OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 4 July 1989 *

Mr President,
Members of the Court,

1. Under Article 173 of the EEC Treaty the Italian Government seeks a declaration that the Commission's decision of 5 November 1987 on the reimbursement to the Italian Republic by the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as 'the EAGGF'), Guidance Section, of aid granted to organizations of producers of fruit and vegetables in respect of 1984 is partially void. [1] The Italian Government's complaint against the decision is that only the amount of LIT 700 924 892 was allowed to be charged to the EAGGF in respect of the aid, although Italy had submitted a request for the reimbursement of LIT 2 935 382 400.

The legislative background

2. The dispute between the parties is centred on Article 14(1) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables. [2] Title II of that regulation, of which Article 14 forms part, introduces a system of aid for organizations of producers of fruit and vegetables. Article 13 sets out the conditions which must be satisfied by those organizations in order to qualify for that aid, which is known as start-up aid. [3] Article 14 empowers the Member States to grant such aid. Pursuant to Article 36(2) the Member States are reimbursed for that start-up aid at the rate of 50% by the EAGGF, Guidance Section.

Let us proceed to a closer examination of Article 14(1), on which the issue turns. It reads:

'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. The amount of such aid shall not exceed, for the first, second and third years respectively, 3, 2 and 1% of the value of production marketed under the auspices of the producers' organization. In respect of each year, the value of production marketed shall be calculated on a standard basis, namely:

(i) members' average marketed production during the three calendar years

* Original language: Dutch.

1 — The number of the contested decision is C (87) 2027

2 — OJ, English Special Edition 1972 (II), p 437

3 — See the judgment of the Court of 28 January 1986 in Case 129/84 *Italy* v *Commission* [1986] ECR 309, together with the Opinion of Sir Gordon Slynn at pp 312 to 319, with particular regard to Article 13

immediately preceding the year in which they became members;

(ii) average producer prices obtained by those members over the same period.'

The phrase in that article which constitutes the nub of the dispute between the parties is: 'may grant aid to producers' organizations, during the three years following the date on which they are established . . . '.

3. The dispute which is described in the pleadings exchanged between the parties relates to the refusal by the Commission to charge to the EAGGF aid paid by Italy more than three years after the formation of the organization in question or, as regards aid relating to the third year, more than four years after the date of formation.

It is clear from the fact that the Commission also takes into consideration a fourth year for certain aid that its approach is not based solely on the aforementioned Article 14(1). In fact, over the years the Commission has allowed the rules to be relaxed in view of the difficulties experienced in applying the legislation.

4. In order to place the applicable regulation in its context I should not omit to refer to the new provision added to Regulation (EEC) No 1035/72 in 1978,[4] Article 14(1)a.[5] Article 14(1)a provides for the grant of aid whose amount is to be determined in a different manner: not as a single sum calculated on the basis of production marketed by member producers before their membership, but on the basis of production marketed under the auspices of the organization, not exceeding the *actual cost* of formation and administrative costs of the organization. A second departure from the system laid down by Article 14(1) is to be found in the second subparagraph of Article 14(1)a, in which it is provided that 'the aid shall be *paid* during the seven years following the date of *establishment*' (emphasis added). At the hearing a representative of the Commission pointed out that the new system introduced by Article 14(1)a was used exclusively in France, whereas the former system provided for in Article 14(1) on which the outcome of this dispute turns was used exclusively in Italy. France and Italy are therefore the only Member States in which use is made of one of the two systems.

5. Nor ought I to overlook Council Regulation (EEC) No 3284/83 of 14 November 1983.[6] That amending regulation proceeds on the basis that the provision contained in Article 14(1)a limiting the costs to the actual cost of formation and administrative costs is the only one which is to be definitively maintained.[7] The provision contained in Article 14(1) was to remain in force for a

4 — Council Regulation (EEC) No 1154/78 of 30 May 1978 amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables (OJ 1978, L 144, p. 5).

5 — Mentioned in the Report for the Hearing in the summary of the letter from the Italian Minister of 18 July 1986.

