the products in question, at least in part, even during the maturing period whereas the system of aids is intended to enable the withdrawal from the market of products which fulfil all the conditions for them to be put on the market.

3. Although the provisions of Community law relating to aids in respect of the private storage of certain cheeses do not expressly lay down the form of the contract for the storage of cheese, they are based on the assumption that every storage operation must be preceded by the conclusion of a written contract in order to be eligible for the Community aid provided for in Article 10 (2) of Regulation No 971/68.

It follows that a contract of storage is not concluded, for the purposes of Regulation No 971/68, until the moment when the written instrument is signed.

In Case 62/82

ITALIAN REPUBLIC, represented by Arnaldo Squillante, President of Section at the Consiglio di Stato [State Council], 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,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Gianluigi Campogrande, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision 81/1044 of 16 November 1981 concerning the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975 (Official Journal, L 375, p. 27) is void in part,

THE COURT,

composed of: J. Mertens de Wilmars, President, P. Pescatore and A. O'Keeffe (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due and K. Bahlmann, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

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

1. 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) lays down a system whereby refunds on exports to non-member countries and intervention intended to stabilize the agricultural markets are directly financed by the Community through the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the Fund").

By Article 4 of that regulation the Commission is to make available to the designated national authorities and bodies the necessary funds.

According to Article 5 (2) (b) of the same regulation the Commission is to clear the accounts relating to the expenditure incurred by the national authorities and bodies on the basis of the annual accounts presented by the Member States.

According to Article 8 of Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section (Official Journal, English Special Edition, Second Series, III, p. 109) the decision as to clearance is to cover, *inter alia*, the determination of the amount of expenditure incurred in each Member State during the year in question, recognized as chargeable to the Guarantee Section of the Fund.

2. By a decision dated 16 November 1981 [1] and notified to the Government of the Italian Republic by letter dated 2 December 1981, the Commission determined the amount of expenditure for the financial year 1975 recognized as

1 — Published in the Official Journal 1981, L 375, p. 27.

chargeable to the Guarantee Section of the Fund in relation to the Italian Republic.

It is clear from the file that, in adopting that decision, the Commission did not charge to the Fund, *inter alia*, five items of expenditure which resulted in a sum of LIT 8 395 731 522 being charged to the Italian Republic in respect of those items.

The items in question were as follows:

Expenditure of LIT 880 058 997 in respect of a margin of 2% for losses in respect of skimmed-milk powder;

Expenditure of LIT 3 727 568 990 in respect of aid for the private storage of cheeses;

Expenditure of LIT 78 596 145 in respect of aid for the private storage of dried pigmeat;

Expenditure of LIT 3 610 555 765 in respect of aid for the storage of wine;

Expenditure of LIT 98 951 625 in respect of aid for the re-storage of wine.

The Commission regarded those items of expenditure as failing to comply with the provisions governing intervention measures. In the course of bilateral contacts preceding the decision as to the clearance of the accounts the Italian authorities were informed of the specific reasons why each operation was regarded as failing to comply with those provisions. Those reasons were summarized in the "Summary report, conclusions from the preliminary work for the clearance of the accounts of the Guarantee Section of the Fund for the years 1974 and 1975", which was forwarded to the Italian Republic. The reasons were the subject of a final discussion during consultative meetings of the Fund Committee held before the adoption of the decision with regard to clearance as required by Article 5 (2) of Regulation No 729/70.

3. By an application registered at the Court on 11 February 1982 the Italian Government instituted the present proceedings.

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.

II — Conclusions of the parties

The *Italian Republic* claims that the Court should:

1. Declare the decision of the Commission of the European Communities of 16 November 1981 void in so far as the following sums are excluded from being financed by the Fund's Guarantee Section:

   LIT 880 058 997
   LIT 3 727 568 990
   LIT 78 596 145
   LIT 3 610 555 765
   LIT 98 951 625
   (Total LIT 8 395 731 522);

2. Order the defendant to pay the costs.

The *Commission* contends that the Court should:

1. Dismiss the application; and

2. Order the Italian Republic to pay the costs.

III — Submissions and arguments of the parties

General aspects

In support of its application the *Italian Government*, the *applicant* in this case, contends that the Commission's decision is based on an erroneous interpretation of the Community regulations regarding the interventions to which items at issue relate and therefore constitutes to that extent an incorrect application of the provisions of Community law regarding the clearance of accounts.

The *Commission of the European Communities*, the *defendant* in this case, expresses first and foremost its concern at the tendency, which it has observed, not to regard the national intervention authorities as strictly bound by all the terms of the regulations governing the different market organizations. Although the national administrations have a great influence, both at the level of the Council and under the management committee procedure, on the contents of the Community regulations governing agriculture, they often regard those regulations as simply providing an indication of the means to be adopted for the management of the markets or even apply them in such a manner as to pursue objectives of national agricultural policy which are contrary to the common agricultural policy.

The Commission considers that it is its duty to oppose such a tendency and, in relation to the clearance of accounts, to deal regorously with the consequences. It is of the opinion that the Community must be particularly demanding with regard to compliance with the provisions of the regulations by the national administration because, on the one hand, those authorities have an opportunity to point out their particular difficulties in a given matter whilst, on the other hand, the national authorities designated by the Member States for the purpose of ensuring the operation of the common agricultural policy are under a duty to adopt all measures necessary to ensure performance of the obligations arising from the Treaty or from measures adopted by the institutions of the Community and to assist the Community in the performance of its task.

