tem established by Regulation No 2727/75.

2. Under the common organization of the market in wine the Community wishes to restrict the vine varieties intended for the production of table wines and also the production of table wines, because they are considered to be of insufficient quality. National measures intended to encourage the use of table grapes for wine production therefore pursue an objective which is irreconcilable with the objectives of the relevant Community legislation.

3. Articles 3a to 3c of Regulation No 516/77, which were added by Regulation No 1152/78, lay down a comprehensive set of Community rules on the market in products processed from fruit and vegetables, including tomatoes, which are intended to stabilize the Community market by means of a Community system of prices and aid and preclude the grant of further aid by the Member States. It follows that national aid intended to promote the processing of tomatoes is incompatible with the relevant Community legislation.

4. Almonds, hazel-nuts and pistachio nuts fall within the scope of Regulation No 1035/72, as is clear from Article 1 thereof in conjunction with headings Nos 08.05 A, B and D of the Common Customs Tariff.

In Case 169/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Gianluigi Campogrande, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, in the person of its Agent, A. Squillante, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters, represented and assisted by O. Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under the EEC Treaty by adopting Sicilian Regional Laws No 47 of 27 May 1980, No 49 of 4 June 1980 and No 83 of 12 August 1980, granting aid in support of certain agricultural activities in Sicily, and by delaying notification to the Commission of the adoption of those Laws,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans and Y. Galmot (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, U. Everling and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
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 — Background

1. In 1980 the Sicilian Region adopted and promulgated three Laws introducing measures intended to promote certain agricultural activities in Sicily. Law No 47 of 27 May 1980 makes financial provision for the establishment of the regional budget for the 1980 financial year and for the three-year period from 1980 to 1982 (Official Journal of the Sicilian Region, No 24 of 27. 5. 1980, p. 135). Article 10 of Law No 47 provides for the renewal of the measures referred to in Articles 15, 16, 17 and 20 of Law No 22 of 18 July 1974 introducing extraordinary measures in support of the Sicilian economy (Official Journal of the Sicilian Region, No 35 of 24. 7. 1974, p. 593). Those measures consist of aid granted at a fixed rate in favour of durum wheat producers who contribute their produce to the voluntary stockpiles created by agricultural co-operatives, consortia and other organizations.

Law No 49 of 4 June 1980 concerns urgent measures in support of wine-producer cooperatives (Official Journal of the Sicilian Region, No 26 of 4. 6. 1980, p. 139)

Finally, Law No 83 of 12 August 1980 lays down additional rules in the agricultural and forestry sectors (Official Journal of the Sicilian Region, No 38 of 23. 8. 1980, p. 226). Articles 2 and 3 of

that Law provide for the payment of aid for the disposal to cooperatives of table grapes intended for vinification. Articles 8 and 9 are concerned with the grant of aid, in respect of tomatoes intended for processing, to associated producers and the cooperatives to which they belong. Similarly, Articles 10 and 11 of the same Law provide for the grant of loans at reduced interest rates to canning undertakings established within the Sicilian Region which undertake to pay the purchase price of Sicilian tomatoes within a short period. Further aid for citrus-fruit producers who are members of cooperatives is provided for by Article 12 (1) of Law No 83, and under Articles 15 and 17 subsidies are to be granted for the disposal of almonds, hazel-nuts and pistachio nuts to cooperatives and their consortia and also to producer associations for the gathering, preservation and collective sale of those products.

2. The draft laws which became Laws No 47 and No 49 were notified to the Commission pursuant to Article 93 (3) of the EEC Treaty by letter of 24 June 1980 from the Italian Permanent Representation to the European Communities, although they had already been adopted by the Sicilian Regional Assembly on 27 May 1980 and promulgated by the President of the Sicilian Region on 4 June 1980. Similarly, the draft law which became Law No 83 was notified to the Commission by letter of 3 October 1980, although it had already been promulgated on 12 August 1980.

3. The Commission took the view that the belated notification of the Laws in question constituted an infringement of Article 93 (3) of the EEC Treaty and that certain provisions of those Laws were contrary to the Community provisions relating to the common organization of agricultural markets; accordingly, it requested the Italian Government, by letter of 19 June 1981, to submit its observations concerning Laws Nos 49 and 83 within four weeks and, by letter of 8 October 1981, to do the same with regard to Law No 47 within 15 days.