6 — Amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables, OJ 1983, L 325, p. 1.

7 — Third recital in the preamble.

limited period. In the new Article 14, as it appears in Regulation (EEC) No 3284/83, the former Article 14(1)a is reproduced in paragraph 1, whilst the provision contained in the original Article 14(1) is reproduced in paragraph 2.

There are also certain substantive modifications which are of importance in assessing the case before the Court. First, Article 13(1)(c) provides for an additional condition for the grant of aid to an organization, namely that it must be recognized, and Article 13(2) prescribes a system of recognition by the Member States. Secondly, both provisions stipulate the commencement date for the period of payment as indeed running from the date of recognition.

The arguments of the parties

6. The Italian Government divided its application into three principal arguments, and also put forward an alternative submission. The first submission goes to the inadequacy of the statement of reasons on which the contested decision is based. The Italian Government's second submission, which is by far the most important, alleges that Article 14 of Regulation (EEC) No 1035/72, taken together with Article 36 thereof, has been infringed and misapplied. The nub of its argument is that the Commission is wrong to regard Article 14 as stipulating a period for the payment, as opposed to the grant, of aid. The third argument put forward by the Italian Government as a principal submission alleges a misuse of powers. That submission will not be dealt with separately since it coincides to a considerable extent with the second submission and for the rest forms part of the alternative submission.

In the alternative submission it is argued that, even if the contested decision was not wrong in applying a mandatory deadline for the payment of aid, that period ought nevertheless to begin to run from the date of recognition of the organizations and not from the date of formation, on the basis of a legitimate expectation aroused by the Commission in its letter No 12.060 addressed to Italy on 30 July 1980. In seeking to gain acceptance of recognition rather than formation as the point of departure, the Italian Government is also able to base itself on the argument of consistency: in similar systems of aid to farmers' organizations,[8] and also in the new system examined at paragraph 5 above, one goes without exception by the date of recognition as the reference date.[9]

It appeared at the hearing that the Commission accepted that the alternative submission was well founded. Except in the conclusion I will therefore not revert to the arguments on that point.

8 — See in particular the system for the hop sector (mentioned by the Commission in the written procedure) (Council Regulation (EEC) No 1696/71 of 26 July 1971, OJ, English Special Edition 1971 (II), p. 634), the common organization in the fisheries sector (Council Regulation (EEC) No 100/76 of 19 January 1976, OJ 1976, L 20, p 1, Article 6(1)(2)) and the system governing various sectors simultaneously in three Member States in Regulation (EEC) No 1360/78 (OJ 1978, L 166, p 1, Article 10)

9 — Admittedly, in such cases a recognition procedure under Community law is provided for (see paragraph 5 above) Moreover, the argument based on consistency, in conjunction with the wording of Article 14, could justify the opposite conclusion. In fact, the system originally used in France in that sector went by the date of *formation* See paragraph 4 above

The allegation that the statement of reasons was inadequate

7. In its first submission the Italian Government alleges that the contested decision is based on an inadequate statement of reasons, even if the penultimate recital in the preamble to the decision in question refers to Commission memorandum No 61.000 of 17 July 1987, in which the Commission finally brought to a conclusion the exchange of correspondence with the Italian Government.

The Commission replies to that argument with a reference to the Court's case-law, from which it is clear that a succinct statement of reasons supporting EAGGF decisions may be regarded as sufficient where the government concerned has been closely involved in the process by which the contested decision was made and was therefore aware of the reason for which the Commission considered that the disputed amount might not be charged to the EAGGF. [10]

8. It seems to me that the case-law cited by the Commission [11] is decisive in the present case, and that the Italian Government's submission cannot therefore be accepted. In a recent judgment of 24 March 1988, the Court held that EAGGF decisions need not set out *in extenso* all the grounds and reasoning on which they are based. [12]

10 — Judgment of 14 January 1981 in Case 819/79 *Germany* v *Commission* [1981] ECR 21, paragraphs 19 to 21.

