In Case 49/83

GRAND DUCHY OF LUXEMBOURG, represented by Ferdinand Hoffstetter, Attaché de Gouvernement Premier en Rang at the Ministry for Agriculture, Viticulture, Water Control and Forestry, Acting as Agent, assisted by Nico Schaeffer, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Christine Berardis-Kayser, 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 of a declaration that Commission Decisions 83/38/EEC and 83/49/EEC of 14 January 1983 (Official Journal 1983 L 38, p. 32 and L 40, p. 57, respectively) are void in so far as those decisions refused to recognize as chargeable to the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, certain expenditure incurred by the Grand Duchy of Luxembourg in respect of private-storage aid for table wines,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans and K. Bahlmann (Presidents of Chambers), P. Pescatore, A. O'Keefe, G. Bosco and O. Due, Judges,

Advocate General: M. Darmon
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 procedure

Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234) provides in Article 5 *et seq.* that private-storage aid may be granted in respect of certain table wines. Article 5 (5) makes the granting of such aid conditional upon the conclusion of storage contracts.

Detailed rules for the conclusion of such storage contracts were laid down in Regulation (EEC) No 1437/70 of the Commission of 20 July 1970 (Official Journal, English Special Edition 1970 (II), p. 469). The first subparagraph of Article 3 (1) of that regulation provides: "Intervention agencies shall conclude contracts only for table wines."

Commission Regulation (EEC) No 2015/76 of 13 August 1976 (Official Journal 1976, L 221, p. 20) replaced Regulation No 1437/70. Council Regulation (EEC) No 1160/76 of 17 March 1976 (Official Journal 1976, L 135, p. 1) made grape musts and concentrated grape musts eligible for storage aid and, in accordance therewith, the second paragraph of Article 1 of Regulation No 2015/76 enabled storage contracts to be concluded in respect of "table wines, grape musts and concentrated grape musts".

Subsequently, Regulation No 2015/76 was amended by Commission Regulation (EEC) No 2206/77 of 5 October 1977 (Official Journal 1977, L 255, p. 13). In particular, Article 6 was completely recast and supplemented by Article 6 (7), which reads:

"A table wine which has been the subject of a storage contract may not subsequently be recognized as a quality wine psr" (quality wine produced in a specified region).

Until the entry into force of Regulation No 2206/77, the relevant Luxembourg legislation provided that any wines made from grapes from recognized vine varieties could obtain the *Marque nationale du vin luxembourgeois* and hence be accepted as quality wines psr, provided that they satisfied certain quality requirements. Wine that was not accepted when first tested and was classed as table wine could nevertheless be resubmitted to the *Commission de la Marque Nationale* at a later date and accepted as a quality wine psr if it had improved in the intervening period. That provision was amended following the entry into force of Regulation No 2206/77 so as to preclude table wines in respect of which storage contracts had been concluded from being submitted to the *Commission de la Marque Nationale* at a later date and recognized as quality wines psr.

By Decisions 83/38/EEC and 83/49/EEC of 14 January 1983, the Commission refused to charge to the European Agricultural Guidance and

Guarantee Fund (hereinafter referred to as "the EAGGF"), Guarantee Section, expenditure incurred by the Grand Duchy of Luxembourg in the 1976 and 1977 financial years in respect of private-storage aid for table wine. According to the Summary Report drawn up by the Commission department concerned on 7 July 1982 on the findings made in inspections carried out with a view to the clearance of EAGGF Guarantee Section accounts for the 1976 and 1977 financial years, this was due, in part, to the fact that — contrary to Article 3 of Regulation No 1437/70 and Article 1 of Regulation No 2015/76 — the system applying in Luxembourg at the time allowed wine in respect of which table-wine storage aid had already been granted to be subsequently recognized as quality wine psr.

By an application registered at the Court on 28 March 1983, the Grand Duchy of Luxembourg applied for a declaration that the decisions in question were void.

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 preliminary inquiry. However, it invited the Luxembourg Government to send any documents in its possession which would support its submissions to the Court. In a letter of 19 January 1984, the Court was informed by the representative of the Luxembourg Government that the latter did not have any such documents.