The Italian Government transmitted its reply by telex on 13 October 1981 as regards Laws Nos 49 and 83 and on 30 October 1981 as regards Law No 47. In its reply, the Italian Government considered in general that the measures adopted were in conformity with the Community rules. Only in respect of Articles 9, 10 and 11 of Law No 83 did it give the Commission an assurance that it would approach the Sicilian regional administration in order to prevent the renewal of the intervention measures in question.

4. Not content with the Italian Government's reply, the Commission, by letter of 5 February 1982, sent to the Italian Republic a reasoned opinion, delivered on 29 January 1982 in accordance with Article 169 of the EEC Treaty, requesting the Italian Republic to comply with its terms within two months. In its reasoned opinion, the Commission set out in detail the reasons for the incompatibility of the various provisions of the Laws in question with the relevant Community regulations.

The Italian Government replied, by letter of 28 April 1982, that the Ministry of Agriculture had emphasized to the regional authorities the need to suspend the implementation of the aid and of the intervention measures and to refrain from renewing them. The regional auth-

orities had also been requested to bring the Sicilian agricultural legislation into line with the Community rules in all essential respects. Moreover, in view of the formal undertakings given by the Sicilian regional administration, by a communication of 24 March 1982, to suspend the initiation of new procedures for the implementation of the contested measures and to re-examine the legislation in force, the Italian Government considered that it had complied with the Commission's reasoned opinion.

II — Conclusions of the parties

1. By application of 10 June 1982, which was received at the Court Registry on 15 June 1982, the *Commission* claims that the Court should:

(1) Declare that the Italian Republic,

(a) by giving notice of the draft laws which subsequently became Sicilian Regional Laws No 47 of 27 May 1980, No 49 of 4 June 1980 and No 83 of 12 August 1980 after their adoption, and

(b) by adopting measures involving intervention in support of agriculture such as those provided for by Article 10 of Sicilian Regional Law No 47 of 27 May 1980 and by Articles 2, 3, 8, 9, 10, 11, 12, 15 and 17 of Sicilian Regional Law No 83 of 12 August 1980,

has failed to fulfil its obligations under Article 93 (3) of the EEC Treaty, as regards the infringement under (a) above, and, as regards the infringements under (b) above, under Article 5 of the EEC Treaty in conjunction with Regulations (EEC) No 2727/75 of 1 November 1975, No 337/79 of 5 February 1979, No 516/77 of 14 March 1977, No 1035/72 of 20 May 1972 and No 1360/78 of 19 June 1978;

(2) Order the Italian Republic to pay the costs.

2. The *Italian Government* contends that the Court should take formal note, in so far as is necessary, of the fact that the measures granting aid were notified, albeit belatedly, to the Commission and dismiss the remainder of the application.

III — Written procedure

The written procedure followed the normal course. Upon hearing the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

However, it requested the Commission to reply in writing to a question. The Commission acceded to that request within the period set by the Court.

IV — Submissions and arguments of the parties

A — Infringement of Article 93 (3) of the Treaty

1. The *Commission* contends that the failure to give notice of the draft laws introducing the aid until after their adoption and promulgation constitutes an infringement of Article 93 (3) of the EEC Treaty. The delay, in the Commission's opinion, was systematic since it occurred three times over a period of four months and had the effect of confronting the Commission with a *fait accompli*. The infringement in question is all the more serious since it was subsequently compounded by the Italian Government's failure to notify the Commission of a new draft law renewing certain measures, which was prom-

ulgated as Law No 97/81. The Commission considers that only the censure by the Court of the conduct complained of is capable of protecting the interests of the Community in the present case.

2. The *Italian Government* maintains, on the other hand, that the delay in notifying the Commission of the Laws was an exceptional occurrence which does not reflect a habitual, repeated and continuous line of conduct. Whilst questioning whether the delay in fact constituted an infringement of Article 93 (3) of the Treaty, the defendant explains that the measures in question constituted a single simplifying procedure connected with the establishment of the budget by means of the substantial renewal of existing provisions which were already known and not contested at Community level.

As regards notification of the draft law which became Law No 97, the Italian Government maintains that the procedure provided for by Article 93 of the EEC Treaty was complied with.

