inspections carried out during the previous month, as required by Article 5 (1) of Regulation (EEC) No 2638/69 of the Commission of 23 December 1969 laying down additional provisions on quality control of fruit and vegetables marketed within the Community (Official Journal, English Special Edition 1969 (II), p. 611) as amended by Commission Regulation (EEC) No 2150/80 of 18 July 1980 (Official Journal, L 210, p. 5), has failed to fulfil its obligations under the Treaty;

2. Orders the Italian Republic to pay the costs.

Mertens de Wilmars Koopmans Bahlmann Galmot

Pescatore O'Keeffe Bosco Due Everling

Delivered in open court in Luxembourg on 15 November 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 4 OCTOBER 1983 [1]

Mr President,
Members of the Court,

This action was brought before the Court on 17 December 1982 by the Commission of the European Communities against the Italian Republic for a declaration that Italy has failed to fulfil its obligations under regulations on the common organization of the market in fruit and vegetables and supplementary provisions.

I — One of the necessary conditions for the proper functioning of the common organization of the market in fruit and vegetables lies in compliance with and the uniform application of the quality standards which have been laid down by the Community provisions for the marketing of those products within the

1 — Translated from the French.

Community and for their export to non-member countries.

It is common ground that the aim of those standards is, in the first place, to protect consumers.

However, compliance therewith is also crucial for the implementation of the measures of market support which are provided for under the common organization. When prices collapse as a result of a glut in the supply of the products which are deemed to comply with those standards, withdrawal measures are adopted.

If there is no control of those standards or if such control is inadequately applied, there is a risk that products of doubtful quality may penetrate the market. A fall in price levels may therefore result in the adoption of withdrawal measures, paid for out of the Community budget, in respect of products which do not qualify for measures of support.

There is an obvious connection between the control of quality standards and withdrawal measures inasmuch as the Community rules provide for a system of pre-emptive withdrawal which may come into operation even though prices are higher than the Community withdrawal price, if the products do not conform to the marketing rules adopted by the producers' organizations.

The operation of quality controls therefore has a greater effect on charges against the Community Budget than on trade between Member States.

It appears that the withdrawal measures adopted in Italy have had significant effects in financial terms.

Following a correspondence initiated by the dispatch of a letter to the Italian Minister for Agriculture on 15 January 1980, the Commission on 24 March 1982 sent a reasoned opinion to the Italian Republic requesting it to take the measures necessary to comply with that opinion within a period of two months.

Italy did not do so and the Commission therefore brought an action before the Court for a declaration that:

By not effecting quality controls of fruit and vegetables marketed within Italian territory, the Italian authorities have failed to fulfil their obligations under Article 8 (1) of Regulation (EEC) No 1035/72 of the Council of 18 May 1972; [1]

By not providing monthly statements relating to the inspections carried out during the previous month, those authorities have failed to fulfil their obligations under Article 5 (1) of Regulation (EEC) No 2638/69 of the Commission of 24 December 1969, [2] as amended by Commission Regulation (EEC) No 2150/80 of 18 July 1980. [3]

Those failures have been confirmed, the Commission states, by complaints from trade circles and by information collected by the Commission from the same sources.

II — The Italian Government seeks to justify itself by referring to a variety of problems. The Special Report on various measures affecting the management of

1 — On the common organization of the market in fruit and vegetables, Official Journal, English Special Edition 1972 (II), p. 437.

2 — Laying down additional provisions on quality control of fruit and vegetables marketed within the Community, Official Journal, English Special Edition 1969 (II), p. 611.

3 — Amending Regulation (EEC) No 2638/69 laying down additional provisions on quality control of fruit and vegetables marketed within the Community, Official Journal, L 210, 13. 8. 1980, p. 5.

the European Agricultural Guidance and Guarantee Fund, Guarantee Section, (Financial Year 1978), published by the Court of Auditors, [1] contains useful information on that subject. Such information, coming as it does from that body, is of particular significance.