II — Conclusions of the parties

The *Luxembourg Government* claims that the Court should:

"Declare that the Commission of the European Communities was wrong in refusing to allow the Grand Duchy of Luxembourg a sum of LFR 13 657 564 (that is to say, LFR 9 639 938 plus LFR 5 149 799 = LFR 14 789 737, less LFR 496 591 plus LFR 937 837 = LFR 1 434 428, making a total of LFR 13 355 309) for the 1976 and 1977 financial years; Consequently declare that that sum must be paid to the Grand Duchy of Luxembourg in whole or at least in part."

In its reply, the Luxembourg Government claims, in addition, that the Court should:

"Take formal note of the applicant's offer of evidence as set out above and declare it to be admissible and material."

The *Commission* claims that the Court should:

"Dismiss the application as unfounded;

Order the applicant to pay the costs."

III — Submissions and arguments of the parties

In the view of the *Luxembourg Government*, the condition that storage contracts must not cover table wines which may subsequently be recognized as quality wines psr, appears neither in the regulations applicable to the storage contracts in question, namely Regulations Nos 1437/70 and 2015/76, nor in the basic Regulation, No 816/70, Annex II of which defines "table wine" without making any reference whatsoever to the subsequent changes in the wine or its use.

In was only in Regulation No 2206/77 that such a condition was laid down for the first time. Consequently, the Luxembourg Government contends that it cannot apply to storage contracts concluded prior to the entry into force of that regulation.

The Luxembourg Government further points out that, whereas it is now no longer possible to trace the ultimate destination of all the wine that was stored, it is clear from the statistics appended to the application that the bulk of the wine in question must necessarily have been disposed of simply as table wine. The amount of wine made from grapes from Elbling and Riesling-Sylvaner (Rivaner) vines which was sold as *Marque nationale* wine accounts for only a small fraction of Luxembourg's total wine production. Therefore, the Luxembourg Government considers that, if not all, at least some of the storage aid should be paid to it.

In its defence, the *Commission* points to the third recital in the preamble to Regulation No 2206/77:

"Whereas so as to avoid abuses, it should be stipulated that a table wine which has been the subject of a storage contract may not be subsequently recognized as a quality wine psr."

The Commission concludes that Regulation No 2206/77 embodies in that regard a declaratory provision serving merely as clarification.

It contends that that view is borne out by the intervention system provided for under the common organization of the market in wine. Whereas Regulation No 816/70, which was in force at the material time, laid down a system of price and intervention measures for table wines, Regulation (EEC) No 817/70 of the Council of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions (Official Journal, English Special Edition 1970 (I), p. 252) merely introduced a "policy of encouraging quality production" for wines and provided for no measure of economic support, such as storage aid.

The object of storage aid, which is provided for in Article 5 of Regulation No 816/70, is to prevent prices on the market in table wine from collapsing by temporarily withdrawing varying quantities of table wine from the market until such time as the situation is more propitious.

If it were possible to store a wine eligible for the appellation "quality wine psr", such wine could enjoy a twofold advantage, namely storage aid (as a table wine) and better marketing conditions (as a quality wine). In the Commission's view, such an outcome would conflict with the wording and the aims of the provisions relating to storage. It would also call into question the equality of treatment of economic operators and distort competition within the Commom Market.

As for the Luxembourg Government's claim in the alternative for partial clearance, the Commission considers that it is for the Member State to provide exact evidence of the number of transactions which were effected in accordance with Community rules. It argues that the statistics annexed to the application are inadequate in this regard in view of the element of chance inherent in such data.

In its reply, the *Luxembourg Government* contests the Commission's assertion that the conclusion of storage contracts in respect of wines which were subsequently recognized as quality wines psr is in conflict with the aims of the Community rules.

The Luxembourg Government contends that there is no doubt that the wines in question were table wines at the time when the relevant storage contracts were concluded, and, therefore, qualified for all the advantages available under the EAGGF for table wines from the other

Community countries. During the storage period, the wines were kept off the market, which helped to stabilize prices. Thus the aim pursued by the Community rules was attained.

The Luxembourg Government argues that there is no justification for the Commission's view that a wine stored under a contract financed by the EAGGF is bound always to remain simply table wine, even when its intrinsic qualities have improved to the extent that it has become a quality wine. The solution advocated by the Commission has the effect of significantly restricting the amount of Luxembourg Moselle wine qualifying for a storage contract and of encouraging producers to dispose of their wine immediately on an already saturated market.

