existing in its internal legal or financial system to justify a failure to comply with obligations and time-limits laid down in Community law.

3. Even if the breach of which the Commission complains was remedied after the expiry of the time-limit laid down by the Commission under the second paragraph of Article 169, there is still an interest in continuing the proceedings; that interest may consist in establishing a basis for the liability which the Member State may incur, in particular, towards individuals as a result of the breach of its obligations.

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT
delivered on 11 December 1985 *

Mr President,
Members of the Court,

1. Subject-matter of the dispute

In Case 309/84 the Commission asks the Court to:

(i) declare that by delaying payment of the premiums due under the scheme established by Regulation No 456/80, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(ii) order the Italian Republic to pay the costs.

The Italian Republic contends that the Court should:

(i) declare that the action is redundant as far as concerns its alleged infringement regarding premiums for the 1980/81 and 1981/82 wine-growing years;

(ii) declare the action inadmissible in so far as it relates, according to the clarification to be provided by the Commission, to the premiums for the following wine-growing years.

2. Legal background to the case

Regulation No 456/80, which aims at greater efforts to reduce Community wine-growing potential, introduced a special scheme under which premiums are provided for the temporary or permanent abandonment of wine-growing in certain areas under vines and premiums for the renunciation of replanting.

According to Article 3 (1) of Regulation No 456/80, applications for premiums must be lodged before 31 December following the start of the wine-growing year with the departments to be designated by the Member States. Article 4 (6) provides that the premium is to be paid 'in a single payment' by those departments not more

* Translated from the Dutch.

than six months after the applicant has furnished evidence that 'grubbing-up has in fact taken place' or, in the case of permanent abandonment, 'after the declaration referred to in Article 3 (3) has been deposited'.

Article 3 (3) provides that the premium is to be paid subject to a written declaration by the applicant in which he undertakes not to plant any new vines and to declare the area under vines.

As far as the renunciation of replanting is concerned, the premium must be paid not more than six months after the renunciation has been established and formalized, again in a single payment (Article 8 (2) of the regulation).

Regulation No 456/80 entered into force on 1 March 1980 and applies from 1 September 1980 with the exception of some premiums for which the date of application is brought forward.

3. History and facts of the case

From 1982 many Italian wine-growers who had grubbed-up their vines in order to obtain the premiums lodged a complaint with the Commission because of the failure of the Italian authorities to pay the temporary and permanent abandonment premiums.

In answer to the Commission's inquiry the Italian Government stated in a letter of 27 May 1983 that 'the payment of the premiums in question still depends on the allocation by the Minister of the Treasury of the necessary funds'.

Taking the view that the delay in paying the premiums constituted a breach of the premium scheme introduced by Regulation No 456/80 the Commission commenced the procedure provided for in Article 169 of the EEC Treaty and requested the Italian Government to submit its observations.

In response to that request the Italian Government pointed out in a telex message of 8 August 1983 that, although the Minister of Agriculture and the Minister of the Treasury had reached an agreement on the financing of the premiums in question, the various legislative procedures had still not been completed owing to the dissolution of the Italian Parliament.

On 28 April 1984 the Italian Government informed the Commission that it had appropriated funds for the premiums for the 1980/81 and 1981/82 wine-growing years.

However, the Commission, which took the view that Italy was still in breach of its obligations, issued a reasoned opinion on 14 May 1984. On the same day the Italian Government informed the Commission that the funds necessary to cover the expenditure for the said wine-growing years were available to the Italian authorities.

The Commission's application was received at the Court Registry on 21 December 1984.

4. Assessment of the case

4 (a) *The question of admissibility*

According to a consistent line of decisions of the Court, the scope of an action brought under Article 169 is delimited by the preliminary administrative procedure provided for by that article and by the pleadings set out in the application so that Commission's reasoned opinion and application must be founded on the same grounds and submissions (see for example

the Court's judgment of 7 February 1984 in Case 166/82, *Commission* v *Italian Republic* [1984] ECR 459, paragraph 16, and the previous case-law cited by Mr Advocate General Reischl on p. 476). However, both in the initial letter of 14 July 1983 and the reasoned opinion of 14 May 1984 as well as in the application of 14 December 1984 the subject-matter of the dispute is defined very widely as (in short) continued delay in the payment of the premiums due under Regulation No 456/80. So the question of the admissibility raised by the Italian Government narrows down to the question whether, despite the occurrence of fresh delays in the payment of premiums of the kind which could be established when the reasoned opinion was issued, the factual scope of the proceedings must nevertheless be considered to be limited to the delays established at that time, that is to say, according to the Italian Government, to the 1980/81 and 1981/82 wine-growing years. It is clear that the wide formulation used in the reasoned opinion and also adopted in the application also covers the similar delays which occurred later.