In that connection the Commission refers to a consistent line of decisions of the Court, in particular in relation to the clearance of accounts. Having regard to the close relationship established by the Court between the principle of the equal treatment of traders and the unity of the market, the Commission interprets that case-law as meaning that national measures which do not comply with provisions of Community law and are contrary to the objectives of the common agricultural policy are to be treated as incompatible with the principle of market unity and consequently with the concept of a common agricultural policy. It is therefore impossible for operations carried out in the context of such national measures to be financed by the Fund, given that the transfer of agricultural policy to the Community level was the sole justification for Community financing of agricultural expenditure.

The *Italian Government*, in its reply, subscribes completely to the view that the rules of Community law are mandatory and categorically rejects any suggestion of preference for a national agricultural policy contrary to the common agricultural policy by a deliberate failure to apply the latter. It remarks, on the other hand, that the dispute which has arisen regarding the charging of certain expenditure to the Fund results merely from different

interpretations of the provisions of Community law by the Italian intervention agency on the one hand and the Commission on the other. Whilst admitting that the meaning and scope of a rule of Community law must be uniform in all the States, the Italian Government considers that it is possible for a rule to be open to different interpretations prior to the existence of any measure designed to achieve uniform clarification and even for each interpretation to be advanced in the conviction that it is correct. In such a situation it seems to the Italian Government that the *a posteriori* finding that the relevant rule has not been applied correctly is not a sufficient ground for regarding the operation which had been carried out as not being a Community one, particularly if the common agricultural policy objective laid down by that rule has nevertheless been attained. It adds that the Italian intervention agencies have acted for years on the basis that they were correctly applying the Community rules and that only when it came to the preparation of accounts, several years after the operations had taken place, were they accused of failing to comply formally with the rules when there was no possibility of remedying the past failure but only of preventing a repetition in the future.

The Italian Government therefore considers that the sums at issue must be charged to the Fund essentially because the operations were conducted in compliance with the rules of Community law and secondarily because the Community objective laid down by those rules was attained even if they were not interpreted correctly.

As regards the Italian Government's alternative argument the *Commission*, in its rejoinder, retorts that the common agricultural policy does not consist solely of objectives and that the methods to be used to attain those objectives are not unaffected by the Treaty. Only the pursuit of those objectives by means of all the legal mechanisms and measures which comprise the common organization of the markets causes the operations carried out by the Member States to fall within the common agricultural policy and justifies the financing of those operations. Moreover, the equality of treatment of traders of the different Member States is guaranteed only if all those legal mechanisms and measures are applied in a uniform manner.

The individual items in dispute

(a) The exclusion of the expenditure in respect of losses of 2% in the processing of skimmed-milk powder into animal feed

The *Italian Government* points out that by virtue of national practices applied even before the entry into force of the common agricultural policy the Italian intervention agency has paid aid in respect of skimmed-milk powder for quantities including losses amounting to no more than 2% of the total. These losses represent the waste lost, for technical reasons, during the manufacturing process.

The Government claims that the Commission's argument to the effect that aid may be granted only for skimmed-milk powder which is actually used as animal feed, an argument which led it to refuse Community finance for the expenditure in respect of such losses, is not compatible with Regulation (EEC) No 990/72 of the Commission of 15 May 1972 on detailed rules for granting aid for skimmed milk processed into compound feedingstuffs and for skimmed-milk powder for use as feed (Official Journal, English Special Edition 1972 (II), p. 428).

Article 1 of that regulation states that "aid shall be granted for skimmed-milk powder which has ... been used in the manufacture of compound feedingstuffs ...". In the Italian Government's opinion

that can only refer to milk used in the process of the manufacture of the feed including any loss due to that process. Such losses are in fact a necessary and inevitable consequence of the process of manufacture. The quantities lost thereby are therefore part of the product which has "been used in the manufacture" even if not processed themselves. Furthermore, the concept of "actual" use was included in the Community regulations to indicate that the products in question must be destined solely for animal feed.

The Italian Government goes on to observe that the Commission's view is that the farmer does not benefit fully from Community aid inasmuch as he must himself bear the costs of the losses which inevitably occur in the processing of the milk for the manufacture of feed. To that extent the view of the Italian Government corresponds more closely to the objective of the Community rules, that is to say to make the use of skimmed-milk powder competitive in comparison to the use of substitute products.

Finally the processing undertaking has no interest in increasing the wastage since the amount of waste for which aid is granted is assessed case by case and may not exceed the 2% limit. On that point the Italian Government adds that the Commission's decision is erroneously based on a flat-rate reduction, with a maximum of 2%. The Government reserves the right to prove, as far as is possible, the average percentage of actual waste for which aid was paid.