The Luxembourg Government also criticizes the attitude of the Commission, which, in its view, is seeking to remedy an omission in the regulations regardless of the fact that, in so doing, it is sacrificing the legitimate interests of the persons affected, in this instance the wine-growers of Luxembourg. The Commission's complaint against them is directed against action that was subject to no clear prohibition. In the Luxembourg Government's contention, legislative provisions ought to be interpreted on the basis of the texts themselves and not on the basis of the policy that the legislature may have wished to pursue.

As regards the request for partial clearance, the Luxembourg Government considers that it would conflict with the principle of equal treatment for economic operators simply to refuse the storage aid for Luxembourg table wine, when it is clear that an appreciable amount of the wine was not marketed with a quality label and so remained table wine. The fact that no more exact evidence can be adduced other than the statistics annexed to the application is due to the inadequacy of Community recording and accounting requirements, no blame for which attaches to either the Luxembourg wine-growers or the Luxembourg authorities.

The Luxembourg Government considers that, since it is the Commission that has refused in a generalized manner and without giving any further particulars to recognize that a number of storage contracts were in order, it is for the Commission to specify how much wine has in fact become quality wine psr. Moreover, the Luxembourg Government offers, under Article 41 (1) of the Rules of Procedure, to produce evidence and establish by experts' reports or, in the alternative, by oral testimony or any other proper means, how much of the table wine stored was actually marketed as such.

In its rejoinder, the *Commission* dismisses the idea expressed in the Luxembourg Government's reply that a wine can be a table wine and, at the same time, a potential quality wine psr. It maintains that that would conflict with the spirit and objectives of the Community rules. In the Commission's view, a table wine remains table wine for its whole existence through to the marketing stage. In contrast, a wine which is granted the *Marque nationale*, provided for in the relevant Luxembourg legislation, has never been a table wine and must not have been the subject of intervention measures intended for table wines. If the Luxembourg legislation makes provision for special systems for grading wine as quality wine psr, those systems must, in any event, be applied in conformity with the Community rules.

The Commission considers that the conclusion of a storage contract does not

erect, as the Luxembourg Government contends, any kind of barrier causing the wine concerned for ever to remain simply table wine. The only wine for which a producer can conclude a storage contract is table wine. Once storage contracts have been concluded for particular wine, that wine is no longer eligible to obtain the *Marque nationale*, not because storage contracts were concluded, but because of the intrinsic character of the wine.

In the Commission's view, that is borne out by the fact that, whereas the Community legislation expressly provides that a quality wine psr may be downgraded to table wine (see, in particular, Article 16 of Council Regulation No 338/79 and Commission Regulation (EEC) No 2903/79 of 20 December 1979 on the downgrading of quality wines produced in specified regions), the converse is not allowed.

As regards the taking account of the interests of the individuals who are bound by the regulations in question, the Commission contends that there was no lacuna in the legislation and that the Luxembourg authorities could, therefore, have applied the rules correctly without difficulty. The Commission cannot be held responsible for the failings of the Luxembourg authorities.

As for the application for partial clearance, the Commission points out that, by virtue of Regulation (EEC) No 1153/75 of the Commission prescribing the form of the accompanying documents for wine products and specifying the obligations of wine producers and traders other than retailers (Official Journal 1975, L 113, p. 1), Member States have appropriate instruments for the purpose of monitoring the destination of the wine they produce. In the Commission's view, those instruments should enable the Luxembourg Government to furnish the necessary evidence that its alternative claim is well founded.

Since the Community financing of certain transactions is conditional on their being in conformity with Community rules, the Commission considers that a Member State applying for such finance may not merely make unsubstantiated declarations that the transactions have been duly carried out.

Moreover, the Commission points out that the Luxembourg Government did, in fact, provide such evidence in connection with the clearance of longterm storage contracts for the 1977/78 reference period. If the Luxembourg Government is not in a position to furnish similar evidence for the contracts at issue, it must bear the responsibility for that state of affairs.

The Commission emphasizes that the Luxembourg Government's request relating to the bringing of evidence by experts' report or oral testimony comes at a very late stage in the procedure without the slightest justification being given for the delay. The Commission also raises doubts as to whether evidence by way of experts' reports or oral testimony is valid in a area where only the documents can provide sufficient evidence.

IV — Oral procedure

The Luxembourg Government, represented by N. Schaeffer, and the Commission of the European Communities, represented by C. Berardis-Kayser, a member of its legal department, assisted by Mr Reichart, as expert, presented oral argument at the sitting on 13 March 1984.

