intervention agencies, according to which the selling-price of cereals must be not less than the local market price is to avoid deterioration of the market and not to guarantee the proper functioning of the Community intervention measures.

It is not therefore possible for a Member State to contend, in order to justify the sale of cereals by its national intervention agency at prices markedly lower than the local market price, that a particular economic situation led the national authorities of that Member State to introduce a temporary price-freeze for certain food products consumed in large quantities and that the prices of the intervention cereals were determined on the basis of the price-freeze.

3. Only the milk product actually used in the manufacture of compound feedingstuffs for animals, to the exclusion of processing waste, is eligible for the aids for skimmed milk processed into compound feeding-stuffs provided for in Regulation No 990/72.

4. Although the provisions of Community law governing aids for the private storage of cheese do not expressly lay down the form of the storage contract, 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, for the purposes of Regulation No 971/68, a storage contract is not concluded until the written instrument is signed.

In Case 61/82

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 81/1043 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 1974 (Official Journal, L 375, p. 25) 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 1974 recognized as 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 increased one of the receipt items and refused to accept as chargeable to the Fund, *inter alia*, three items of expenditure, which therefore left a total sum of LIT 4 141 124 731 chargeable to the Italian Republic in respect of those items,

Those items consisted of the following:

An increase in the receipts in respect of the sale of intervention cereals amounting to LIT 2 264 702 642;

Expenditure amounting to LIT 721 953 004 in respect of a margin of 2% for losses in respect of skimmed-milk powder;

Expenditure amounting to LIT 1 143 616 575 in respect of aid for the private storage of cheeses;

Expenditure amounting to LIT 10 852 510 in respect of aid for the storage of wine.

The Commission regarded those receipts and that 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 the 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:

1 — Published in the Official Journal 1971, L 375, p. 25.

LIT 2 264 702 642
LIT 712 953 004
LIT 1 143 616 575
LIT 10 852 510
(Total LIT 4 141 124 731);

2. Order the defendant to pay the costs.

The *Commission* contends that the Court should:

1. Dismiss the application;

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 intervention to which the items at issue relate and therefore constitutes to that extent an incorrent 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 agriculture policy.

The Commission considers that it is its duty to oppose such a tendency and, in relation to the clearance of accounts, to deal rigorously 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 administrations 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 purposes 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 had 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 primarily 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 equal treatment of traders of the various 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 increase in receipts from the sale of intervention cereals

The *Italian Government* asserts that the rectification by the Commission of the "net losses" account by increasing the revenue arising from the sale of intervention cereals of Italian origin or transferred from other intervention agencies in respect of all operations carried out during the first seven months of 1974 is based on an erroneous interpretation of Articles 2 and 3 of Regulation (EEC) No 376/70 of the Commission of 27 February 1970 laying down the procedure and conditions for

the disposal of cereals held by intervention agencies (Official Journal, English Special Edition 1970 (I), p. 126). By virtue of those provisions the sale of intervention cereals is to be by tender on the basis of a price which is no less than the local market price.

Contrary to the Commission's argument, according to which the sales in question were made at prices considerably lower than the local market price, all sales were conducted in compliance with that provision by reference to the local market prices as established by an organization specializing in market studies. The Commission wrongly referred to the prices quoted on the Milan market and to products sold by mutual agreement. Such prices only operate as a guide and the position is different in other markets and in respect of sales by tender. Furthermore the quality of the intervention stocks varied to a significant extent.

Moreover, the Italian Government points out that the Decreto Legge (Decree-Law) No 427 of 24 July 1973 (Gazzetta Ufficiale della Repubblica Italiana [Official Gazette of the Italian Republic] No 189 of 24 July 1973, p. 5235), which was adopted to meet a particular economic situation, provided for a temporary price-freeze for certain products which were consumed in large quantities. That was done for social and economic reasons of which the Commission was aware. The transfers of products from other intervention agencies took place by reference to those prices.

Consequently the Commission has not shown that there was no relationship between the market prices and the prices set for products sold by the intervention agency.

The *Commission* explains that in the course of 1974 cereals coming from other Member States were in such demand on the Italian market that those States obtained on the open market prices very close to or even higher than those of national cereals. Only products transferred to the Azienda di Stato per gli Interventi sul Mercato Agricolo (hereinafter called "the Italian intervention agency") were sold by it at prices substantially lower than the average market prices recorded at Alessandria, Milan, Bologna, Padua, Ancona and Grosseto.