The *Commission* is of the opinion that the exclusion of the aid paid by the Italian intervention agency to processors in respect of "losses" accords with both the scheme and with the letter of the relevant rules of Community law. In that connection it refers to the first recital in the preamble to Regulation (EEC) No 986/68 of the Council of 15 July 1968 laying down general rules granting aid for skimmed-milk and skimmed-milk powder for use as feed (Official Journal, English Special Edition 1968 (I), p. 260), which states that "provision must be made for the granting of aid for skimmed-milk powder which is denatured or used as feed." From that point of view it is essential that the powder be actually used as feed. It is not therefore sufficient that the relevant quantities are intended for use as feed by virtue of their use in the process of manufacturing the feed. As is confirmed by the third recital in the preamble to Regulation No 990/72, which states that provision should be made to ensure that "aid is granted only for ... skimmed-milk powder processed into feeding-stuffs", to be eligible for aid the product must be found in a processed form in the compound feed.

The Commission considers that the requirements of strict supervision in an economic sector which is so vulnerable to fraud means that it is impossible to contemplate a margin which amounts, in effect, to the payment of aid for a part of the product whose actual use cannot be checked. To accept such a margin would mean accepting that a part of the product which was in the trader's business and of which there is no trace on the market is eligible for aid. Such a concept cannot be accepted by the Commission in the context of the proper management of the market and of the Community budget.

As regards the flat-rate reduction, with a maximum of 2%, the Commission states that the Italian Republic has not as yet provided the documents required by Article 5 (1) of Regulation No 729/70 for the purpose of determining the precise sums paid out by the Italian intervention agency in respect of skimmed-milk powder which is not to be found in a processed form in compound feed. Consequently the Commission has to limit the amount which it charged to the Fund to that part of the Italian expenditure which definitely complied with the requirements of the Community rules.

Finally the Commission points out that it did not raise any objection with regard to that question in the financial years prior to 1974 because in the case of Italy it had never checked that type of expenditure in respect of earlier years.

In its reply the *Italian Government* refers to a circular of the Italian Ministry of Agriculture dated 10 July 1974 which provided for a margin of actual losses up to a maximum of 2%. That maximum percentage was fixed on the basis of technical surveys carried out at the processing plants. The processors were required to state the actual daily loss in their processing records and, at the stage when the aid was calculated, the provincial agricultural inspectorate informed the Italian intervention agency of the amount of the loss in the statement of quantities incorporated into animal feed.

An inquiry relating to the processing records of 11 manufacturers of animal feed who processed approximately 25% of all the milk powder in Italy during the years 1974 and 1975 revealed that the average actual loss for which aid was granted was 1.745% for the financial year 1974 and 1.464% for the financial year 1975.

On the basis of those data the applicant reaffirms its points of view and contends, as an alternative argument, that the reduction made by the Commission must correspond to the averages indicated, in respect of which the aid was granted, that is to say at the fixed rate of 1.5%.

The *Commission*, in its rejoinder, contends that the facts presented by the applicant in its reply show that the loss or waste during processing for which the Italian Republic granted aids was not checked to ensure that they were genuine but simply for accounting purposes. It was therefore possible to receive aid in respect of quantities of skimmed-milk powder which were not in the hands of the undertaking, provided only that they had been recorded in the books of account as an actual daily loss not exceeding 2% of the quantity contained in the final product.

The Commission considers itself unable to accept such administrative management which would open the door to a variety of abuses which could not be verified.

Finally the Commission points out that the clearance of the accounts was carried out on the basis of accounts presented in the form laid down by Regulations Nos 729/70 and 1723/72. It could not, at the time of such clearance, accept as eligible for financing any part of the expenditure other than that which, on the basis of the accounts presented, corresponded to operations which complied with the rules of Community law. It is not possible to

take into account the systematic error revealed by the accounts other than at its maximum extent of 2% unless the figure could be proved precisely and not on the basis of a presumption or of a flat rate.

(b) The exclusion of the expenditure in respect of aid for the private storage of cheese

As regards the Commission's refusal to accept as chargeable to the Fund expenditure in respect of aid for the private storage of Grana Padano and Parmigiano-Reggiano cheese for the financial years 1974 and 1975, the *Italian Government* considers that the Commission erroneously bases its decision on the fact that the storage contracts were concluded several months after the cheese had gone into storage. According to Article 10 (2) of Regulation (EEC) No 971/68 of the Council of 15 July 1968 (Official Journal, English Special Edition 1968 (I), p. 251) private storage paid for those cheeses is to be conditional on the conclusion of a contract of storage with the intervention agency, and the requirements which must be fulfilled for the conclusion of such a contract are laid down in Article 16 of Regulation (EEC) No 1107/68 of the Commission of 27 July 1968 (Official Journal, English Special Edition 1968 (II), p. 382).

Aid was granted according to the procedure laid down by the decision of the Italian intervention agency's governing board dated 20 September 1973 (Gazetta Ufficiale della Repubblica Italiana No 225 of 2 October 1973), which contains the requirements to be fulfilled under the relevant rules of Community law. In conformity with that procedure the Italian agency, having verified that the request for the conclusion of a contract submitted by the person concerned fulfilled those requirements, informed that person, the relevant provincial agricultural inspectorate and the Consorzio di Tutela [producers' association for quality protection] that the said request had been granted subject to the inspectorte's supervising the product's entry into storage. Subsequently the Italian intervention agency regarded the contract as concluded once the inspectorate confirmed by report the storage of the quantities of cheese. The transmission to the person concerned of the general terms, in which all the operations carried out were summarized, for his signature, was purely for accounting purposes. Although the aid was paid only after receipt of the signed general terms it was nevertheless in fact due once the inspectorate's report had been drawn up.

