effect of Community Regulations and of jeopardizing their simultaneous and uniform application in the whole of the Community.

4. It cannot be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community Regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests. In the same way, practical difficulties which appear at the stage when a Community measure has to be put into effect cannot permit a Member State unilaterally to opt out of observing its obligations.

5. For a State unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Communitiy brings into question the discriminations at the expense of their nationals, and above all of the nationals of the State itself which places itself outside the Comunity rules.

This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the fundamentel basis of the Community legal order.

In Case 39/72

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Armando Toledano-Laredo and Giancarlo Olini, acting as agents, having chosen its address for service in Luxembourg in the chambers of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by Signor Adolfo Maresca, Ambassador, acting as agent, assisted by Signor Giorgio Zajari, substitute at the Avvocatura generale dello Stato, having chosen its address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a declaration that the Italian Republic has failed in the obligations imposed on it by virtue of Regulation No 1975/69 of the Council of 6 October 1969 introducing a system of premiums for slaughtering cows and for withholding milk and milk products from the market and of Regulation No 2195/69 of the Commission of 4 November 1969 establishing methods of implementing the system of premiums for the slaughtering of cows and for withholding milk and milk products from the market,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore (Rapporteur), Presidents of Chambers, A. M. Donner and J. Mertens de Wilmars, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the present

JUDGMENT

Issues of fact and of law

I — Statement of the facts

The Council, considering that the situation in the sector of milk and milk products in the Community involved substantial and growing surpluses, which needed to be limited, — by Regulation No 1975/69 of 6 October 1969 (OJ L 252, p. 1), as amended by Regulation No 1386/70, instituted a system of premiums for slaughtering cows and for withholding milk and milk products from the market.

The methods of implementing this system were established by Regulation No 2195/69 of the Commission of 4 November 1969 (OJ L 278, p. 6), as amended especially by Regulation No. 2240/70 of the Commission dated 4 November 1970 (OJ L 242, p. 12).

The system instituted by Regulation No 1975/69 was repealed, as regard applications for premiums made after 30 June 1971, by Regulation No 1290/71 of the Council dated 21 June 1971 stopping the grant of premiums for slaughtering cows and for withholding milk and milk products from the market (OJ L 137, p. 1).

Until that date, Member States were required to see that the system of premiums was applied in a correct manner and within the time limits stipulated.

As regards the premiums for slaughtering, the national authorities were required to take the measures necessary to permit, on the one hand, the submission of applications for premiums and the slaughtering of the cows within the stipulated time limits, which expired respectively on 9 January and 30 June 1970, and, on the other hand, the verification of the applications submitted.

For the purpose of this verification, it was necessary to mark all dairy cows kept on the holding, to determine the number of dairy cows conferring entitlement to a premium, taking account of the cows kept on the holding at a particular date between, for Italy, 1 September 1968 and 30 November 1969, to register the undertaking of the farmer to give up the production of milk completely and to slaughter all the dairy cows and provide a descriptive form to

accompany each dairy cow in all transactions until slaughter.

As regards the premium for withholding milk and milk products from the market, the national authorities had to take measures concerning, in particular, the submission of applications in accordance with the stipulated conditions, the verification of the applications, the determination of the number of cows conferring entitlement to a premium, the registration of the undertaking by the breeder to give up completely the disposal of milk or milk products by way of sale or gift, as well as the survey of all the businesses concerned with the collection of the products in the applicant's area.

The Member States were required to make payment of the premiums for slaughtering cows within a period of two months from the production of proof of slaughter, and the first annual payment of the premium for nonmarketing within a period of three months from the signing of the abovementioned undertaking by the breeder.

By a cirular of 23 March 1970 the Italian Minister of Agriculture and Forestry gave directives to the provincial inspectorate of agriculture with a view to the examination of the applications already submitted, in anticipation of the approval of the legislative measure required to release the funds necessary for the implementation of Regulations Nos 1975/69 and 2195/69.

The Commission, observing the absence in Italy of implementing legislation or regulations which would have permitted a normal payment of the premiums for slaughtering and the payment of the premium for the withholding of milk and milk products from the market, by letter of 21 June 1971 commenced against the Italian Republic the procedure provided for by Article 169 of the EEC Treaty.

