the setting-up of an organization and there is no reason to regard the payment as being effective only if it is made within the strict time-limits indicated by the Commission.

The three-year period, it says, is valid only for reference purposes in determining the amount of the contribution. It does not constitute the period within which the payment must be made.

It adds that, even if it is appropriate for the payment to be made as swiftly as possible so as to facilitate the existence of the organization at its outset, that does not mean that it must be effected within the three-year period, since a later payment may also be capable of enabling the objective pursued by the Community rules to be attained.

It concludes that, by requiring the strict observance of a time-limit for payment which is not provided for in the Community rules, the Commission has misinterpreted and misapplied those rules.

The Commission claims principally that an examination of the correspondence exchanged between the parties reveals that the Commission always regarded it as necessary to comply with the three-year period, not because it is compulsorily imposed by Community rules as a mandatory period but because observance of that period is the only means whereby the objectives pursued by the aforesaid Article 14(1) may be attained.

In its view, the aid referred to in that article is in fact intended to encourage the formation and facilitate the initial operation of producers' organizations on condition

that they provide an adequate guarantee as to both the duration and the effectiveness of their activities. It is obvious, in its view, that in the agricultural sector where it is well known that the capital available is limited, and all the more so in a country like Italy where the rate of inflation was very high during the years when the events occurred, the effectiveness of aid is directly proportionate to the speed with which it is 'granted'. The period of three years during which the aid was to be granted therefore amounts, in its view, to a deadline beyond which the aid was no longer able to attain the objective pursued.

The Commission goes on to stress that, in order to avoid the difficulties aired by the Italian Ministry of Agriculture, it agreed, on the one hand, that the aid should be paid during the fourth year following the formation of the organization as regards the third part of the request for aid submitted at the end of the third year and, on the other hand, that the three-year period should begin to run as from the date of recognition of the organization, and not from the date of formation.

Moreover, it claims that it is inconceivable that aid for the formation and initial functioning of an organization can be regarded as such where it is granted six, seven or eight years after the formation of such an organization.

It considers that a period of such length cannot be justified by reliance on the principle of the observance of a reasonable period that Member States are required to respect, in accordance with the Court's case-law and in particular the judgments of 3 March 1982 in Case 14/81 *Alpha Steel* [1982] ECR 749 and of 21 September 1983 in Joined Cases 205 to 215/82 *Deutsche Milchkontor* [1983] ECR 2633. In its view, it is in fact clear that such a period could not in any event be regarded as a reasonable period.

The Commission further considers that the Member States must have accepted the Commission's statements which were communicated to them in the working document of 13 December 1977. It could not therefore accede to the Italian requests without infringing the principle of equal treatment:

(i) between Member States imposed by Community law, as laid down as far as the observance of periods of time fixed for all the Member States is concerned in the judgment of 27 May 1981 in Joined Cases 142 and 143/80 *Essevi* and *Carlo Salengo* [1981] ECR 1413;

(ii) between traders in different Member States as interpreted with regard to the conditions under which expenditure may be charged to the EAGGF in the judgment of 27 February 1985 in Case 56/83 *Italian Republic* v *Commission* [1985] ECR 703, at p. 713, paragraph 31.

On that point, the Italian Government stated in its reply that the need to ensure similar treatment in all the Member States was not relevant because the Italian authorities had in any event pointed out the specific factor capable of justifying a different solution.

3. *Misuse of powers*

The Italian Government also alleges that the Commission misused its powers inasmuch as it appears to have exercised, in regard to the stipulation of periods for payment, a power

which is not conferred on it by any provision other than Article 14(1), mentioned above, which it misinterpreted as conferring on it such a power.

The Commission's position, it adds, is illogical, as is demonstrated by the arbitrary nature of the determination of the period for payment, if one considers that it allowed aid relating to the third year to be lawfully paid before the end of the fourth year, a period which is not mentioned in Article 14(1), mentioned above, and that it interpreted that period to run from the date of recognition of the organizations and not from their formation, thereby construing that provision freely.