11 — See to the same effect the judgment of 27 January 1981 in Case 1251/79 *Italy* v *Commission* [1981] ECR 205, paragraphs 20 and 21.

12 — In Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraphs 59 and 60; see also paragraph 78 of the Opinion of Mr Advocate General Mischo of 1 October 1987 delivered in that case.

The allegation that Article 14 was infringed

9. Italy's second argument, that Article 14 of Regulation (EEC) No 1035/72 was infringed, is in two parts. The first part is to the effect that Article 14 stipulates no period for payment as distinct from the grant of aid. The three-year period mentioned in Article 14 is merely intended to serve as a point of reference in order to determine the amount of aid. The second part of the argument is that even if it is appropriate for the payment to be made as rapidly as possible that does not mean that it must take place within a specific period of, for example, three years, since payment at a later date is also capable of facilitating the attainment of the objective of the Community rules.

By requiring the strict observance of a period for payment which is not provided for in the Community rules, the Commission misinterpreted and misapplied those rules.

At the hearing, the representative of the Italian Government nevertheless conceded that it was necessary to require that aid be paid within a reasonable period. That is a concession which is of major importance in assessing the case, as will be shown below.

10. The Commission deploys four arguments against the allegation that there was an infringement of Article 14. First, the only means whereby the objectives pursued by Regulation (EEC) No 1035/72, namely the encouragement of the formation of producers' organizations and the facilitation of their functioning, may be achieved is to

pay aid as rapidly as possible during the initial phase of such organizations' existence.

Secondly, the Commission points out that, in the practical application of the rules, it did indeed take account of the difficulties encountered by Italy in observing the period of three years following formation for the payment of aid. The Commission's flexible approach consisted in accepting that aid in respect of the third year of functioning should be paid during the fourth year and that aid in respect of the first two years could also be paid during the third year. The Commission adopted that more flexible approach in its letter No 12.060 of 30 July 1980, which was drawn up after a number of years' experience of the system and of the difficulties encountered, particularly in Italy, in its application.

The third argument relied on by the Commission is that its policy of reimbursing only aid paid during the three or four years following the formation of the organizations is based on the Court's case-law relating to 'reasonable periods'.[13] More specifically, the Commission alleges that the period envisaged by Italy, which would result in aid from Community funds being granted to certain organizations seven or eight years after their formation, is unreasonable.

13 — The Commission refers to the judgment of the Court of 3 March 1982 in Case 14/81 *Alpha Steel* [1982] ECR 749, paragraph 10, and to the judgment of 21 September 1983 in Joined Cases 205 to 215/82 *Deutsche Milchkontor* [1983] ECR 2633, it is perhaps alluding to paragraph 33, which is of little relevance in this context

The fourth argument relied on by the Commission to refute the allegation of an infringement of Article 14 is the principle of equal treatment as between Member States,[14] and as between economic operators in the different Member States,[15] an argument which has lost much of its force since the Commission's representative made clear at the hearing that the system is applied in that form only in Italy (see above, at paragraph 4).

The implementation of provisions in the 'inter-administrative relationship'

11. The question raised by the Italian Government relates to the Commission's power as the administrator of the EAGGF,[16] when applying a payment period provided for in a Council Regulation, informally to specify the detailed manner in which it is to be applied. In other words the question is whether in fact a power of interpretation, or more broadly a power of definition, is conferred on the Commission (as on anyone entrusted with the implementation of a policy) and which is to be distinguished from the power of implementation itself inasmuch as it is limited to supplementing or completing the applicable legal provisions.[17] I shall briefly examine the nature and limits of such a power.

14 — Judgment of 27 May 1981 in Cases 142 and 143/80 *Essevi and Salengo* [1981] ECR 1413

15 — Judgment of 27 February 1985 in Case 56/83 *Italy v Commission* [1985] ECR 713, on this point at paragraph 31.