In its observations, presented to the Commission by letter of 24 August 1971, the Italian Government maintained that there was before Pariament, with a view to the implementation of Regulations Nos. 1975/69 and 2195/69, a draft law, which had already received the approval of the appropriate committee of the Senate and which had still to be approved by the Chamber of Deputies.

On 26 October 1971 there was promulgated Law No 935, 'applying the Community Regulations in the sector of zoo technology and in the sector of milk products' (OJ of the Italian Republic No 294 of 22 November 1971).

The first paragraph of the first Article of this Law provides that the Minister of Agriculture and Forestry shall establish, by statutory instrument made with the approval of the Minister of Health, the procedure for the investigation of applications and the settlement of the premiums for slaughthering cows.

Paragraph 3 of this Article authorizes for this purpose the setting aside of a thousand million lire in the provisional estimates for 1970 of the Ministry of Agriculture and Forestry.

On 30 December 1971, for the purpose of putting into effect Law No 935, a decree of the Italian Finance Minister was adopted regarding the amendments to be made to the provisional estimates of the Ministry of Agriculture and Forestry for 1971.

On 21 February 1972 the Commission gave a reasoned opinion, delivered on 28 February, in which it invited the Italian Republic to take within a period of one month the steps necessary to implement the system of premiums for slaughtering dairy cows and premiums for withholding milk and milk products from the market.

On 22 March 1972 the Italian Minister of Agriculture and Forestry and the Minister of Health published an interministerial decree setting out details of the procedure for the award and payment of premiums for slaughtering.

On the same date the Minister of Agriculture and Forestry informed the provincial inspectorate of agriculture of the releasing of the funds necessary for

the payment of the premiums for slaughtering and gave them instructions for the payment of these premiums.

On 27 March 1972 a joint decree was issued by the Minister of Agriculture and Forestry and the Finance Minister granting an additional credit for 1972.

By application lodged on 3 July 1972, the Commission, under Article 169, paragraph 2, of the EEC Treaty, brought before the Court failure of which it complained on the part of the Italian Republic, with regard payment of the premiums for slaughtering cows and the premiums for withholding milk and milk products from the market.

II — Procedure

The written procedure followed a regular course;

The Court, on the report of the Judge-Rapporteur, after hearing the Advocate-General, decided to open the oral procedure without a preparatory inquiry;

The parties presented oral argument at the hearing on 28 November 1972;

The Advocate-General presented his opinion at the hearing on 11 January 1973;

III — Submissions of the parties

The *Commission* submits that the Court should

— declare that in not taking the measures necessary to permit the effective application in its territory, within the proper time limits, of the system of premiums for slaughtering dairy cows and premiums for withholding milk and milk products from the market, the Italian Republic failed to fulfil the obligations imposed on it by Regulations Nos 1975/69 and 2195/69;

— order the Italian Republic to pay the costs of the proceedings;

The *Italian Government* submits that the Court should declare that there is no longer any need to give a decision in the presente case.

IV — Pleas and arguments of the parties

The pleas and arguments of the parties may be summarized as follows:

The *Commission* after reviewing the situation in the sector of milk and milk products in the Community, and especially the measures taken by the Council to eliminate surpluses, observes that in its judgment of 17 May 1972 (Orsolina Leonesio v Minister of Agriculture and Forestry of the Italian Republic; request for a preliminary ruling referred by 'Pretore' of Lonato; Case 93/71; Recueil 1972, p. 287), the Court of Justice held that, as from the moment when all the conditions required by Regulations Nos 1975/69 and 2195/69 were fulfilled, those Regulations conferred on farmers a right to payment of the premium for slaughtering, without the Member State being able to resist such payment by relying on any element whatsoever in its legislation or its administrative practice. However, judicial proceedings under Article 169 and Article 177 of the EEC Treaty respectively have a different object, and different purposes and effects; the Commission also had the obligation, in view of the Italian Republic's failure to act, to pursue the action started against the latter under Article 169.