As far as I have been able to ascertain, the Court's case-law provides no clear answer to this question of the limitation in time of the subject-matter of an action brought under Article 169 where, as in this case, a series of identical events occurs over a long period. As far as concerns fresh, similar delays in payment which occurred after the facts mentioned in the reasoned opinion, the Commission argued at the hearing, rightly in my view, that the rights of defence of the Member State concerned are not infringed if those delays are considered to be covered by a reasoned opinion framed in sufficiently wide terms. In the Commission's view, this undoubtedly applies to payments for the 1982/82 and 1983/84 wine-growing years which, under the scheme of the regulation, ought to have been made before 14 May 1984, the date of issue of the reasoned opinion (in my view, this alternative argument is supported by paragraph 9 of the Court's judgment in Case 39/72 which is cited below in a different context). The Commission also rightly pointed out at the hearing that acceptance of the Italian Government's argument would mean that the Commission would have to commence fresh proceedings for the same infringements with regard to the 1982/83 and 1983/84 wine-growing years. I myself would also consider such a result to be inconsistent with procedural economy since, for the reasons stated, the rights of defence of the Member State concerned cannot be considered infringed in that way. The objection of inadmissibility to the application with regard to the 1982/83 and 1983/84 wine-growing years raised by the Italian Government in its rejoinder must therefore, in my view, be rejected.

Moreover, the Commission also pointed out at the hearing that the 1982/83 wine-growing year is at any rate expressly mentioned in the second sentence on page 2 of its first letter of 14 July 1983. Since that sentence does not relate to grubbing-up premiums, I consider the Italian Government's argument at the hearing to the effect that such grubbing-up premiums could not yet be due at the beginning of 1983 for the 1982/83 wine-growing year to

be irrelevant. Declarations of permanent abandonment, as mentioned in that sentence, could definitely have given rise to entitlement to the payment of premiums for the 1982/83 wine-growing year before 14 July 1983.

4 (b) *Substance*

In assessing the substance of the case I should mention first of all that the Italian Government acknowledges that considerable delays have occurred in the payment of premiums for the 1980/81 and 1981/82 wine-growing years. At the hearing it again confirmed this.

The Italian Government's argument that the Commission's action regarding those years has lost its purpose because all overdue premiums for those years had been paid on the date of its rejoinder is not supported by the Court's case-law and must therefore be rejected. For example, the Court rejected a similar defence of the Italian Government in Case 39/72 ([1973] ECR 101). In paragraph 11 of that decision the Court made the general point that '... in the face of both a delay in the performance of an obligation and a definite refusal, a judgment by the Court under Articles 169 and 171 of the Treaty may be of substantive interest as establishing the basis of a responsibility that a Member State can incur as a result of its default, as regards other Member States, the Community or private parties.' Even if the scope of the application was limited to the 1980/81 and 1981/82 wine-growing years, such a determination of a basis for liability towards the undertakings benefiting from Regulation No 456/80 would, of course, also remain relevant in the event of repeated delays in subsequent years.

As far as the 1982/83 wine-growing year is concerned, the Italian Government has also acknowledged in substance in its defence of 5 March 1984 that the finance procedure was still not completed for a good two-thirds of the LIT 36 billion needed in total. As regards 1983/84, it was pointed out that all the information about the premium applications was still not available or checked: from that observation the Commission rightly concluded in its reply that the Italian Government is clearly waiting for all applications for that year to be received and checked before commencing the necessary budgetary procedure, which must inevitably lead to new, considerably long delays compared with the time-limits laid down in Regulation No 456/80. In the second subparagraph of paragraph 4 of its rejoinder, the Italian Government has expressly confirmed the correctness of that conclusion. However, as pointed out earlier, in its rejoinder the Italian Government asks the Court to declare the application inadmissible with regard to the two last-mentioned wine-growing years. Since I have already reached the conclusion that this objection of inadmissibility must be rejected, I need only conclude, as far as the substance of the case is concerned, that, for the reasons given by the Commission, its application must be considered well founded with regard to those two years as well. For the sake of completeness I would merely add that the Italian Government's argument that the Commission's preliminary letter of 14 July relates only to premiums for the grubbing-up of vines and not to premiums for permanent abandonment, is, in my view, refuted by the first, second and third paragraphs of that letter.

5. Conclusion

To sum up, I propose that the Court should:

(a) declare the Commission's application admissible in its entirety;

(b) declare that by delaying payment of the premiums due under the scheme established by Regulation No 456/80, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(c) order the Italian Republic to pay the costs.