The Court of Auditors notes that the Community rules on withdrawal are based on the system existing in the Netherlands, a country in which the market is relatively small, homogeneous and thus reasonably transparent and where, for a long time, the trade organizations have played an important role in regulating production and marketing.

These proceedings show that the conditions which obtained in the Netherlands are not, even now, met in Italy, where there are factors which partition the market in such a way that whilst in certain places it is impossible to satisfy demand, in others withdrawals take place as a result of transport difficulties, the closed nature of distribution chains or the links existing between certain groups of producers and certain distributors.

Moreover, the Italian producers' organizations do not always comply with the conditions laid down under Title II of Regulation No 1035/72, in particular as regards the marketing of the total production of the members and the rules of exclusive access.

The main cause of that state of affairs lies in the extremely decentralized character of the organization of the market in fruit and vegetables in Italy. That is confirmed by the replies given to the questions put by the Court.

1 — Official Journal, C 258, 6. 10. 1980, pp. 10 to 12.

III — According to Article 5 of Regulation No 158/66 of the Council, [2] which was reproduced almost in its entirety in Article 8 of Regulation No 1035/72, a check on the products in question must be made by sampling at all marketing stages and during transport by the authorities appointed by each Member State. The check is preferably to be made prior to dispatch from the production areas when the goods are being packed or loaded. Finally Member States must communicate to the other Member States and to the Commission the names of the authorities which they have appointed to be responsible for checking.

The Azienda di Stato per gli Interventi nel Mercato Agricolo [State Organization for Intervention in the Agricultural Market] and the Istituto Nazionale per il Commercio Estero [National Institute for Foreign Trade], were charged with responsibility for such checks; however, the problems created by the implementation of quality controls were much more serious in respect of the domestic market than in respect of the external market.

Internal consumption greatly exceeds the quantities intended for export. Moreover, and this consideration is referred to in the recitals in the preamble to Council Regulation (EEC) No 1360/78 of 19 June 1978 on producer groups and associations thereof, [3] the market in Italy is supplied by products from a very large number of holdings, which are small in size and insufficiently organized. Only a small part of the production is marketed by the producers' organizations. Those structural features inevitably have an effect on the organization of inspections.

2 — Regulation of 25 October 1966, on applying common quality standards to fruit and vegetables marketed within the Community, Official Journal, No 192, 27. 10. 1966, p. 3282.

3 — Official Journal, L 166, 23. 6. 1978, p. 1.

In accordance with Article 5 (2) of Regulation No 158/66, [1] by Regulation No 2638/69, the Commission adopted *additional* provisions on the quality control of fruit and vegetables marketed within the Community.

There was however still no provision in that regulation such as to require that quality controls be effected regardless of the destination of the goods, that is, also on the domestic market of *all* the Member States; nor was there any provision requiring that the Commission be *regularly* informed by the Member States as to the inspections carried out.

It became *possible* to achieve that objective only after the adoption by the Commission of Regulation No 2150/80 of 18 July 1980 in accordance with Article 8 (2) of Regulation No 1035/72.

According to Article 1 (3) of that regulation, Article 5 (1) of Regulation No 2638/69 was replaced by the following text, which I must read to the Court. It provides that:

"Each Member State shall furnish the Commission with a monthly summary of the inspections carried out the previous month, showing in particular:

The origin of the goods inspected,

The destination of such goods,

The marketing stage at which inspection was carried out, indicating the number of consignments inspected,

The number of cases of failure to comply with the rules in force."

That provision, then, made possible, for the first time, the implementation of the domestic market of the Member States of the control of quality standards, also provided for at that stage in the marketing chain in Article 8 (1) of Regulation No 1035/72.

IV — I note, in the first place, that there is a certain contradiction in the actual wording of the letter of formal notice which was sent on 20 July 1981 by Commissioner Andriessen to the Italian Minister for Foreign Affairs. In that letter, the Commission took the view in particular that the Italian authorities' failure to reply to an earlier letter from Commissioner Gundelach, dated 15 January 1980 [2] to the same authorities, and to the reminders from the Director General for Agriculture of 28 May and 28 July 1980 confirmed that the Italian Government had, *inter alia*, failed to fulfil its obligations under Article 5 (1) of Regulation (EEC) No 2638/69 of the Commission, as amended by Article 1 (3) of Commission Regulation (EEC) No 2150/80 of 18 July 1980. A similar letter was addressed to the competent authorities of all the Member States which, according to the Commission, supplied the information requested.