(a) As regards the premium for slaughtering, the Italian Republic which had until then limited itself to taking, by the circular of the Minister of Agriculture and Forestry dated 23 March 1970, purely conservative measures, had promulgated only with considerable

delay — more than two years after the coming into effect of Regulation No 1975/69 — Law No 935 of 26 October 1971 'applying the Community Regulations in the sector of zoo technology and in the sector of milk products'.

This Law, moreover, was not of immediate application: its putting into effect depended, on the one hand, on a decree by the Finance Minister making certain modifications to the budget estimates and, on the other hand, on a decree to be made by the Minister of Agriculture and Forestry, with the approval of the Minister of Health, on the procedure for the investigation of applications and settlement of the premiums.

The decree of the Finance Minister did not issue until 30 December 1971, and this made necessary a new decree of 27 March 1972, with a view to the grant of an additional credit for the 1972 financial year.

The interministerial decree of the Minister of Agriculture and Forestry and the Minister of Health was not adopted until 22 March 1972. It contained only a few implementing provisions properly so called; the main part consisted only of a simple reproduction of the provisions of Community Regulations, which were 'deemed applicable' in the Italian legal system. This procedure is very debatable; in view of the date of this decree the Commission was not able to raise objections against it in its reasoned opinion of 21 February 1972.

The interministerial decree of 22 March 1972 was yet in another respect contrary to Community law. It ignored Regulation No 580/70 of the Council of 26 March 1970 amending the system of premiums for slaughtering (OJ L/70, p. 30) which had postponed from 30 April to 30 June 1970 the time limit for the slaughter of certain cows.

The payments of the premium for slaughtering in fact commenced in Italy at the end of October 1972. It is proper to notice however that the first payments were due to court decisions, and that the Italian authorities refused even to accept all the consequences of these, particularly as regards the payment of interest.

The considerable delay in the promugation of the implementing legislation meant, in any case, that the premiums were not and could not be paid within the time limits laid down by the Community Regulations. Moreover, the range of application of the system of premiums was unduly restricted, since certain classes of cattle were excluded and the postponement of the time limit for slaughtering was disregarded.

The result of all this is that Italian farmers were placed, as regards premiums for slaughtering, in a more disadvantageous position than the farmers of other Member States, which is contrary to the fundamental principle of the uniform application of Regulations throughout the Community.

(b) As regards the premium for non-marketing, no implementing measure has been taken by the Italian Republic.

The arguments advanced in the present proceedings by the Italian Government to justify its failure to act, should not be accepted.

Objections based on the economic or political expediency of the Regulation in question cannot be raised in the contentious phase of proceedings under Article 169, especially as in this case, in the pre-contentious phase, only the slowness of parliamentary procedure had been relied on to excuse the inertia of the Italian Republic in putting the Regulations into effect.

Further, it is proper to note that the Italian Republic, just as the other Member States, was intimately involved in formulating and working out the Regulations in question; at this stage it would have been open to the Italian authorities to present all the arguments of a technical or political nature that they considered appropriate, in the

general interest of the Community as well as in Italy's own interest. As from the moment however when these arguments were not accepted by the Council, Regulations No 1975/69 and 2195/69, which were unanimously adopted, should have been applied in Italy as in all the other Member States. The Italian Government had the duty to insist that the national Parliament should adopt the measures to give effect to the Regulations. Should there have been difficulties of a technical order due to the national agricultural structure, the Italian Government should have apprised the Community authorities and requested them, should the need arise, to make amendments to the Regulations in question. The Italian Republic has chosen an easy way out: it has simply neglected to apply the Regulations. Such an attitude cannot be tolerated in the framework of the Community.

It is not true that the Community authorities have recognized the inadequate character of the measures taken to limit surpluses in the sector of milk and milk products. Indeed, the system of premiums for non-marketing was right from the start instituted as a temporary system; Article 13 of Regulation No 1975/69 shows this to be so. Regulation No 1290/71 stopping the grant of premiums, was promulgated because the situation had improved and, for this reason, the grant of premiums to new applicants was no longer justified.