The Advocate General delivered his opinion at the sitting on 12 April 1984.

Decision

1 By application lodged at the Court Registry on 28 March 1983, the Grand Duchy of Luxembourg brought an action, under Article 173 of the EEC Treaty, for a declaration that Commission Decisions Nos 83/38 and 83/49 of 14 January 1983 (Official Journal 1983, L 38, p. 32 and L 40, p. 57, respectively), by which the Commission refused to charge to the EAGGF Guarantee Section certain expenditure incurred by the Grand Duchy in the 1976 and 1977 financial years in respect of private-storage aid for table wines, are void.

2 The reasons given to the Grand Duchy by the Commission for its refusal are based, in so far as this case is concerned, on the fact that, under the Luxembourg provisions in force at the material time and contrary to the Community rules on the matter, wine stored as table wine could subsequently obtain the Luxembourg *Marque nationale* and hence be sold as quality wine produced in a specified region (quality wine psr).

3 The legislation in force in Luxembourg at the time provided that any wine made from grapes from recognized vine varieties could obtain the *Marque nationale* and so become quality wine psr, provided that it satisfied certain quality requirements. Wine could be tested with a view to its obtaining the *Marque nationale* several times over a period of up to two years following vinification. In the meantime, it was regarded as table wine and was thus eligible for storage aid if a storage contract was concluded.

4 In the view of the Luxembourg Government, there was nothing at all in the Community rules on storage contracts to prevent storage contracts from being concluded for table wines which, under the relevant national legislation, might subsequently become quality wines psr. It therefore asked, as its principal claim, that the Court recognize that it is entitled to settlement of all its expenditure in connection with the payment of the storage aid that is contested by the Commission for the reasons set out above. In the alternative, it asks that at least the aid in respect of stored table wine which never in fact became quality wine psr be charged to the EAGGF.

The principal claim

5 Storage aid for table wine was provided for in Article 5 *et seq.* of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234). The granting of such aid was made conditional upon the conclusion of storage contracts, for which detailed rules were laid down in subsequent Commission regulations.

6 The first subparagraph of Article 3 (1) of Regulation (EEC) No 1437/70 of the Commission of 20 July 1970 (Official Journal, English Special Edition 1970 (II), p. 469) provides: "Intervention agencies shall conclude contracts only for table wines". Regulation No 1437/70 was replaced by Commission Regulation (EEC) No 2015/76 of 13 August 1976 (Official Journal 1976, L 221, p. 20); the second paragraph of Article 1 of that Regulation provided that storage contracts could be concluded in respect of "table wines, grape musts and concentrated grape musts".

7 Commission Regulation (EEC) No 2206/77 of 5 October 1977 (Official Journal 1977, L 255, p. 13) inserted in Regulation No 2015/76 the following Article 6 (7):

"A table wine which has been the subject of a storage contract may not subsequently be recognized as a quality wine psr."

8 The Luxembourg Government emphasizes that both the basic Regulation No 816/70 and the implementing Regulations Nos 1437/70 and 2015/76 merely stipulate that storage contracts are to be concluded only for table wine; they are silent as to the subsequent changes in the wine and its use.

9 It follows, in the contention of the Luxembourg Government, that for it to be possible to regard a storage contract as meeting the necessary conditions and hence as eligible for storage aid, it was sufficient, before the entry into force of Regulation No 2206/77, that the wine was table wine at the time when the contract was concluded. Since the Commission does not dispute that the whole of the wine stored in Luxembourg in the 1976 and 1977 financial years actually was table wine when the storage contracts were concluded, it may not refuse to charge the payment of the aid in question to the EAGGF.

10 The Luxembourg Government argues that the said Regulation No 2206/77, which precludes a stored wine from being subsequently recognized as quality wine psr, introduced new legislative provisions and cannot have retroactive effect.

11 The Commission replies, first, that, far from introducing new requirements for obtaining storage aid, Regulation No 2206/77 merely confirms and clarifies the legislative position that existed before that regulation entered into force. It points out that the third recital in the preamble to the regulation is worded to that effect.

12 The Commission argues that, even leaving aside Regulation No 2206/77, examination of the intervention system applying at that time under the common organization of the market in wine shows that the solution put forward by the Luxembourg Government must be rejected.