B — Compatibility of the Laws adopted with the Community provisions on the common organization of agricultural markets

1. The *Commission* maintains in its application that the relevant Sicilian regional laws contain provisions which are contrary to the Community rules on the common organizations of the markets in agricultural products.

In particular:

(a) Article 10 of Regional Law No 47, renewing certain measures already provided for by Regional Law No 22 of 18 July 1974, introduces aid for durum wheat producers which is not provided for by the Community legislation on durum wheat (Regulation No 2727/75, Official Journal 1975, L 281, p. 1). Since the relevant Community legislation is conceived as a complete and comprehensive system which denies the Member States any supplementary power to influence price formation at the production stage by taking action themselves, the regional aid constitutes an unlawful measure involving intervention in an area within the exclusive jurisdiction of the Community. It has the effect of distorting competition between producers, jeopardizing the effectiveness of Community intervention measures and introducing a disruptive factor in the market trend, which forms the basis for the technical and political decisions to be adopted at Community level for the administration of the common organization of the market.

(b) The objectives of Articles 2 and 3 of Law No 83, which provide for payment of aid for the disposal to cooperatives of table grapes intended for vinification, are wholly contrary to the objectives pursued by means of the common organization of the market in wine. The policy pursued by the Community legislature (in Regulation No 337/79, Official Journal 1979, L 54, p. 1) was to discourage the vinification of table grapes in view of the insufficiently high quality of wines made from table grapes, whilst the aid in question encourages the vinification of such grapes and constitutes in any event an independent measure unilaterally adopted by Italy in a sector wholly regulated by the Community intervention system.

(c) The aid for tomatoes intended for processing, which is provided for by Articles 8 and 9 of the same law, is also an unlawful measure involving intervention in an area which is exclusively reserved to the Community. The Commission contends that such aid is unauthorized under the common organization of the market in products processed from fruit and vegetables. Regulation No 516/77 (Official Journal 1977, L 73, p. 1) established a common system of production aid for certain processed products, including products processed from tomatoes. That system provides for the grant of aid to processors who have entered into contracts providing for regular supplies to industry at a minimum purchase price for producers.

(d) Articles 10 and 11 of Law No 83, which provide for the grant of loans on favourable terms to Sicilian canning undertakings, distort trade, in the Commission's opinion, in a sector covered by the common organization of the market, by interfering with competition between tomato producers and producers of processed products, patterns of supply and price levels. That has the effect of promoting agricultural production, the price of which must be maintained exclusively by Community intervention measures, beyond the limits of Community policies.

Moreover, the regional aid (which evidently is granted in the form of loans on favourable terms) interferes, in the Commission's view, with the system for payment of Community aid since it enables the Sicilian processors to obtain payment thereof considerably earlier than would be possible under a market system not distorted by regional measures.

(e) Article 12, which introduces aid for citrus-fruit producers who are members of cooperatives, and Articles 15 and 17, which provide for the grant of subsidies for the disposal of almonds, hazel-nuts and pistachio nuts to cooperatives and the like, and also to producer associations, constitute supplementary measures adopted unilaterally which are incompatible with the Community measures regulating the organization of the market in fruit and vegetables inasmuch as they distort competition.

The application does not contain any specific observations concerning Law No 49 of 12 August 1980.

The Commission rejects the argument put forward by the Italian Government to the effect that some of the measures have a social purpose and are intended to promote the development of the cooperative movement. To begin with, that aim cannot remedy the unlawful nature of the measures and, secondly, incentives to promote the development of the agricultural cooperative movement are entirely and comprehensively governed by the relevant provisions of Community law (see Regulations (EEC) No 1360/78, Official Journal 1978, L 166, p. 1, and No 1035/75, Official Journal 1982, L 118, p. 1), which preclude any unilateral intervention in that area on the part of the Member States.

Moreover, the Commission points out that the Italian Government's statement to the effect that it would approach the regional authorities in order to prevent the renewal of some of the measures complained of is of no value since only the immediate suspension of the application of the provisions in question is

capable of preventing any future infringement.

2. In its defence, the *Italian Government* does not consider the regional measures concerned in depth since, in view of the assurances given by the Sicilian Region not to apply the measures provided for by the contested laws and to reconsider the whole question with a view to bringing regional legislation into line with Community legislation, any discussion of that point serves no purpose. Furthermore, the Italian Government regards the application as unfounded on the ground that it has already complied with the Commission's reasoned opinion promptly and in accordance with its terms.