The Italian intervention agency was under a duty, by virtue of the relevant Italian legislation (Decreto Legge No 427 of 24 July 1973, cited above, as amended by Legge No 496 of 4 August 1973, Gazetta Ufficiale No 216, p. 5806), to sell the cereals at prices fixed by the Comitato Interministeriale per la Programmazione Economica [Interdepartmental Committee for Economic Planning] (hereinafter referred to as "the Committee"). By a decision dated 7 September 1973 the Committee fixed the selling prices of wheat held by the Italian intervention agency at amounts which varied from LIT 8 000 to LIT 8 200 per quintal, which were considerably lower than the local market prices.

Thus the sale of cereals held by the Italian intervention agency did not take place by reference to the common agricultural policy but by reference to objectives and in accordance with rules which were part of national agricultural and economic policy. It follows, according to the Commission, that it is not able to charge the cost thereof to the Community budget.

In its reply the *Italian Government* observes that in fact during the first months of 1974 wheat held by the Italian intervention agency was disposed of, in pursuance of a decision of the Committee, at a weighted average price of LIT 8 264 per quintal, that is to say

15 % below the market price (approximately LIT 9 500 per quintal). The Community institutions were aware of the relevant Italian law. Furthermore the grave shortage of wheat on the Italian market which had resulted in speculation and hoarding and an abnormal increase in prices also led to the adoption of Community measures such as Regulation (EEC) No 2104/73 of the Council of 1 August 1973 concerning the transfer to and sale by the Italian intervention agency of common wheat held by the German, French and Belgian intervention agencies (Official Journal 1973, L 214, p. 2).

In that connection the Italian Government maintains that it follows from the firmly established case-law of the Court that national operations which are not intended to have a direct effect on the formation of market prices but are intended to stop the increase in consumer prices of certain foodstuffs are not incompatible with the common organization of the markets where they do not jeopardize the objectives and functioning of that organization. It argues that in the present case the selling price of the cereals in question was lower than the market price solely because the latter was artificially high by reason of speculation.

The *Commission* maintains in its rejoinder that the national measure which was adopted was not compatible with the common organization of the markets. Even in Regulation No 2104/73, which was the last in a series of special measures adopted by the Community to enable the Italian Republic to deal with its difficulties in obtaining supplies of common wheat, it was provided that the selling price was to correspond essentially to the local market price (Article 6 (4), which refers back to Article 3 (2) of Regulation No 376/70). Furthermore the purpose of that regulation was not to intervene directly in the market price by selling intervention products cheaply but was to ensure the continuity of supply and to discourage speculators.

The Commission notes that the Italian Republic was well aware of the fact that it was not authorized to sell the common wheat in question at a price which was lower than the market price because it had attempted to obtain from the Commission a derogation from the terms of Article 6 of Regulation No 2104/73 of the Council. There was nothing that the Commission could do but to refuse the request.

(b) 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 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 only 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 feedingstuffs", to be eligible for aid the product must be found in a processed form in the compound feed.

The Commission considers that the requirement 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 rate 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 by the Italian intervention agency in respect of skimmed-milk powder which is not to be found in a processed form of compound feed. Consequently the Commission had 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 state when the aid was calculated, the provincial agricultural inspectorate informed the Italian intervention agency of the amounts 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 processed 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 point 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 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 acutal 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 abuses which could not be rectified.

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 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 of a flat rate.

(c) 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 cheeses for the financial years 1974 and 1975, the *Italian Government* considers that the Commission erroneously based its decision on the fact that the storage contracts were concluded several months after the cheeses 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 intervention 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 inspectorate'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 therefore 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 Regulation 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 in the case of 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 Joined 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.

(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 period prescribed in the Community regulations, the *Italian Government* requests the Court to reconsider this problem which was the subject of its judgment of 27 Januar 1981 in Case 1251/79 (cited above). In that 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 (EEC) 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 the wine which is the subject of the contract to be rectified.

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.

The *Commission* states that the present proceedings relate to long-term storage contracts made during the marketing year 1971 to 1972, the clearance of which had been suspended pending the judgment in Case 1251/79. It considers the problem to have been resolved by that judgment. Furthermore the sale of products placed in storage during the period of validity of the contract did not lead to any additional deduction other than that made by reason of the delayed conclusion of the contracts.