13 Whereas Regulation No 816/70 laid down a price and intervention system for table wines, Regulation (EEC) No 817/70 of the Council 28 April 1970 laying down special provisions relating to quality wines produced in specified regions (Official Journal, English Special Edition 1970 (I), p. 252) merely introduced a "policy of encouraging quality" for the wines concerned and did not envisage any economic-support measure, such as storage aid. In the Commission's view, it follows that the Community legislature has laid down two alternative systems for wines, depending on whether they are table wines or quality wines. A given product may not, therefore, be subject both to the table wine régime, and thus qualify for storage aid, and to the quality wine régime, which would enable it to enjoy particularly advantageous marketing conditions.

14 In order to resolve this problem of interpretation, it is necessary first to eliminate the arguments that the Commission seeks to derive from Regulation No 2206/77. That regulation does not apply to the contracts at issue, since they were concluded prior to its entry into force, and the statements inserted by the Commission in the preamble to that regulation cannot be relied on as against the Member State concerned.

15 Accordingly, it should be examined whether, as the Commission claims, the conclusion of storage contracts in respect of wines which, under Luxem-

bourg legislation, could subsequently become quality wines psr should be regarded as conflicting with the common organization of the market in wine, even in the absence of an express provision to that effect.

16 It is clear from the text of the abovementioned Community provisions that only table wines and, following the entry into force of Council Regulation No 1160/76 of 17 March 1976 (Official Journal 1976, L 135, p. 1), grape musts and concentrated grape musts are eligible for storage aid.

17 In contrast, although quality wines also fall within the scope of Regulation No 816/70, they are excluded from Title I thereof, relating to prices and intervention. The Community legislature therefore did not consider that it was necessary, in order to stabilize the market and ensure a fair standard of living for the agricultural community concerned, to provide for intervention measures for quality wines. It considered that it was enough to foster a policy of encouraging quality by means of the specific measures in Regulation No 817/70 in order to contribute to the improvement of conditions on the market and, as a result, to an increase in outlets as is stated in the second recital in the preamble to the regulation.

18 However, the Luxembourg Government points out that, unlike Regulation No 816/70, which itself defines table wine (in Annex II), Regulation No 817/70 relies to a very considerable degree on the relevant national rules for the definition of quality wine psr. Consequently, it is permissible for a Member State to provide, as the Luxembourg legislation provided, that any wine produced in its territory should be regarded as table wine until such time, if ever, as it passes the prescribed tests to obtain the appellation "quality wine psr.".

19 It is sufficient in this connection to point out that it is in any event not permissible for the particular nature of the Luxembourg legislation in force at the time as regards the granting of the *Marque nationale* to quality wines psr to have the effect of enabling Luxembourg to give its producers for the same product the benefit of two régimes which the Community legislature had introduced for two distinct products. As emerges from what has been stated above, such an overlapping of advantages would run contrary to the system set up by Regulation No 816/70, on the one hand, and Regulation 817/70, on the other.

20 If the Luxembourg legislation was liable to produce results that conflicted with Community rules, the Grand Duchy of Luxembourg was in any event obliged under Article 5 of the EEC Treaty to take the necessary measures to preclude wine in respect of which storage aid had already been paid from obtaining the *Marque nationale:* that was in fact done following the entry into force of Regulation N 2206/77.

21 The interpretation of the Community rules suggested by the Luxembourg Government should, therefore, be rejected and the view, rightly taken by the Commission, should be confirmed, namely that quality wines psr, whatever the time at which that appellation was conferred on them under the relevant national legislation, are not eligible for the storage aid provided for under Regulation No 816/70.

22 Since it is not contested that at least some of the table wine which was stored in Luxembourg in the 1976 and 1977 financial years subsequently obtained the *Marque nationale* and was disposed of as quality wine psr, the Luxembourg Government's principal claim, namely for recognition of its entitlement to clearance of all the expenses connected with the payment of the storage aid at issue in this case, must be rejected.

The alternative claim

23 In the event that its principal claim is rejected, the Luxembourg Government requests that its entitlement to clearance should be recognized at least as regards the expenses connected with the payment of the storage aid disbursed in respect of the quantities of table wine which were never recognized as quality wine psr.