The Italian Government is therfore not able to agree with the Commission's view that the contract cannot be said to be concluded unless the general terms have been signed by the person concerned. It states that under Article 1326 of the Italian Civil Code a contract is complete at the moment when the offeror has knowledge of the other party's acceptance. In the present case the contract was concluded at the moment when the intentions of the person concerned expressed in his application concurred with the intentions of the Italian intervention agency expressed in its letter of acceptance and came into effect as a result of the verification undertaken by the inspectorate and recorded in the report.

The Italian Government opposes the analogous application, proposed by the Commission, of the Court's judgment of

27 January 1981 in Case 1251/79 *Italian Republic* v *Commission of the European Communities* [1981] ECR 205), according to which the contract does not become perfect until the preparation of the written instrument, after verification of all the relevant information by the intervention agency. The system of aid for the private storage of cheese is clearly different from that relating to aid for the storage of wine with which that case was concerned.

Thus Article 9 (1) of Regulation No 1437/70, which relates to wine, expressly provides for the drawing up of a contract in two copies, whereas Regulations Nos 971/68 and 1107/68, which relate to cheese, do not lay down any requirements as to the form of the contract itself. In the present case verification both as to formal and as to substantive matters preceded the "conclusion" of the contract. Moreover the general terms drawn up by the Italian intervention agency for accounting purposes are superfluous so far as the Community rules are concerned. Finally, the conclusion of storage contracts in respect of cheese is not subject to any specific time-limit, such as that provided for the case of the storage of wine.

Alternatively, the Italian Government argues that it is an arbitrary act to refuse to accept as chargeable the expenditure in question for reasons which relate solely to form when the objectives of the Community regulations are in fact attained.

The *Commission* points out that by making the grant of aid for the private storage of certain cheeses conditional on the conclusion of a contract Article 10 (2) of Regulation No 971/68 imposes an obligation to conclude the contract before the storage is effected. In Italy, however, storage contracts were concluded several months after the storage had been effected, and even, in some cases, on the day before the expiry of the storage period.

As regards the concept of a contract the Commission is of the opinion that in the absence of a Community concept it is necessary to refer to the national law of each Member State in relation to those matters which are not expressly regulated by Community law, such as the form of the contract and the moment at which it may be regarded as concluded and binding upon the parties.

In that context it refers to the aforementioned decision of the Italian intervention agency's governing board of 20 September 1973. According to Article 2 of that decision the contract between the Italian intervention agency and the storer is concluded "at the moment when the latter appends his signature to the instrument of acceptance whereby he agrees to comply with the conditions set out in the general terms". Article 5 of that decision requires the signature of that instrument to be authenticated within a period of five days failing which it will be void.

Contrary to the applicant's contentions it follows from those provisions of national law laid down by the Italian intervention agency's governing board that the latter regarded the signature of the instrument of acceptance of the general terms by the trader to be the decisive factor for the purposes of the conclusion of a contract rather than the drawing up of a storage report by the provincial inspectorate. Furthermore, until the moment of signature the trader has not entered into any obligation with regard to the Italian intervention agency even if there has been compliance with all the necessary storage requirements. Consequently,

until the signature of the instrument of acceptance the Italian intervention agency did not have at its disposal any legal instrument which would enable it to enforce the trader's obligations.

The Commission therefore takes the view that the storage operations were not effected according to the Community rules but according to a system which prevents a definitive verification by the Italian intervention agency, sometimes up to the last day of the storage period, and which makes it impossible to enforce the obligations which it is the intention of Community law to impose on the trader by the system of contracts.

In its reply the *Italian Government* maintains its view based on Article 1326 of the Italian Civil Code. The grant by the Italian intervention agency, in its letter of acceptance, of the application of the person concerned renders both the trader and the agency subject to mutual obligations. The signature of the general terms is only a formality for the purposes of a summary record. In that respect the information provided by the decision of the Italian intervention agency's governing board is incorrect both linguistically and legally.

The Italian Government points out finally that the procedure followed for the payment of aid demonstrates that in substance, regardless of any procedural omissions, the aid was paid for actual and genuine storage in respect of which all the required verifications had been carried out beforehand.

The *Commission* in its rejoinder refers to the Court's judgment of 29 April 1982 in Jointed Cases 66 and 99/81 *Pommerehnke and Others* [1982] ECR 1363 in order to reaffirm its view that those aspects of a storage contract which are not regulated by Community law are governed by national law, that is to say in the present case by the decision of the governing board of the Italian intervention agency dated 20 September 1973. It is of the opinion that it is not possible to assume that a trader has the intention to incur an obligation when he makes his application since the aforesaid decision explicitly defers the making of the contract to the later stage of the signature of the general terms. The reason why the contract does not come into existence until such signature resides, even more than in any formal defect, in the absence of agreement between the parties.

With regard to the question of form the Commission adds that, according to Article 1326 of the Italian Civil Code, if the offeror requires that the acceptance must be in some particular form then an acceptance is invalid if it is in any other form. If, however, as the Italian Government submitted in Case 1251/79, cited above, in respect of storage contracts relating to wine, the contract is to be regarded as concluded pursuant to an offer made to the public by the Italian intervention agency, that agency, as offeror, requires an acceptance in the form of a signature appended to the general terms.