The Italian Government also emphasizes that the Italian authorities had pointed out to the Commission two facts which, according to them, provided ample justification for the delay in payment, were of major significance and should be taken into consideration, even if the period in question were to be deemed to be a mandatory period:

(i) first, the fact that certain organizations were subjected to a fact-finding inquiry by the Commission which ended during 1981 and that, as regards the others, a subsequent verification on the basis of the results of that inquiry was carried out at national level in order to see whether the organizations offered 'sufficient guarantees as to the duration and the effectiveness of their activities', a point on which the Commission has refrained from any comment;

(ii) secondly, the payment difficulties occurring on account of the budgetary unavailability of funds.

The Italian Government further claims, in the last alternative, that in the contested decision the Commission treated the period as running from the 'formation' of the organizations and not from their 'recognition', which runs counter to the view expressed in its abovementioned memorandum of 30 July 1980 (subsequently confirmed in its defence). It stresses that the amount of LIT 700 924 892 appearing in the contested decision was arrived at on the basis of a period which runs from the formation of the organizations and not from their recognition, whereas, if the Commission had gone by the date of recognition, the amount stated would have been LIT 158 524 000 greater.

The application should therefore be granted on this point.

The Commission replies that, as far as it can understand, the Italian Government is alleging in this submission that the Commission:

(a) did not take account of the internal administrative difficulties encountered by the Italian Government,

(b) arbitrarily fixed the periods for payment of aid,

(c) did not wish to charge to the EAGGF expenses which it had legitimized by its earlier statements,

and that if those are the matters amounting to the misuse of powers alleged against it, the allegations may easily be rebutted.

As regards internal administrative difficulties, the Commission refers to the Court's case-law according to which a Member State may not plead internal administrative difficulties in order to justify the incorrect application of Community law in its internal legal order (judgments of 2 December 1980 in Case 43/80 *Commission* v *Italian Republic* [1980] ECR 3643, 3648, paragraph 4, and of 17 December 1981 in Joined Cases 30 to 34/81 *Commission* v *Italian Republic* [1981] ECR 3379, 3384, paragraph 4). It considers that, since the Italian Government was aware of the Commission's position as early as December 1977, it was for it to implement in due course the procedures appropriate for achieving the objectives laid down by Community law.

As regards the administrative difficulties encountered by the Commission in the context of the fact-finding inquiry which could in part explain the delays incurred in the grant of payments by the Italian authorities, the Commission states that the Italian Government has never produced the slightest evidence in this connection.

As regards the arbitrary fixing of the date of formation of the organizations, and not the date of recognition, as the beginning of the period for payment, the Commission refers to paragraph 20 of the judgment of 28 January 1986 in Case 129/84 *Italian Republic* v *Commission* [1986] ECR 309, at p. 309, 334, which states that 'Regulation No 1035/72 imposes a number of conditions on producers' organizations, but . . . 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 . . . , such administrative formalities cannot in any way affect the position under Community law'. It infers therefrom that the date on which the period to be taken into consideration may be treated as beginning to run is the date of the formation of the producers' organizations. Since the Commission had in the present case gone so far as to accept the date of recognition as being valid, it considers that it is impossible to accuse it of a misuse of powers.

As to the refusal to charge to the EAGGF expenses which it had legitimized by its earlier statements, the Commission claims that, in its view, a reading of the correspondence clearly shows that the Commission never altered its position on the essential points of the discussion. It considers that the Italian Ministry of Agriculture, having misinterpreted the Commission's statements, cannot now be heard to claim that the Commission should bear the consequences of that ministry's erroneous interpretation. On that point, the Commission refers to what the Court stated in its judgment of 27 January 1981 in Case 1251/79 *Italian Republic* v *Commission* [1981] ECR 205, at p. 221, paragraph 17, namely that the Commission is not obliged to charge to the EAGGF expenditure incurred as a result of an incorrect interpretation of Community law unless the incorrect interpretation may be attributed to a Community institution.