(c) The argument of the Italian Government, in so far as it persists in relying on budgetary or administrative rules to justify its failure to act, is quite contrary to the decisions of the Court. According to them, actions for a declaration of default are intended to assert the Community interests established by the Treaty against the inertia or resistance of the Member States. In the case in question there is inertia on the part of the Italian State as regards the premiums for slaughtering and a deliberate and admitted resistance as regards the premiums for non-marketing, The realization of the objects of the Community requires that the rules of Community law established by the Treaty itself or by the procedures which it has created shall apply with full force at the same time and with the same effect over all the territory of the Community, without Member States being able to put any obstacles whatsoever in the way.

In these circumstances, it cannot seriously be disputed that the Italian Republic has failed in the obligations which lay upon it by virtue of Regulations No 1975/69 and 2195/69, in the framework of the Community agricultural system, in conjunction with Article 5 of the EEC Treaty.

The *Italian Government* claims that a distinction should be drawn between the case of premiums for the withholding of milk and milk products from the market, on the one hand, and the case of premiums for slaughtering cows on the other hand.

(a) As regards the premiums for slaughtering, the necessary funds have been allocated, albeit after an annoying delay, and the regional administration henceforth has the funds to permit it to pay the premiums with very little further delay.

It is true that the delay in the payment of the premiums, in relation to the period provided by the Community Regulations, is indisputable. It is necessary however to bear in mind that the allocation of the necessary credits for the financing of the system of premiums has met with difficulties due to the concomitance of various substantial financial commitments which the Italian State has had to face simultaneously, in order to resolve the problems created by the adaptation of the economic and social structure of the country to new methods of production and new social conditions. Another reason for delay lay in the fact that the problem of premiums for slaughtering was considered at the same time as that of premiums for the

withholding of milk and milk products from the market, in respect of which there appeared serious objections militating in favour of at least a temporary postponement of the question.

The question of the payment of interest raises a matter of internal law only and does not come under Community law.

In these circumstances the pursuit of the action by the Commission is neither constructive nor useful; it would only have the gratuitously punitive effect of penalizing temporary difficulties with which the Italian State has been confronted.

(b) The intervention provided for in the sector of premiums for withholding milk and milkproducts from the market has been found objectively impracticable in Italy.

Not only did an immediate and complete application of the provisions for artificially encouraging the non-marketing of milk present, by reason of the special conditions of the Italian economy and in particular of the most deprived southern regions, very serious difficulties for the national agriculture which suffers from inadequate production, but the Community system met with a physical impossibility of execution: in view of the breeding conditions and the structure of the majority of Italian farms, the statistics were lacking which would have permitted, by the survey and control of the quantity of milk which was not marketed, the putting into effect of the Regulations.

It is not a question in the present case of disputing the expediency or the validity of Comunity rules, but of recognizing the objective reasons for which they have revealed themselves inapplicable in a given situation. Given the present structure of its agriculture, the Italian Republic has come up against a physical impossibility of putting into effect on its territory the Community Regulations on premiums for withholding milk and milk products from the market.

It can be seen clearly from the official documents of the Council of 16 July and 12 September 1969 that the Italian delegation, in the course of the discussions prior to the adoption of Regulation No 1975/69, had expressed the most formal reservations as to the practical applicability of the measures envisaged.

Moreover, the Italian authorities, although conscious of the necessity to fulfil loyally their Community obligations, were aware that doubts had equally appeared at the Community level as to the rational nature of the measures laid down on premiums for the non-marketing of milk.

All these considerations taken together had led the Parliament to remove from the draft law which it had before it the measures relating to the system of premiums for withholding milk and milk products from the market, and to postpone its decision on this matter. In the meantime, moreover, the Community authorities themselves have modified their views as to the type of intervention intended, as a result of numerous negative opinions about a system of premiums encouraging without distinction a dispersal of resources which was no doubt justifiable in areas having an excess production but which was quite inappropriate in areas where there was insufficient production. They have in consequence changed the direction of their policy, especially with regard to areas characterized by an insufficiency of production of the most necessary foods.

At the present time it is in any case no longer possible physically to meet retroactively the obligations which should have been performed in the period laid down by the Community Regulations in question. Furthermore, the non-implementation in Italy of the system of premiums for withholding milk and milk products from the market has in the end made it possible to avoid aggravating deplorable deficiencies in this sector, averting a crisis which could have been dangerous to the economy of the entire Community.