In that respect the Commission points out that in the present case the Italian Government is reversing the terms of its analysis by treating the trader's application as a contractual offer. Nevertheless, even from that point of view, the trader's application is made by reference to the entirety of the storage system established by Community and national provisions, including conditions as to form.

Finally, the Commission maintains that the verification to ensure that all the requirements for the grant of the aid are

met did not take place until after the delivery of the letter of acceptance which was regarded by the Italian intervention agency as the beginning of the agreed period of storage. In its judgment of 27 January 1981 in Case 1251/79 (cited above) the Court has already stated that an interpretation of the term "conclusion" of the contract which would enable a right to the Community aid to be established even before it was determined that the conditions governing that aid were fulfilled, cannot be accepted.

(c) The exclusion of the expenditure in respect of aid for the private storage of dried or smoked pigmeat

The *Italian Government* disagrees with the interpretation given by the Commission to Regulation (EEC) No 2600/74 of the Commission of 11 October 1974, amending Regulation (EEC) No 289/71 as regards detailed rules for granting private storage aid for certain dried or dried and smoked pigmeat products (Official Journal 1974, L 277, p. 34).

It points out that Article 1 of that regulations provides that:

"Private storage aid may be granted only for products derived from animals recently slaughtered being products held:

. . .

in the form of dried or dried and smoked hams the preparation of which requires a maturing period of at least 5 months before consumption . . ."

and that Article 2 thereof provides that:

"In the case of dried and smoked hams:

storage shall commence on the first day of the sixth month following the commencement of drying or drying and smoking;

the quantity of the products must be shown in the contract both as a number of items and by weight. The weight of the finished product may not be less than 70 % of the weight of the fresh product as ascertained before drying or drying and smoking."

The Italian intervention agency considered the commencement of drying to be the date on which the first part of the consignment of fresh products which is the subject of each storage contract was weighed and regarded the contractual period of storage as commencing five months and one day after that date.

The Commission refused to accept the expenditure relating to the contracts in question as eligible for Community finance because it considered that the minimum requirements as to the length of the drying period prior ot the contractual storage must be complied with in respect of the whole quantity under contract and that therefore the period of contractual storage could not begin to run until five months had elapsed since the date on which the last part of the consignment under contract was put into storage for drying. In that connection the Commission referred to Regulation (EEC) No 1637/74 of the Commission of 27 June 1974 on special conditions for granting private storage aid for frozen pigmeat (Official Journal 1974, L 173, p. 62) which also provides that the storage period is to begin on the day on which the storing is completed.

In that connection the Italian Government contends that the regulations concerning private storage aids for pigmeat have always made a clear distinction, as regards the commencement of the period of contractual storage, betwen frozen products and

products preserved by drying or by drying and smoking since the storage of the two types of products involves quite different operations. If the legislature had intended to place dried pigmeat on the same footing as fresh pigmeat it would therefore have employed, in Regulation No 2600/74, a form of wording similar to that contained in Regulation No 1637/74, that is to say some such formulation as "after the drying is completed" instead of the words "commencement of drying".

The Italian Government goes on to express the view that the minimum maturing period of five months laid down in Article 1 of Regulation No 2600/74 is not to be regarded as a condition which causes the storage periods to begin to run but as a factor for the purpose of classifying the products which are the subject of storage. From that point of view the Italian intervention agency did not consider it necessary that the whole of the quantity of the stored product should be "finished" but that it was sufficient if the product which was intended to be dried was actually in storage. The aid was paid in respect of products which were actually dried. Moreover, the aid is in proportion to the weight of the fresh product whereas the weight of the "finished" product, which may not be less than 70 % of the weight of the fresh product, is not taken into account except to verify that drying has taken place and it is therefore not necessary for it to be indicated in the storage contract.

In any event the rule gave rise to doubts as to its interpretation. In that connection the Italian Government refers in the first place to the text of a "draft regulation of the Commission amending Regulation (EEC) No 1092/80 laying down detailed rules for granting private storage aid for pigmeat" (Document VI/571/81, Third Revision) of 7 May 1981 according to which "storage shall commence on the 151st day following the date on which the weight is ascertained prior to drying or drying and smoking of the first quantity of the products which are the subject of the contract". In a later document (dated 4 November 1981) it was proposed to express the rule in a contrary sense: "Storage shall commence on the 151st day following the commencement of drying ... of the final consignment of the total quantity of the product which is the subject of the contract."

Later the Commission stated, in a working document dated 1 April 1982, with regard to private storage under Regulation No 717/82, that: "The storage period shall start at the beginning of the first hour of the day following the day on which entry into store is completed." The Commission's representative on the Management Committee who examined that document stated that that provision was binding on intervention agencies as from the time of the storage referred to in Regulation No 717/82 and that in that respect the Commission would not raise any objection with regard to storage undertaken previously, thus taking into account an apparent inconsistency in the rules in force.

Finally the Italian Government states that the Commission shares the responsibility for a possibly erroneous interpretation of the Community provisions in question. In that connection it refers to an exchange of correspondence during the month of October 1975 between the Italian intervention agency and the relevant departments of the Commission with regard to the meaning of the expression "first day of the sixth month" contained in Article 2 of Regulation No 2600/74 and to bilateral meetings held in

September and November 1975 to consider the operation of the storage procedures in question. Any error of interpretation may also be imputed to the solution adopted by the Italian administration. Consequently the expenditure incurred by the Italian intervention agency in that area should be charged to the Fund in accordance with a consistent line of decisions of the Court on the matter.