16 — This management function is recognized in Article 11 of basic Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, OJ, English Special Edition 1970 (I), p 218

17 — J. Schwarze, in *Europaisches Verwaltungsrecht*, 1988, p 425, describes the 'Durchfuhrungsrecht' of the Commission as 'erganzende Rechtsetzung'

12. First of all, I wish to point out that the present case concerns not the relationship between the Commission and economic operators — although what I am about to say applies *mutatis mutandis* to that relationship as well — but rather the relationship between the Commission as the Community administrative authority and the national administrations entrusted with the implementation of Community law. That inter-administrative relationship is dealt with only schematically at Community level. [18] However, the Court has stated that the most serious gaps must be filled with the aid of two fundamental principles. [19] The first fundamental principle, derived from Article 5 of the Treaty, emphasizes the need for genuine cooperation between the Community and national authorities in order to ensure the correct implementation of Community law in favour of the citizens. [20] A second basic principle, which is mentioned expressly in Article 40(3) of the EEC Treaty as regards agricultural policy, lays down the principle of equality between the economic operators in the different Member States. [21] In the relationship between the Commission and one or several Member States no elements may supervene which give rise to unequal treatment.

13. Inter-administrative relations between the Commission and national administrations must be based on the principle of legality. When the Commission lays down rules to be observed by Member States in the context of EAGGF accounts it must evidently be able to base itself on a clear provision which confers on it the power to lay down implementing measures. Of relevance in this connection is Article 7 of the basic regulation, Regulation (EEC) No 729/70 on the financing of the common agricultural policy, [22] in which the Commission is given the power to 'determine the detailed rules for the application of each of the common measures'. Article 36 of Regulation (EEC) No 1035/72, which is at issue in this case, takes a different line as far as the rules for the application of aid mentioned in Article 14(1) of the regulation are concerned. In that case the power is conferred on the Council, which used that power to adopt Regulation (EEC) No 449/69 of 11 March 1969, [23] enacted in pursuance of the regulation preceding Regulation (EEC) No 1035/72.

What is at issue in this case, however, is in my view *not* the power to implement Article 14(1) but, as has been pointed out, rather the power of application or definition which the Commission enjoys, a power which is in fact a variant of the power to interpret an ambiguous provision of the law, in this particular case (as is explained in more detail in paragraph 14, below) the wording of Article 14(1), which provides for a three-year period for the grant of aid. The Commission's power of interpretation

18 — In legal doctrine proper to federal systems of law such as that of the Federal Republic of Germany much attention is paid to these relationships. See *inter alia* R. Boest: *Die Agrarmärkte im Recht der EWG*, 1984; J. Scherer: 'Das Rechnungsabschlußverfahren — Ein Instrument zur Durchsetzung europäischen Verwaltungsrechts?' *Europarecht* 1986, at pp. 52 to 72; J. Schwarze: *Europäisches Verwaltungsrecht*, 1988.

19 — These fundamental principles are considered together in paragraph 17 of the judgment of 21 September 1983 in Joined Cases 205 to 215/82 *Deutsche Milchkontor* [1983] ECR 2633. As regards recognition of the need to resolve certain problems of administrative law which are not specifically covered by the Treaty by drawing inspiration from the rules common to the law of the Member States, in order to avoid a denial of justice, I may refer to the judgment given by the Court on 12 July 1957 in Joined Cases 7/56 and 3 to 7/57 *Algera and Others* v *Common Assembly of the ECSC* [1957] ECR 39, at p. 55 (Law, A, III, 5th paragraph).

20 — The fact that the requirement imposed on a Member State to observe a 'reasonable period' may be derived from the obligation to cooperate laid down in Article 5 of the EEC Treaty is borne out by the judgment of the Court of 6 July 1971 in Case 59/70 *Netherlands* v *Commission* [1971] ECR 639 in the context of Article 86 of the ECSC Treaty which is analogous to Article 5.

21 — See footnote 15.

22 — Regulation cited in footnote 16.

23 — OJ, English Special Edition 1969 (I), p. 101.

enables it (evidently subject to review by the Court) to supplement provisions of Community law, whose general purport is uncontested, by means of interpretative communications in the form of circulars, general notes and the like. The fact that we are dealing in the present case with a provision of that kind, whose general scope moreover, like the Commission's implementing power, is not contested, is borne out by the acceptance by the Italian Government of the need for a reasonable period for the payment of aid as well (see paragraph 9, above).