The provisions of Regulation No 2150/80 came into force only on 1 January 1981. [3] Consequently on 15 January, 28 May and 28 July 1980 it was impossible to charge the Italian authorities with failing to apply them. It was therefore the letter from Commissioner Andriessen of 20 July 1981 which, for the first time, clearly indicated the failure to fulfil its obligations which is alleged against the Italian Republic.

1 — The provision was reproduced in Article 8 (2) of Regulation No 1035/72.

2 — Erroneously cited as dated 15 December 1980.

3 — Article 2 of Regulation No 2150/80.

I do not consider that it is a good administrative practice to open a dialogue with a Member State in connection with a failure to fulfil obligations when the specific provisions which it is alleged not to have complied with have not come into force, have not been published or have even not been adopted.

V — I have stated that Community rules on the subject of quality controls on the Italian market led to a fragmentation of the physical inspection arrangements.

Whilst the Netherlands — as is also the case in Belgium, Luxembourg, Denmark, Ireland and the United Kingdom — has only one forwarding area covering the whole of the national territory, Italy is divided into five zones (and Greece into seven).

The Commission itself does not have representatives working with each producers' organization.

In Italy, the two bodies which are responsible for inspection — one of which clearly deals only with exports — must therefore have the indispensable but costly checks carried out by members of the trade, unless they carry them out themselves.

At the end of 1981, checking the application of quality standards for marketing and for withdrawal operations, for the *whole* Community, was entrusted to a total of some 1 300 national agents; that is clearly an inadequate number.

In order to improve the rapidity of compilation and the scope of the reports required by Community rules, it would be necessary, in the first place, to facilitate the collection of the information on which such reports are based and thus to tackle, in particular, the problem of producers' groups or organizations so as to enable them to provide the information expected of them in so far as it is accepted that such information can only be collected and transmitted through that channel. In short, if those organizations are to made responsible and are not to be self-financing, it will be a precondition that financial aid must be granted either by the Member States or by the Community.

It cannot be a question of simply abolishing any division of the Italian territory, but, in order to make effective control possible, it would seem indispensable to carry out a reorganization along lines to be agreed between the Community institutions, the national authorities and the trade circles concerned.

VI — The Commission points out that the amendment introduced by its Regulation No 2150/80 to Article 5 of Regulation No 2638/69 conformed to the opinion of the Management Committee for Fruit and Vegetables. Moreover the Italian Republic has not directly challenged the legality of that regulation and I am doubtful whether it is possible for a Member State to plead in any way the illegality of the Community provisions which it is alleged to have disregarded.

However, even apart from the contradiction to which I have referred, it is, in my view, somewhat futile to declare that a Member State has failed to fulfil its obligations when the necessary conditions for the normalization of the position — which depend partly on the Community authorities — are not satisfied. Moreover, the Court is aware that discussions are at present taking place on the type of organization to be

established in order to ensure the proper functioning of the market, not only in Italy, but also in other producer States and that fundamental changes are envisaged in the context of the accession of other Mediterranean States.

Finally, in view of the complexity of the problem, I consider that it was unrealistic to allow the Italian Government two months from 24 March 1982 to comply with the requirements.

A declaration that a Member State has failed to fulfil its obligations under those circumstances might prove to be ineffective. In that regard, the cases of the Italian Viticultural Land Register [1] or the Italian Milk Centres [2] are instructive precedents.

I propose that the action be dismissed and that the Commission be ordered to pay the costs.

1 — Judgment of 4 March 1970, Case 33/69 *Commission* v *Italian Republic* [1970] ECR 93.

2 — Judgment of 21 March 1972, Case 82/71 *Società Agricola Industrie Latte (SAIL)* [1972] ECR 119.