The *Commission* recalls that in order to avoid overloading cold storage facilities it took the view, in Regulation No 2600/74, that "provision should therefore be made for the storage of dried or dried and smoked hams.".

In Article 1 of that regulation dried or dried and smoked ham was defined in such a way that only a product which had been matured for at least five months could be eligible for aid. Thus the obligation of the storer laid down in Article 3 (2) of Regulation (EEC) No 289/71 of the Commission of 10 February 1971 (Official Journal, English Special Edition 1971 (I), p. 60) to take the agreed quantity of the product in question into store within the time limits laid down and to store it for the stipulated period can relate only to products which fulfil the minimum requirement as to maturing.

Article 2 of Regulation No 2600/74 then defines the commencement of the agreed period of storage by reference to the minimum maturing period. Far from amending the definition of the product referred to in that regulation, that provision relates to the commencement of drying or drying and smoking with regard to each ham to be stored under contract. In the case of a storage contract relating to a number of hams the requirement as to maturing is therefore not satisfied and the storage of the whole quantity cannot in fact commence until the first day of the sixth month after the last ham of that total quantity has been submitted to the drying process.

It is clear in the Commission's view that the system was designed in order to withdraw from the market "finished" products, that is to say products which have completed the minimum period of maturing, for the whole storage period. The purpose of the Community aids is to compensate for a voluntary and unremunerated withdrawal of finished products from the market. To accept the applicant's interpretation would, on the contrary, amount to compensating for withdrawal from the market for the purposes of the acutal process of maturing. Such withdrawal is, however, already the subject of compensation by virtue of the increase in the value of the ham as a result of its maturing.

According to the Italian view the trader in effect receives aid for the whole of the agreed storage period whereas only a part of the total quantity stored fulfils the requirement as to maturing during the whole of that period.

The Commission adds that it also follows from the provisions of Article 2 of Regulation No 2600/74, with regard to the weight of the finished product in relation to the weight of the fresh product, that the weight of the finished product must be known and that the product in question must therefore be "finished", within the meaning of the regulation, before the actual commencement of storage.

Consequently the Commission considers that in granting aid for the storage of hams which were not "finished" the Italian intervention agency did not comply with the requirements laid down by the relevant Community regulation and that the expenditure connected therewith cannot be charged to the Community budget.

The Commission goes on to explain that the draft regulation cited by the applicant was not intended to interpret the existing set of rules but to modify them. That draft was withdrawn by the officers responsible for it before being submitted to the Commission. Furthermore the working document of 1 April 1982 to which the applicant has referred concerns a problem which has nothing to do with the subject-matter of this case, that is to say the non-application of the analogous provisions of Regulation (EEC, Euratom) No 1182/81 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (Official Journal, English Special Edition 1971 (II), p. 354) in the area covered by each market organization.

Finally the Commission states that the application of the requirement of maturing was not the subject of the exchange of correspondence in October 1975 or the discussions conducted during the bilateral meetings between the Italian intervention agency and officers of the Commission during September and November 1975. It emphasizes that at no time was it aware of the interpretation contemplated by the Italian intervention agency.

(d) The exclusion of the expenditure in respect of aids for the storage of wine

As regards the Commission's refusal to provide Community finance in respect of aids granted in connection with contracts for the private storage of wine made with retroactive effect after the expiry of the periods prescribed in the Community regulations, the *Italian Government* requests the Court to reconsider the problem which was the subject of its judgment of 27 January 1981 in Case 1251/79 *Italian Republic* v *Commission of the European Communities* [1981] ECR 205.

In states that with regard to the short-term and long-term contracts at issue in this case, which relates to the marketing years 1973 to 1974 and 1974 to 1975, the situation is different from that in the case of the marketing year 1971 to 1972 with which the aforementioned judgment was concerned. The Italian intervention agency no longer paid aids solely from the date of the signature of the instrument of acceptance of the general terms, but, more logically to its way of thinking, from the date of the lodging of the application, which in its view constitutes the date of the conclusion of the contract.

Furthermore, in its judgment the Court based its reasoning on the need for the intervention agency to verify before the conclusion of the contract that the conditions for the grant of the aid are satisfied. The Italian Government considers that the contract may be concluded independently of such verification. In that respect it refers to Article 7 of Regulation No 1437/70 of the Commission of 20 July 1970 (Official Journal, English Special Edition 1970 (II), p. 469) according to which the producer is to be under an obligation to allow, at any time during the period for which the contract is concluded, the identity and volume of wine which is the subject of the contract to be verified.

In its reply the Italian Government again points out that the sale of products placed in storage during the period of validity of the contract, referred to by the Commission in the summary report, has never been established. As a consequence of the results of the first on-the-spot inspection the Italian intervention agency had to correct only certain arithmetical errors on the part of the producers.

In the view of the *Commission* the problem was resolved by the aforementioned judgment in Case 1251/79 even, *mutatis mutandis,* in relation to short-term storage contracts concluded in respect of a period to the date on which they were made. Furthermore, it

refers to the arguments it submitted in relation to aid for the private storage of cheeses.