In these circumstances it would have been in accordance with the spirit of the Treaty for the Commission not to pursue the proceedings, which in the present state of affairs can henceforth give rise only to formalism and legalism without any practical bearing. Moreover, the Commission has taken this attitude in certain similar situations.

The pursuit of the proceedings started by the Commission is therefore unwarranted; if the Commission does not desist, the Court should hold that there is no need to give a decision.

Grounds of judgment

1 By application lodged with the Registry on 3 July 1972, the Commission has brought before the Court, under Article 169 of the EEC Treaty an action for a declaration that, in not taking the measures necessary to permit in its territory effective application within the prescribed period of the system of premiums for slaughtering dairy cows (hereinafter called 'premiums for slaughtering') and of premiums for withholding milk and milk products from the market (hereinafter called 'premiums for non-marketing'), the Italian Republic has failed in the obligations imposed on it by Regulation No 1975/69 of the Council of 6 October 1969 a system of premiums for slaughtering cows and for withholding milk and milk products from the market (OJ L 252, p. 1) and of Regulation No 2195/69 of the Commission of 4 November 1969 establishing methods of implementing the aforementioned Regulation (OJ L 278, p. 6);

2 Regulation No 1975/69, as modified especially by Regulation No 580/70 of the Council of 26 March 1970 (OJ L 70, p. 30), introduced, with a view to reducing the surpluses of milk and milk products existing at that time in the Community, a system of premiums to encourage the slaughtering of dairy cows and the withholding of milk and milk products from the market.

The procedure for putting the system into operation was set out by the Commission in Regulation No 2195/69 as amended and amplified on various subsequent dates.

As a result of these provisions, the Member States were bound to take comprehensive measures, within the time limits laid down, to put the system into operation, especially as regards the making and verification of applications by farmers, the registration of the undertaking under which the applicants agree to give up completely the production or supply of milk, the notification to the Commission of the number and magnitude of the ap-

plications received, the control of the carrying out of the undertakings and finally the payment of the premiums to those entitled.

3 As regards the premiums for slaughtering, the aforementioned Regulation fixed 1 to 20 December 1969 as the period in which the applications for the premium had to be made to the competent national authority, and from 9 February to 30 April 1970 as the period for slaughtering. For dairy cows calving between 1 April and 31 May 1970, the period was extended for thirty days after the day of calving.

The payment of the premiums had to be made, in accordance with the rules laid down by Articles 4 of Regulation No 1975/69 and 10 of Regulation No 2195/69, within a period of two months from proof of slaughtering, save that as regards the balance due to farmers who had owned more than five dairy cows the payment was postponed for a period of three years.

4 On the other hand, as regards premiums for non-marketing, the applications had to be received by the competent national authority from 1 December 1969, and the first payment was to be made within three months from the signing of the undertaking by the applicant.

5 Because of an improvement observed in the sector of milk and milk products, the Council, by Regulation No 1290/71 of 21 June 1971 (OJ L 137, p. 1), revoked the system of premiums for slaughtering and non-marketing provided for by Regulation No 1975/69.

6 After the entry into force of Regulations Nos 1975/69 and 2195/69 the Italian Government presented a draft law to the Parliament containing the necessary provisions for the application in Italy of the system of premiums for slaughtering and non-marketing.

By a circular of 23 March 1970 the Minister of Agriculture gave directions to the provincial inspectorate as to the investigation of the applications already made in anticipation of the approval of the legislative measure which, in particular, had to release the funds necessary to give effect to the Regulation.

According to the explanations furnished by the Italian Government, doubts appeared during the Parliamentary debates as to the expediency of putting into effect the Community Regulations regarding premiums for non-

marketing, and accordingly the relative provisions were struck out of the draft law, and Parliament postponed its decision with regard to them.

In these circumstances there has been no measure implementing the system of premiums for non-marketing in the Italian Republic.

7 Thus, Law No 935 of 26 October 1971 regarding 'applying the Community Regulations in the sector of zoo technology and in the sector of milk products', published in the *Gazzetta ufficiale* No 294 of 22 November 1971, only contains provisions authorizing the Government to take steps to implement the payment of the premiums for slaughtering and provides the financial means for the payment of these premiums only.