It goes without saying that such implementing power exists only within narrow limits. Like any power of interpretation of which it is, as I have said, a variant,[24] it must not go beyond the scope of the relevant provision in content and may not run counter to other mandatory provisions. It can, or even must, be applied especially in the relationship between Community and national administrations in order to ensure the observance by Member States of certain general principles of law such as those mentioned above (correct and proper application of Community law in the interests of the citizen, equal treatment as between economic operators[25]). As regards the form which the exercise of the implementing power must take, it must not infringe essential procedural requirements[26] and it must be exercised by way of general instructions which are established after consultation with the interested parties and are notified to them in due time. The instructions must be clear and must not have been laid down in an arbitrary manner.

Assessment of the lawfulness of the payment period laid down in the present case

14. Against this general background I will now consider the payment period actually imposed by the Commission on Italy.

In a working document of 13 December 1977, the Commission initially required that, to be eligible for Community financing, aid to organizations must not only be granted during the course of the three years following the formation of the organization, but must also be paid within that period. Regard being had to the objective of the aid in question and the terms of Article 14(1) of Regulation (EEC) No 1035/72, that was a reasonable view. It is, after all, clear from the aforementioned article that the aid in question is intended to

24 — It is in fact a variant, of a general nature, of the power of interpretation vested in anyone who applies a legal provision. When the interpretation given is applied in regard to different persons it is normal for it to be inserted in an interpretative document of a general nature.

25 — Although the interpretation of Community rules by the Commission is not binding on national authorities (see in that connection the judgment of the Court of 27 March 1980 in Case 133/79 *Sucrimex* [1980] ECR 1299, paragraphs 16 and 22, and the judgment of 10 June 1982 in Case 217/81 *Interagra* [1982] ECR 2233, paragraph 8) it is very important (see the judgment of the Court of 25 November 1980 in Case 820/79 *Belgium* v *Commission* [1980] ECR 3537, paragraphs 13 and 15), and is more persuasive when it expresses general principles of law which are themselves binding.

26 — See Article 7(1), cited above, of Regulation (EEC) No 729/70 to which Article 36 of Regulation (EEC) No 1035/72 refers. It is not disputed that the Commission followed the procedure which is there stipulated (see the last recital in the preamble to the contested decision) and, moreover, that it was constantly in contact with Italy over the fixing of the period in question. Incidentally, I would observe that both paragraphs of Article 7 require the Fund Committee to be consulted but that that article, applicable to the Guidance Section, is drafted less precisely as regards the nature or the form of the 'provisions' which are referred to therein than the corresponding Articles 2 to 5 for the Guarantee Section. That circumstance, which is aggravated by the absence of case-law of the Court on Article 7, may be explained in my view by the fact — which is also apparent in this case — that in the Guidance Section it is less frequently that operators are granted direct aid. It is therefore more often a purely inter-administrative relationship in which a more flexible approach is justified.

encourage the start-up, that is to say the formation and initial functioning, of such organizations. That purpose can be achieved only if aid is not only granted at the outset but is also actually made available to the organizations concerned. Strictly speaking, the expression 'grant aid' used in the first sentence of Article 14(1) encompasses the grant and the payment of aid. [27]

When it appeared that the strict application of that period was causing practical difficulties, the Commission, in the letter which it addressed on 30 July 1980 to the Italian authorities, relaxed the Community rules and in fact extended by one year the period for payment (see paragraph 10 above). In that way account was taken, as the Italian Government representative argued at the hearing, moreover, of the time needed for the administrative processing of data relating to certain producers who had joined the organizations towards the end of the three-year period for the grant of aid. [28]

Did the specific manner in which the Commission determined the payment period, thereby relaxing the strict interpretation of the provision, constitute an unlawful exercise of regulatory power as regards the Member State concerned? And, if that question is answered in the negative, was the payment period unreasonable?