(e) The exclusion of the expenditure in respect of aid for the re-storage of wine

On this matter the parties refer to the solution proposed by them in relation to contracts for the storage of wine, given that according to the terms of Regulation (EEC) No 2117/75 of the Commission of 12 August 1975 (Official Journal 1975, L 215, p. 18) aid for the re-storage of wine may be granted only in relation to table wines in respect of which storage contracts were concluded pursuant to Regulation No 1437/70 during the wine-growing year 1974 to 1975.

IV — Oral procedure

The parties presented oral argument at the sitting on 23 November 1982.

The Advocate General delivered her Opinion at the sitting on 18 January 1983.

Decision

1 By application lodged at the Court Registry on 11 February 1982 the Italian Republic brought an action, pursuant to the first paragraph of Article 173 of the EEC Treaty, for a declaration that Commission Decision 81/1044/EEC af 16 November 1981 concerning the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975 (Official Journal, L 375, p. 27) was void inasmuch as the Commission refused to charge to the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the Fund") a sum of LIT 8 395 731 522 in respect of the payment of aids for skimmed-milk powder used for animal feed, for the storage of dried meat, for the storage of wine, for the re-storage of wine and for the storage of cheese.

(a) Aids for skimmed-milk powder

2 Article 1 of Regulation (EEC) No 990/72 of the Commission of 15 May 1972 on detailed rules for granting aid for skimmed milk processed into compound feedingstuffs and for skimmed-milk powder for use as feed (Official Journal, English Special Edition 1972 (II), p. 428) provides that aid is to be granted for skimmed-milk powder only after it has been used in the manufacture of compound feedingstuffs for animals under the conditions laid down in Article 4. The latter provision lays down the requirements which such compound feedingstuffs must fulfil.

3 The Italian Government maintains that the Commission should have charged to the Fund a sum representing processing waste, that is to say that proportion of the skimmed-milk powder which is lost for purely technical reasons in the course of the manufacture of the compound feedingstuffs. The aids paid by the Italian intervention agency to the manufacturers covered such losses up to a maximum of 2% of the total amount of the aid.

4 According to the Commission only the milk product actually used for animal feed is eligible for Community aid. If the Italian Government's view were adopted aid would have to be granted for any quantity of the milk product used in the process of manufacturing animal feed.

5 The Commission's point of view must be regarded as correct. It accords with the actual wording of the provisions of Regulation No 990/72 and is based on the recitals in the preamble thereto which, after referring to the necessity of making certain changes to the existing regulations, state expressly that there is a need to ensure "that the skimmed milk and skimmed-milk powder for which aid is granted are in fact used as feed."

6 The Italian Government also claims that the Commission, even if its interpretation is correct, is not entitled to reduce the expenditure in question by 2% since the rate of 2% is the maximum laid down by the Italian rules. In reality the average percentage of waste for which the aid had been granted should be assessed at 1%.

7 As evidence the Italian Government submitted to the Court a table which, however, related to only 25% of the total quantity of milk powder processed into animal feed in Italy during the years 1974 and 1975. In relation to that quantity the average loss amounted to 1.745% in 1974 and 1.464% in 1975.

8 In those circumstances it has not been established that of the total quantity which had been processed the percentage of actual waste differend to any appreciable extent from the maximum rate of 2% which was laid down by the Italian rules and which the Commission adopted as a basis at the time of clearance.

9 Consequently the objections made to the Commission's decision must be rejected in so far as they relate to aids for skimmed-milk powder.

(b) Aids for the storage of dried meat

10 Article 2 of Regulation (EEC) No 2600/74 of the Commission of 11 October 1974 amending Regulation (EEC) No 289/71 as regards detailed rules for granting private storage aid for certain dried or dried and smoked pigmeat products (Official Journal 1974, L 277, p. 34) provides that the storage of dried hams or dried and smoked hams is to commence on the first day of the sixth month following the commencement of drying or drying and smoking.

11 The dispute between the parties is in relation to the phrase "commencement of drying or drying and smoking". The Italian Government takes the view that those operations commence on the date on which the first consignment of fresh products under each storage contract is weighed. The Commission considers that the operation has begun only when all the products making up the consignment to be stored have been covered by it.

12 In that connection the Commission recalls that dried or dried and smoked ham is described in Article 1 of Regulation No 2600/74 as ham which has undergone a maturing period of at least five months. Consequently only a product which has already been matured for such a period is eligible for Community aid in respect of the storage of dried or dried and smoked hams.

13 The view advanced by the Commission must be accepted. The interpretation given by the Italian Government would lead to the products in question being subsidized, at least in part, even during the maturing period, whereas the system of aids is intended to enable the withdrawal from the market of products which fulfil all the conditions for them to be put on the market.

14 This part of the application is therefore unfounded.

(c) Aids for the storage of wine

15 The Italian Government admits that the Commission's refusal to charge to the Fund the amount in dispute in relation to the aid for the storage of wine for the year 1975 is based on the same reasons as the similar refusal in relation to 1973 and that the Italian Republic's action in respect of that refusal was dismissed by the Court in its judgment of 27 January 1981 in Case 1251/79 (*Italian Republic* v *Commission of the European Communities* [1981] ECR 205). Nevertheless it requests the Court to re-examine the problem in question.