In execution of this Law, the putting into effect of the system of premiums for slaughtering was secured by a decree of 22 March 1972, whilst a subsequent decree of 27 March 1972 put at the disposal of the administration the financial means necessary for the payment of the premiums for slaughtering.

It appears from information furnished in the course of the proceedings that the payment of the premiums to those entitled commenced about the end of the month of October 1972.

On the preliminary objection

8 The defendant, without going into the merits of the dispute, claims that the pursuit of the action commenced by the Commission is no longer warranted because of the circumstances.

The difficulties which had originally delayed the payment of the premiums for slaughtering having been overcome, the payment of these premiums is in process and therefore the *raison d'etre* of the proceedings instituted by the Commission has disappeared.

As for the omission to pay the premium for non-marketing, the situation has become in the meantime irremediable, because it would no longer be possible physically to comply retroactively with the obligations which should have been performed during the period provided by the Community provisions in question.

In these circumstances, the action brought by the Commission has lost its purpose on both counts, so that it only remains for the Court to hold that there is no need to give a decision.

9 The object of an action under Article 169 is established by the Commission's reasoned opinion, and even when the default has been remedied subsequently to the time limit prescribed by paragraph 2 of the same Article, pursuit of the action still has an object.

This object holds in the present case since, as regards the premiums for slaughtering the obligation placed on the Italian Republic is far from being completely performed; the question of the payment to those entitled of interest on the overdue payments, is not settled, and the complaints developed by the Commission in the course of the proceedings relate not only to the delay in carrying out the Regulations but also to certain of the methods of application which have in effect weakened their efficacity.

10 As regards the non-performance of the provisions relating to the premiums for non-marketing, the defendant cannot in any case be allowed to rely upon a *fait accompli* of which it is itself the author so as to escape judicial proceedings.

11 Moreover, 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.

12 The preliminary objection raised by the defendant must therefore be rejected.

Merits

13 It is convenient to consider separately the manner in which the defendant has implemented the provisions regarding the premiums for slaughtering, and its refusal to implement the provisions regarding the premiums for non-marketing.

1. With regard to the premiums for slaughtering

14 The Regulations of the Council and of the Commission have provided precise time limits for the carrying into effect of the system of premiums for slaughtering.

The efficacy of the agreed measures depended upon the observation of these time limits, since the measures could only attain their object completely if they were carried out simultaneously in all the Member States at the time determined in consequence of the economic policy the Council was pursuing.

Over and above this, as has been stated by the Court in its judgment of 17 May 1972 (Case 93/71 Orsolina Leonesio v Ministry of Agriculture of the Italian Republic, Request for a preliminary ruling made by the Pretore di Lonato), Regulations Nos 1975/69 and 2195/69 conferred on farmers a right to payment of the premium as from the time when all the conditions provided by the Regulations were fulfilled.

It consequently appears that the delay on the part of the Italian Republic in performing the obligations imposed on it by the introduction of the system of premiums for slaughtering constitutes by itself a default in its obligations.

15 Apart from this delay in implementation, the Commission has raised certain complaints with regard to the manner in which the Italian Government has given effect to the provisions of the system in question.

This criticism concerns more especially the fact that the provisions of the Community have been distorted by the procedure in giving effect to them adopted by the Italian authorities and that these same authorities have not taken into consideration an extension of the time allowed for the slaughter.

16 Whilst the Italian Law No 935 is limited to making the necessary financial provisions for giving effect to the system of premiums for slaughtering and to enabling the Government to institute the appropriate administrative measures for giving effect to the Community Regulations, the decree of 22 March 1972 provides, in the first Article, that the provisions of the Regulations 'are deemed to be included in the present decree'.

In substance the same decree, apart from some procedural provisions of a national character, confines itself to reproducing the provisions of the Community Regulations.

17 By following this procedure, the Italian Government has brought into doubt both the legal nature of the applicable provisions and the date of their coming into force.

According to the terms of Article 189 and 191 of the Treaty, Regulations are, as such, directly applicable in all Member States and come into force solely by virtue of their publication in the *Official Journal* of the Communities, as from the date specified in them, or in the absence thereof, as from the date provided in the Treaty.