24 It should be acknowledged, first, that, contrary to the view taken by the Commission, before Regulation No 2206/77 entered into force, it was possible for the Luxembourg authorities to conclude storage contracts in good faith in respect of wines which, at the time the contracts were concluded, were in fact table wines and were never recognized as quality wines psr even though the possibility existed under the relevant national legislation.

25 In this regard, it must be borne in mind that the object of the Community legislature in introducing storage aid was to lend support to the market in

table wine at times of crisis by encouraging the withdrawal of surplus table wine from the market.

26 It is indisputable that the contracts concluded by the Luxembourg authorities were completely consonant with that objective, as they had the effect of removing from the market quantities of table wine whose characteristics were such as to preclude the wine being disposed of as quality wine psr.

27 Therefore the alternative claim of the Luxembourg Government is, in principle, well founded.

28 However, in order to prove what proportion of the wine stored was actually disposed of as table wine, the Luxembourg Government has merely produced statistics showing, for particular vine varieties, the quantities sold as table wine and as quality wine psr respectively for the years in question. It maintains that, in any event, it is for the Commission, which is claiming that the storage contracts at issue were irregular, to state what proportion of the table wine stored was in fact recognized as quality wine psr.

29 The Commission contends that it is for the Member State which is asking the Commission to charge expenditure to the EAGGF to prove that the expenditure was incurred in conformity with the Community rules. In that respect it contests the probative value of the statistics produced by the Luxembourg Government.

30 It is true that, in order to obtain EAGGF financing for the storage aid in question, the Luxembourg Government had to demonstrate, not only that the wine stored was actually table wine at the time when the storage contracts were concluded, but also that it was never recognized as quality wine psr. However, in view of the particular circumstances, the question must be asked whether the Luxembourg Government has not satisfied that evidential requirement.

31 It should be observed that although, by submitting the aforementioned statistics to the Court, the Luxembourg Government has not shown precisely what quantities of the stored wine were disposed of as table wine, it has nevertheless shown that a quantity equivalent to at least one-third of that wine was not marketed as quality wine psr.

32 In those circumstances, the Luxembourg Government should be held to be entitled to have the Commission charge to the EAGGF part of the sums that were paid as storage aid for table wine in the 1976 and 1977 financial years; in the absence of more precise data, that amount should be fixed at one-third of the sums claimed.

33 From all the foregoing considerations it follows that Commission Decisions 83/38/EEC and 83/49/EEC of 14 January 1983 must be declared void in so far as they refuse to charge to the EAGGF Guarantee Section one-third of the expenditure incurred by the Grand Duchy of Luxembourg in the 1976 and 1977 financial years in respect of storage aid for table wine.

Costs

34 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

35 However, under the first subparagraph of Article 69 (3), where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part.

36 As the Commission was unsuccessful in respect of the alternative claim for partial clearance, the Court should order the parties to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares Commission Decisions 83/38/EEC and 83/49/EEC of 14 January 1983 void in so far as they refuse to charge to the European Agricultural Guidance and Guarantee Fund, Guarantee Section, one-third of the expenditure incurred by the Grand Duchy of Luxem-**

bourg in the 1976 and 1977 financial years in respect of private-storage aid for table wines;

2. Orders the parties to bear their own costs.

Mackenzie Stuart Koopmans Bahlmann

Pescatore O'Keeffe Bosco Due

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

A. J. Mackenzie Stuart

President

OPINION OF MR ADVOCATE GENERAL DARMON DELIVERED ON 12 APRIL 1984 [1]

Mr President,
Members of the Court,

1. On 14 January 1983, the Commission of the European Communities adopted two decisions relating to the clearance of the accounts submitted by the Grand Duchy of Luxembourg in respect of expenditure for the 1976 and 1977 financial years financed by the European Guidance and Guarantee Fund (EAGGF).

By those two decisions [2], the Commission refused to allow expenditure declared in respect of private-storage aid for table wine to the amount of:

(a) LFR 9 639 938 for the 1976 financial year;

(b) LFR 5 149 799 for the 1977 financial year.

The Grand Duchy of Luxembourg accepts that those decisions are well founded to the extent that they refused to allow sums of LFR 937 837 in respect

1 — Translated from the French.

2 — Decision 83/38/EEC (Official Journal L 38 of 10 February 1983, p. 32) as regards the 1976 financial year and Decision 83/49/EEC (Official Journal L 40 of 12 February 1983, p. 57) as regards the 1977 financial year.