16 As the Italian Government rightly recalls, the judgment of 27 January 1981 decided that the Italian intervention agency had not paid aids for the storage of wine in the year 1973, in accordance with the relevant Community rules, because the storage contracts had not been concluded before a specific date. The Court held that according to the relevant provisions of Community law a storage contract is not concluded until the written instrument has been prepared and it has been established that the conditions governing the Community aid have been fulfilled.

17 The Italian Government disputes the latter interpretation without however submitting any arguments other than those already examined in the aforementioned judgment.

18 It therefore follows that this part of the application must also be dismissed.

(d) Aids for the re-storage of wine

19 The parties are in agreement that this part of the application raises the same question as that raised in relation to the storage of wine since the aid for re-storage is subject to the requirement that a storage contract has been "concluded" at the time of re-storage.

20 It therefore follows from the foregoing considerations that this part of the application must also be dismissed.

(e) Aids for the storage of cheese

21 Article 10 (2) of Regulation (EEC) No 971/68 of the Council of 15 July 1968 laying down general rules for the intervention on the market in Grana Padano and Parmigiano-Reggiano cheeses (Official Journal, English Special Edition 1968 (I), p. 251) provides that private storage aid in respect of those cheeses is to be conditional on the conclusion of a storage contract between the intervention agency and any person capable of fulfilling the requirements of such a contract.

22 The Italian Government maintains that, according to the practice of the Italian intervention agency, the drawing up by a State official of the record of entry into storage in which the date of commencement of the storage is stated, must be deemed to constitute the conclusion of a contract.

23 In the Commission's view a storage contract is not concluded for the purposes of Article 10 of Regulation No 971/68, until the moment when the written instrument containing the terms of the contract is signed by the storer and the representative of the intervention agency. In that connection it recalls that according to Article 11 of Regulation No 971/68 the storage contract must at least include provisions on the quantity of cheese stored, the amount of aid, the relevant dates relating to the execution of the contract, conditions to be laid down as to the minimum quantity of cheese per lot and the inspection measures.

24 In essence the Italian Government relies on the argument to the effect that the conclusion of a storage contract is governed by national law. Unlike the Community provisions relating to the storage of wine, which were the subject of the judgment of 27 January 1981, those relating to the storage of cheese do not lay down any particular requirement as to the form of the contract. Under Italian law the general rules of the Civil Code provide that a contract is concluded at the moment when the intentions of the two parties concur. By sending an application for the conclusion of a storage contract to the Italian intervention agency the storer makes an offer to that agency

which it accepts when the report recording the quantities of stored cheese is drawn up. The written instrument, in the form of the general terms, which the storer is later invited to sign, merely summarizes for accounting purposes the operations which have already been completed.

25 The Commission, like the Italian Government, starts from the premise that in the present case the question of the conclusion of the storage contract is governed by Italian law. Nevertheless the provisions of national law applicable to the activities of the Italian intervention agency provide that the contract between the agency and a storer is concluded at the moment when the latter appends his signature to the instrument of acceptance by which he undertakes to comply with the conditions set out in the general terms.

26 It is necessary to point out that although the provisions of Community law do not expressly lay down the form of the contract for the storage of cheese, they are based on the assumption that every storage operation must be preceded by the conclusion of a written contract in order to be eligible for the Community aid provided for in Article 10 (2) of Regulation No 971/68.

27 That requirement arises in the first place from the recitals in the preamble to Regulation No 971/68 which, after recalling that private storage must contribute to the attainment of a balanced market, state that Community rules should be provided to ensure the orderly functioning of such storage and that, to that end, it is necessary in particular that "the storage contract should be drawn up in accordance with Community provisions."

28 It further follows from the relevant Community provisions and in particular from Article 11 of Regulation No 971/68, which lists certain provisions which must be included in the contract, that the storage contract may only be in the form of a written instrument. The same conclusion is to be derived from Article 17 (2) of Regulation (EEC) No 1107/68 of the Commission of 27 July 1968 on detailed rules of application for intervention on the market

in Grana Padano and Parmigiano-Reggiano cheeses (Official Journal, English Special Edition 1968 (II), p. 382) according to which the storer is to cease to qualify for aid if the quantities of cheese specified in the contract are withdrawn from storage before the date of expiry of the contract.

29 Finally, the same interpretation is dictated by the objectives of the system of intervention in question. That system, which is part of the common organization of the market in milk and milk products, is intended to contribute to the stabilization of those markets by means of, *inter alia*, the grant of Community aid for the private storage of certain cheeses. Such stabilization can be achieved only if the Community provisions ensure that the quantities of cheese which are the subject of storage contracts are actually withdrawn from the market.

30 It follows that a contract of storage is not concluded, for the purposes of Regulation No 971/68, until the moment when the written instrument is signed. Moreover, it is in order to comply with that requirement laid down by Community law that the provisions of Italian law governing the activities of the Italian intervention agency lay down the detailed rules in accordance with which the storage contracts are to be signed.

31 Consequently, the complaint made by the Italian Government against the refusal to charge to the Fund certain expenditure concerning aid for the storage of cheese cannot be upheld.

32 In the light of all the foregoing considerations the application must be dismissed.

Costs

33 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.**

Mertens de Wilmars Pescatore O'Keeffe
Bosco Koopmans Due Bahlmann

Delivered in open court in Luxembourg on 15 March 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS

(see Case 61/82, p. 676)