Consequently, all methods of implementation are contrary to the Treaty which would have the result of creating an obstacle to the direct effect of Community Regulations and of jeopardizing their simultaneous and uniform application in the whole of the Community.

18 Moreover, the implementing measures provided both by Law No 935 and by the decree of 22 March 1972 do not take into account the extension of the time allowed for slaughter by Regulation No 580/70, so that Italian farmers have been misled as regards the extension of the time allowed for the slaughter of cows which have calved between 1 April and 30 May 1970.

The default of the Italian Republic has thus been established by reason not only of the delay in putting the system into effect but also of the manner of giving effect to it provided by the decree.

2. *As to the premiums for non-marketing:*

19 The default in putting into operation the provisions of Regulations Nos 1975/69 and 2195/69 with regard to premiums for non-marketing is due to a deliberate refusal by the Italian authorities.

The defendant justifies this refusal by the difficulty of providing an effective and serious inspection and control of the quantities of milk which are not marketed but destined for other use, taking into account both the special characteristics of Italian agriculture and the lack of adequate administration at a lower level.

In any case, according to the Italian Government, measures intended to restrict the production of milk were inappropriate to the needs of the Italian economy, which is characterized by insufficient food production.

During the debate stages of Regulation No 1975/69 of the Council the Italian delegation made these difficulties known and expressed clear reservations at that time with regard to the carrying out of the Regulation.

In these circumstances, complaint ought not to be made against the Italian Republic for having refused to put into effect on its national territory provisions passed in spite of the opposition which it has manifested.

20 According to the third paragraph of Article 43 (2) of the Treaty, on which Regulation No 1975/69 is founded, Regulations are validly enacted by the Council as soon as the conditions contained in the Article are fulfilled.

Under the terms of Article 189, the Regulation is binding 'in its entirety' for Member States.

In consequence, it cannot be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community Regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests.

21 In particular, as regards the putting into effect of a measure of economic policy intended to eliminate surpluses of certain products, the Member State which omits to take, within the requisite time limits and simultaneously with the other Member States, the measures which it ought to take, undermines the efficacy of the provision decided upon in common, while at the same time taking an undue advantage to the detriment of its partners in view of the free circulation of goods.

22 As regards the defence based on the preparatory work on Regulation No 1975/69, the objective scope of rules laid down by the common institutions cannot be modified by reservations or objections which Member States have made at the time the rules were being formulated.

In the same way, practical difficulties which appear at the stage when a Community measure has to be put into effect cannot permit a Member State unilaterally to opt out of observing its obligations.

The Community institutional system provides the Member State concerned with the necessary means to secure that its difficulties should be reasonably considered within the framework and priciples of the Common Market and the legitimate interests of other Member States.

23 In this respect, an examination of the Regulations in question and their modifying instruments reveals that in many respects the Community legislator has taken into consideration, by means of special clauses, the particular difficulties of the Italian Republic.

In these circumstances, any practical difficulties of implementation cannot be accepted as a justification.

24 In permitting Member States to profit from the advantages of the Community, the Treaty imposes on them also the obligation to respect its rules.

For a State unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discriminations at the expense of their nationals, and above all of the nationals of the State itself which places itself outside the Community rules.

25 This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the fundamental basis of the Community legal order.

It appears therefore that, in deliberately refusing to give effect on its territory to one of the systems provided for by Regulations Nos 1975/69 and 2195/69, the Italian Republic has failed in a conspicuous manner to fulfil the obligations which it has assumed by virtue of its adherence to the European Economic Community.

Costs

26 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

The defendant has failed in its pleas.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral arguments of the parties;

Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 43, 169, 171, 189 and 191;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Declares that the Italian Republic, in not taking the measures necessary to permit the effective application in its territory and within the prescribed time limits of the system of premiums for slaughtering dairy cows and for withholding milk and milk products from the market, has failed to fulfil the obligations which lay upon it by virtue of Regulation No 1975/69 of the Council of 6 October 1969 and Regulation No 2195/69 of the Commission of 4 November 1969;**

2. **Orders the defendant to pay the costs.**

Lecourt Monaco Pescatore

Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 7 February 1973.

A. Van Houtte
Registrar

R. Lecourt
President