By way of jusitification for its failure to put an end to the alleged infringement in the past, the Italian Government contends that the reasoned opinion concerns only the future and does not apply to relations already entered into. Moreover, it is difficult or even impossible to demand repayment of aid which has actually been paid. In any event, the contested provisions were applied in the past only to a very limited extent.

As regards the Commission's contention that the Italian Government's reply to the reasoned opinion contains "merely a partial undertaking for the future", the Italian Government denies this inasmuch as it disregards both the approach made by the Government to the regional authorities and the undertakings given by those authorities in their communication of 24 March 1982, referred to above.

The failure to amend the provisions of the laws granting subsidies is of no consequence as regards the fulfilment by Italy of its obligations, in the light of the undertakings given by the Sicilian Region not to apply the provisions in question. Legislation may be formally amended only in accordance with the legislative procedures laid down.

As regards the Commission's contention that the Sicilian region renewed some of the contested measures by adopting Law No 97, which is currently in force, the Italian Government observes that the reasoned opinion and its reply thereto postdate that Law and that any reference to it is meaningless. Furthermore, the Sicilian Region's undertaking not to implement the contested measures refers to the aid and not to the measures, with the result that it also encompasses the provisions renewing those measures which are embodied in Law No 97.

3. In its *reply*, the Commission puts forward the argument summarized below:

(a) The undertakings given by the Sicilian Region to suspend "the initiation of new implementing procedures" are insufficient to put an end to the infringement.

According to the Commission, it is necessary, at least, to refrain forthwith from applying the provisions in force to any existing cases, in other words to cease payments. Since the provisions at issue fail to provide for any time-limits or provide for a time-limit by virtue of the fact that budgetary authorization exists only for 1980 or cover a period which may extend to 1982, there is a possibility that fresh payments may be made which fall outside the scope of the undertaking given by the Sicilian Region. In the first place, the undertaking excludes the initiation and completion of

financing operations relating to 1980 and 1981 and, secondly, a large number of the measures in question would, if their application had not been suspended, continue to permit the initiation of new financing operations (which are not, in the Commission's view, "new implementing procedures").

(b) Only the definitive repeal of the provisions in question would in law bring the infringement to an end, particularly in the context of a system of regional autonomy. Until such time as that situation is remedied within the national legal system of the Italian Republic, there will be a conflict with the relevant Community legislation likely to disrupt, at least potentially, the correct and prompt application thereof. Furthermore, the Commission concludes that, during the period granted to the defendant in order to give it sufficient opportunity to initiate the national procedures required to comply with the reasoned opinion, no new factor demonstrating the defendant's intention to comply with the relevant Community legislation came to light.

4. The Italian Government points out, in its *rejoinder*, that it has never acknowledged that the regional measures in question constitute an infringement. It approached the regional authorities only in order to ensure that the contested provisions were re-examined in accordance with the wishes of the Commission. In its opinion, the provisions are in no way incompatible with the provisions governing the common organizations of the markets.

Furthermore, the Italian Government does not consider the formal repeal of the provisions to be necessary, as is conceded even by the Commission, which maintains that the crucial factor is the suspension of payments. In that regard the Italian Government points out that such suspension also extended to the procedures which had already been set in motion, with the result that all further payments were frozen. No further contribution was granted under the contested provisions, either those complained of or those contained in laws renewing earlier measures. Since the undertaking given by the Sicilian Region was and is being honoured, no further measure, of a formal nature, appears to be necessary for the time being.

Next, the Italian Government considers the question of the compatibility of the measures complained of with Community law, whilst emphasizing that this substantive question should not be examined in these proceedings. Whilst stressing the objectives of the measures adopted in the light of their socio-economic context (the role still played by the peasant farmer in Sicilian agriculture, desire to promote the formation of cooperatives and associations, very limited possibility of self-financing and the impossibility of obtaining normal agricultural loans), the Italian Government maintains that the provisions in question are not incompatible with the relevant provisions of Community law. In particular, it makes the following observations:

(a) Article 10 of Law No 47 does not introduce a new form of aid but merely confirms the aid already available, which is in any case extremely limited, serves to maintain a balance in the region and could not be abolished without creating disruption.