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 81/1043 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 1974 (Official Journal, L 375, p. 25) was void inasmuch as the Commission increased the receipts in respect of the sale of intervention cereals by a sum of LIT 2 264 702 642 in favour of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the Fund"), and inasmuch as it refused to accept as chargeable to the Fund a sum of LIT 1 876 422 089 in respect of the payment of aid for skimmed-milk powder used for animal feed, for the storage of wine and for the storage of cheese.

(a) The sale of intervention cereals

2 Article 1 of Regulation (EEC) No 376/70 of the Commission of 27 February 1970 laying down the procedure and conditions for the disposal of cereals held by intervention agencies (Official Journal, English Special Edition 1970 (I), p. 126) provides that such sales are to be conducted by way of invitation to tender and Article 3 (2) of that regulation provides that the selling price must be not less than the local market price.

3 The Italian Government maintains that the sale of considerable quantities of cereals purchased from intervention agencies of other Member States and put up for sale in Italy during the first seven months of 1974 was conducted in compliance with those requirements. The Commission contends, on the contrary, that the cereals disposed of by the Azienda di Stato per gli Interventi nel Mercato Agricolo (hereinafter referred to as "the Italian intervention agency") were sold by it at prices which were markedly lower than the local market price.

4 At the present stage of the proceedings the parties no longer dispute that at the relevant time the average of the prices recorded on the market places in Alessandria, Milan, Bologna, Padua, Ancona and Grosseto was about LIT 9 500 per quintal and that the selling prices of intervention cereals charged by the Italian intervention agency were between LIT 8 000 and LIT 8 200 per quintal.

5 Nevertheless the Italian Government contends that in 1973 and 1974 there was a particular economic situation which led the Italian authorities to introduce a temporary price-freeze for certain products, such as pasta products, which were consumed in large quantities. The prices of the intervention cereals were determined on the basis of the price-freeze. The intervention cereals were disposed of by the Italian intervention agency in order to facilitate, in the face of speculative operations on the market, the maintenance of the freeze which would have failed if the cereals had been sold at the market price.

6 That argument cannot be accepted. Whilst considerations of a social nature may justify the taking of appropriate steps in order to obtain, at a Community level the adaption of the relevant rules, they may not however lead to an interpretation of the Community regulations which is contrary to their wording and objectives.

7 In that connection it is necessary to record that the provisions of Regulation No 376/70, according to which the selling price of the intervention cereals put up for sale by intervention agencies must be no less than the local market price, are intended to avoid deterioration of the market and therefore to guarantee the proper functioning of the Community intervention measures.

8 It follows that, on this point, the application must be dismissed.

(b) Aids for skimmed-milk powder

9 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.

10 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 feedingstuff. 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.

11 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.

12 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."

13 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 has been granted should be assessed at 1%.

14 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.

15 In those circumstances it has not been established that of the total quantity which had been processed the percentage of actual waste differed to any appreciable degree 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.

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

(c) Aids for the storage of wine

17 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 1974 is based on the same reasons as the similar refusal in relation to the previous year 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.

18 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.

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

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

(d) 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 that storage contract must at least include provisions on the quantity of cheese stored, the amount of aid, the 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 that 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 DELIVERED ON 18 JANUARY 1983 [1]

Mr President,
Members of the Court,

The Government of the Italian Republic has brought two actions for the partial annulment of two decisions of the Commission dated 16 November 1981 [2] concerning the clearance of accounts in respect of expenditure for 1974 and 1975 financed by the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the Fund"), Guarantee Section.

I shall present my submissions in respect of both actions in a single opinion so as to avoid repetition, but in the interests of clarity I have chosen to present my arguments in relation to each product which has been the subject of litigation as regards expenditure, since the two cases relate in effect to intervention cereals, milk and milk products, wine and pigmeat.

I — Intervention cereals

By Decision 81/1043/EEC (Official Journal 1981, L 375, p. 25) the Commission refused to recognize as chargeable to the fund a sum of LIT 2 264 702 642 in respect of the sale of intervention cereals.

Regulation (EEC) No 2104/73 of the Council of 1 August 1973 (Official Journal 1973, L 214, p. 2) concerns the transfer to and sale by the Italian intervention agency of common wheat held by the German, French and Belgian intervention agencies. Pursuant to the regulation 200 000 tonnes of common wheat were put at the disposal of the Azienda di Stato per gli Interventi sul

1 — Translated from the French.
2 — Decisions 81/1043/EEC and 81/1044/EEC.