Those are the questions to which I must now reply.

15. As regards the first question it seems to me that when it appeared that owing to practical difficulties it was not possible to observe scrupulously a strict interpretation of Article 14(1), the Commission was nevertheless entitled to adjust the payment period informally. That is in fact an illustration of what I have referred to above as the exercise of an implementing power in respect of which the Commission was entitled to rely in this case on one of the abovementioned general principles — not so much the principle of equal treatment (although that too [29]), since it was established at the hearing that the system in question is applied only in Italy, but rather the principle of genuine cooperation between the Community and national administrations with a view to the correct implementation of Community law in the interests of the citizen. In pursuance of that principle, the administrations must ensure that the objective of the Community aid scheme, which in the present case is a scheme for providing start-up aid, is achieved in the best manner possible, and that the recipients of aid are as rapidly as possible put in possession of the aid granted to them. The fixing of a short payment period answers that objective. It is significant that the Italian government also acknowledges that principle, even if it contests the duration of the period stipulated.

It is certainly necessary, as I have stressed in the general considerations set out above, for that 'informal' system of payment periods to

27 — In a passage of its memorandum of 30 July 1980 reproduced in the Report for the Hearing, the Commission spoke in the authentic Italian version of 'la concessione' (the grant) and 'il pagamento' (payment), two actions which are covered by the term 'accordare' (grant) used in the first sentence of Article 14(1).

28 — See paragraph 2 above for the method of calculating aid on the basis in particular of members' production in the three calendar years preceding the year in which they became members.

29 — The principle of equal treatment is in fact not entirely irrelevant if only one Member State operates the system under examination. In its judgment of 3 May 1978 in Case 112/77 *Töpfer* [1978] ECR 1019, paragraph 20, the Court in fact discussed equal treatment in terms of preventing 'privileged positions from becoming established'.

be of general application and laid down in advance after discussions with the administrations concerned, and for the latter to be notified thereof at the appropriate time. In that connection no criticism can be levelled at the Commission. Even in its working document of 13 December 1977, which was transmitted to all the Member States, the problem of payment within the stipulated periods was mentioned in general terms and subsequently discussed with the Italian authorities,[30] and in the letter based on that working memorandum which was sent to the Italian Government on 30 July 1980, the Commission allowed a sufficient period of time for an adjustment to be made to the timetable contained therein which, it is not contested, would also have applied to other Member States if they had been in the same situation *(quod non)*.

Reasonableness of the stipulated period

16. The question remains whether the period allowed by the Commission was reasonable and was laid down in a manner which was not arbitrary. In the context of that assessment it is not for the Court to substitute itself for the Commission. I shall merely set out the following considerations.

First, as regards the length of the period, were the three years (in respect of the first two years of functioning) or four years (in respect of the third year of functioning) allowed for payment following formation of the organization sufficient time in the case of Italy? The answer to this question depends on the nature of the inquiry which the Member State must make in order to calculate the aid for a specific organization. In that connection Article 14(1) provides that the basis for the calculation is the production marketed by member producers during the three calendar years preceding the year of their membership of the organization (for the wording of that paragraph see paragraph 2, above, and for the practical difficulties arising in connection therewith, paragraph 14). It seems to me that the figures for each producer joining should be available either at the time of joining or shortly thereafter and that an extra year (in the case of aid for the first year of functioning even two extra years) is a reasonable period for administrative processing. The Italian Government has not in any event produced any evidence to cast doubts on this supposition.

Secondly, as regards the point at which time begins to run, and irrespective of the question of the legitimate expectation aroused by the Commission, which is the subject of the alternative submission put forward by the Italian Government, did the Commission act arbitrarily in persisting in having regard to the date of formation, notwithstanding that in its letter of 30 July 1980 it admitted that it was preferable to take account of the date of recognition, specifically on grounds of harmonization with other rules?[31] I do not think so. As long as Article 14(1) had not been amended, as it was subsequently (see paragraph 5, above), the Commission was bound to have regard to the date of formation and it is also that date which is decisive for the clearance of EAGGF accounts. In my opinion, the Commission cannot be

30 — See in particular the reference to a letter from the competent Italian ministry made in the abovementioned letter of 30 July 1980.