(b) The purpose of Articles 2 and 3 of Law No 83 is to promote the formation of agricultural associations, thereby facilitating, by means of producer co-operatives, the disposal of table grapes for processing followed by distillation, as provided for by the relevant Community legislation.

(c) The same considerations apply in the case of Articles 8 and 9 of Law No 83. Article 9 in particular, which provides for a similarly small contribution to the management costs of associations, is concerned with the functioning of associations and is not directly aimed at the relevant market sectors.

(d) As regards Articles 2, 10 and 11 of Law No 83, they must be regarded as being intended to facilitate access to agricultural loans and not as granting aid supplementary to the Community measures in the wine and tobacco sectors. In the Community, the conditions governing access to loans differ from one country to another and, in the opinion of the Italian Government, pending harmonization at Community level of the national aid systems in force, it is necessary to limit the interest paid by farmers, who would otherwise be unable to obtain loans at normal rates, a practice which is in no way contrary to the rules of Community law.

(e) Similarly, Article 12 is also intended to promote the formation of associations by renewing the regional aid which is already available and which has not been contested.

(f) Articles 15 and 17 similarly renew aid already available in a very limited sector which does not form part of a common organization of the market. It is more appropriate to regard the aid in question as a measure designed to promote ecological and environmental balance rather than as an economic measure.

V — Oral procedure

At the sitting on 25 October 1983 oral argument was presented for the Government of the Italian Republic by O. Fiumara, Avvocato dello Stato, and for the Commission of the European Communities by G. Campogrande, a member of the Commission's Legal Department.

The Advocate General delivered his opinion at the sitting on 7 December 1983.

Decision

1 By application lodged at the Court Registry on 15 June 1982 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic, by giving notice to the Commission of the draft laws which subsequently became

Sicilian Regional Laws No 47 of 27 May 1980, No 49 of 4 June 1980 and No 83 of 12 August 1980 after their adoption, and by adopting measures involving intervention in support of agriculture such as are contained in certain articles of Laws No 47 and No 83, has failed to fulfil its obligations under the EEC Treaty.

2 During the preliminary stage of the procedure laid down by Article 169 of the EEC Treaty, the Commission sent a reasoned opinion to the Italian Republic on 5 February 1982, in which it stated, first, that "the failure to give notice of the draft laws granting aid until after their adoption and promulgation . . . constitutes an infringement of the provisions of Article 93 (3) of the EEC Treaty" and, secondly, that certain provisions of those regional Laws constituted infringements of the Community provisions on the common organization of agricultural markets, and it requested the Italian Government to "adopt the measures needed to comply" with the opinion within two months from the date of its notification.

3 Since in its reply to the Commission's letter of 19 June 1981 the Italian Government had stated that it would approach the Sicilian regional administration in order to prevent the renewal of some of the measures in question, the Commission stated in its reasoned opinion "that only the immediate suspension of the application of the provisions in question can prevent any future infringement. An undertaking to take all possible steps to avoid a further renewal is not sufficient to guarantee the fulfilment by the Italian Republic of all its obligations under the Treaty and the measures adopted by the Community institutions".

4 In its application, the Commission charges the Italian Republic with two categories of infringement with respect to the provisions of Community law in question: first, the failure to notify the Commission in sufficient time of the draft laws in question, which, contrary to Article 93 (3) of the Treaty, were not notified until after their promulgation, and, secondly, the grant of aid by certain provisions of the regional Laws contrary to the Community provisions relating to the common organization of agricultural markets. It is therefore necessary to consider both categories of infringement.

5 According to Article 42 of the EEC Treaty, the provisions of Article 93 thereof, like all the provisions of the Chapter relating to the rules of competition, are applicable "to production of and trade in agricultural products only to the extent determined by the Council within the framework of" the provisions relating to the agricultural policy.

Failure to notify the Commission in sufficient time

6 Article 10 of Sicilian Regional Law No 47 of 27 May 1980, Sicilian Regional Law No 49 of 4 June 1980 and Articles 2, 3, 8 to 12, 15 and 17 of Sicilian Regional Law No 83 of 12 August 1980 renewed certain measures granting aid for durum wheat, table grapes, wine, tomatoes, citrus fruits and almonds, hazel-nuts and pistachio nuts.

7 The products in question are covered by the common organizations of the markets established by the following regulatoins:

(a) Regulation (EEC) No 2727/75 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1);

(b) Regulation (EEC) No 337/79 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1);

(c) Regulation (EEC) No 516/77 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1); and

(d) Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437).