As regards the statement in the last alternative made by the Italian Government to the effect that if the period to be taken into consideration were to begin to run as from the date of recognition of the organizations and not from the date of formation, the amount of the reimbursement would have been LIT 158 524 000 greater, the Commission requests the Italian Government to produce specific evidence in support.

IV — Replies to the questions asked by the Court

Questions to the Commission

1. The Commission was requested to specify:

(i) whether the amount of LIT 700 924 892 appearing in the contested decision was arrived at on the basis of a period running from the formation of the organizations of producers of fruit and vegetables or their recognition and to give its comments, if the former is the case, on the reason for that choice, when it acknowledged in particular in its memorandum of 30 July 1980 and on p. 10 of its defence that it had accepted that time may run from the date of recognition,

(ii) and, in the event that the contested decision takes account of the period from the formation of the organizations, whether it is in agreement with the assertion of the Italian Republic that if that decision had been based on a period running from the date of recognition the sum would have been LIT 158 524 000 greater.

The Commission replies that the amount of LIT 700 924 892 was arrived at on the basis of the period running from the formation of the organizations of producers of fruit and vegetables and that the date of recognition of the organizations was accepted by the Commission in order to facilitate the task of the Italian Government in so far as the lapse of time between formation and recognition is no more than two years.

It states that, in the context of the contested decision, four requests were rejected, not for reasons related to the question of formation or recognition, but owing to a lack of specific information.

The Commission states that the amount mentioned is LIT 158 524 000 in the reply, LIT 158 110 250 in the memorandum submitted to the Court by the Italian Government on 26 July 1988 and LIT 158 524 650 according to its calculations, the amount which it states that it is ready to take into consideration as soon as further particulars have been supplied to it.

2. Asked to state why it fixed at three and four years the reasonable period within which aid for the first two years of functioning and for the third year of functioning had to be granted and paid, whereas Article 3(2) of Council Regulation No 3284/83 takes five years as being a reasonable period, the Commission replies that the reasonable period fixed by the Commission in 1977, after exhaustive explanations had been given to the Member States, is based on the following considerations:

(a) the data necessary for calculating aid are related to the average value of the products marketed during the three years prior to formation and are consequently already available at the beginning of the three-year period during which provision is made for aid. A fourth year was added in order to facilitate administrative tasks;

(b) the need to avoid the negative effect of inflation which, during the period in question, exceeded 20% in Italy.

Question to the Commission and to the Italian Republic

Asked to state to what extent the fact-finding inquiry by the Commission into the functioning of producers' associations, which was concluded in 1981, and the administrative problems arising out of the conduct thereof, could have delayed the handling by Italy of requests for recognition submitted by producers' organizations and account for some of the delays by the Italian authorities in the payment of aid:

(i) the Commission replies that the fact-finding inquiry which it carried out between 1978 and 1980 does not appear to have been of such a nature as to cause delays, which were found to have occurred before, during and after the period under consideration;

(ii) in reply, the Italian Government informs the Court that 'the associations in respect of which payment has not been made on account of the fact-finding inquiry being carried out by the Commission of the European Communities are those indicated below, in the amounts specified:

(1) Arpos, Cagliari 1st and 2nd years LIT 1 211 950 300

(2) Concoosa, Salerno 1st and 2nd years LIT 51 607 400

(3) AOSA, Nocera Inf. 1st and 2nd years LIT 137 178 100

(4) APO, Palermo 3rd year LIT 127 833 600

(5) APOC, Caserta 3rd year LIT 244 831 000

Total LIT 1 773 400 400'

The Italian Government states that 'in the light of the factors emerging during the inquiry, it was necessary to gather further information on the functioning of the associations even if they were not covered by the inquiry and, consequently, in respect of all the associations which, at that date, had submitted the requests in question it was necessary to conduct a more detailed inquiry which caused the period of three years (a deadline which is not laid down in any regulatory provision) to be exceeded'.

Gordon Slynn
Judge-Rapporteur