31 — See footnote 8.

criticized for seeking to relax the legal framework, as I have described above (paragraph 14), regard being had to the difficulties encountered by Italy, nor can it be regarded as having acted arbitrarily. To apply a legal provision in a reasonable manner cannot in my view be assimilated to arbitrariness.

17. Finally, I would like to examine the argument of the Italian Government that certain delays in the payment of aid were attributable to a general inquiry by the Commission or to checks decided upon by the Italian Government in order to see whether the organizations satisfied the conditions of Article 14(1).

That argument must be taken seriously in view of the fact that the Court has held that if there is doubt as to whether an expense is justified it is not eligible for EAGGF financing.[32] It is thus evident that the Member States wish to grant aid only to undertakings, that is to say organizations, which satisfy the conditions for the grant thereof set out in the Community provisions, in this case Article 13 of Regulation (EEC) No 1035/72;[33] hence the importance of the question put by the Court principally to the Italian Government, but also to the Commission, seeking clarification as to how the investigation by the Commission which ended in 1981 could have hindered the Italian Government in the payment of aid.

The Italian Government's reply consists merely of a list of organizations to which, it is said, aid could not be paid in time on account of the investigation being conducted by the Commission. The Italian Government added that, in the light of matters emerging in the course of that inquiry, it appeared to be necessary to obtain further information on the functioning of the organizations, even those which had not been subject to the Commission's inquiry. That reply does not, however, contain the slightest actual evidence, and therefore does not constitute proof, of hindrance, not to mention negligent or unjustifiable conduct by the Commission which could have prevented Italy from properly carrying out its normal task of implementing agricultural policy.

My view is supported by the fact that in its judgment of 28 January 1986 in Case 129/84,[34] the Court held that the Italian Government's decision to require the organizations concerned to be 'recognized' by national authorities, together with formal registration, was not a situation brought about by Community law and accordingly that that decision could not affect the application of Community law.[35] In so far as the investigation carried out by Italy related to national recognition conditions, the delay attributable thereto may clearly not be taken into consideration.

32 — Judgments of 7 February 1979 in Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, paragraphs 8 and 9, and in Case 18/76 *Germany* v *Commission* [1979] ECR 343, paragraphs 7 and 8. See also the judgment of 28 January 1986 in Case 129/84 *Italy* v *Commission* [1986] ECR 309, paragraph 19.

33 — It is not immediately clear why the need to check whether the organizations satisfy the *conditions for the grant of aid* may constitute an obstacle to the payment of aid within the period prescribed. Since that verification relates to the functioning of the *organizations*, that can be carried out at any time and during the whole year. As an example of a case relating to the conditions for the grant of aid I would refer again to the judgment of the Court mentioned in footnote 3.

34 — Judgment of 28 January 1986 mentioned in footnote 3, paragraph 20.

35 — It is now otherwise: since 1 June 1984 the recognition of organizations is prescribed by Community law (Regulation (EEC) No 3284/83, examined above at paragraph 5, in particular Article 13(2) thereof).

Conclusion

18. I have already pointed out (in paragraph 6) that the Commission has conceded the alternative submission made by the Italian Government. In view of that acceptance of principle, all that remains to be determined is the result in figures — in other words, the amount in respect of which the contested decision should be declared void. In a letter of 14 June 1989 the Commission stated that examination of the documentation submitted by Italy had resulted in full acceptance of the amount of LIT 158 524 650 vouched for by that documentation.

Having regard to the fact that, on the basis of the foregoing considerations, I have come to the conclusion that the Italian Government's main claim must be rejected, I propose that the Court should declare contested Decision C (87) 2027 of 5 November 1987 void only in the amount of LIT 158 524 650 and, in accordance with the terms of the first subparagraph of Article 69(3) of the Rules of Procedure, order each party to bear its own costs.