8 Those regulations contain, in Articles 22, 59, 17 and 31 respectively, an identical provision extending the application of Article 93 (3) of the Treaty, which provides that the Commission must be informed in sufficient time of any plans to grant or alter aid, to the production of and trade in the products in question.

9 It should be noted in that regard that the Italian Government itself acknowledges that the measures in question provide for the grant of aid and that they were not notified to the Commission until after their promulgation. However, it contends that the adoption of the Laws in question should be regarded as a single simplifying procedure connected with the establishment of the budget by means of the substantial renewal of existing provisions which are well know and are not contested at Community level.

10 None of those contentions can relieve the Italian Republic of the obligation imposed upon it by Article 93 (3) of the Treaty to notify the Commission in sufficient time of any draft laws granting aid.

11 It follows from the foregoing that the Italian Republic, by failing to notify the Commission of the draft laws in question until after their adoption as Laws No 47/80, No 49/80 and No 83/80, has failed to fulfil its obligations under Article 93 (3) of the Treaty.

Compatibility of the aid granted with the relevant Community legislation

Admissibility

12 The Italian Government maintains that the part of the application which concerns the second category of infringement must be dismissed by virtue of the second paragraph of Article 169 of the Treaty, because the Commission stated in its reasoned opinion that "only the immediate suspension of the application of the provisions in question can prevent any future infringement". The Italian Government contends that, as a result of its intervention, the Sicilian regional authorities suspended the application of the provisions in question and therefore the request contained in the reasoned opinion was complied with.

13 In that regard it is clear from both the statement of reasons contained in the reasoned opinion and the operative part thereof that the Commision demanded not only the suspension of the application of the measures in question, but also their definitive repeal. Although the sentence relied upon by the Italian Government is to be found in the text of the reasoned opinion, it does not have the meaning attributed to it by the defendant. It is clear

from the documents before the Court that the sentence in question was inserted in response to the Italian Government's aforementioned proposal to approach the regional administration with a view to securing the suspension of the application of the measures in question.

14 The objection of inadmissibility must therefore be dismissed.

Substance

15 The Commission considers that certain provisions of Regional Laws No 47/80 and No 83/80 are contrary to the Community provisions relating to the common organization of agricultural markets. The provisions at issue are, in particular, Article 10 of Regional Law No 47/80 granting aid to durum-wheat producers, Articles 2 and 3 of Regional Law No 83/80 granting aid for the disposal to cooperatives of table grapes intended for vinification, Articles 8 and 9 of the same Law granting aid for tomatoes intended for processing, Articles 10 and 11 of the Law granting loans on favourable terms to Sicilian canning undertakings, Article 12 of the Law granting aid to citrus-fruit producers who are members of cooperatives and Articles 15 and 17 of the Law granting subsidies for the production of almonds, hazel-nuts and pistachio nuts intended for disposal to cooperatives.

16 In that regard the Commission maintains that the relevant Community regulations cover in a complete and comprehensive manner the organization of agricultural markets in the products referred to above and the aid applicable thereto, with the result that the measures in question are incompatible with those regulations since they are contrary to the objectives pursued by the Community legislature and are capable of distorting competition, jeopardizing the effectiveness of the Community intervention measures and introducing a disruptive factor in the market trend.

Compatibility of Article 10 of Regional Law No 47/80 with Regulation No 2727/75

17 Article 10 of Regional Law No 47/80 provides for the renewal and, in part, also the increase of aid for the production of durum wheat. In the

Commission's view, no such aid is provided for by Regulation No 2727/75 of the Council on the common organization of the market in cereals, which established a complete and comprehensive system denying the Member States any additional power to influence the formation of prices at production level.

18 It is clear from Regulation No 2727/75, and in particular from Article 2 thereof, that the regulation provides for a system of prices and other measures intended to establish a system of uniform prices for cereals throughout the Community. Article 10 provides for the grant on certain conditions of aid of a uniform amount for the whole Community for the production of durum wheat. It follows from that system that any support measure must be decided upon at Community level in order to avoid the risk of jeopardizing the functioning of the system by the grant of additional aid.

19 The grant of the national aid in question is therefore contrary to the relevant Community legislation and is capable of distorting the system established by Regulation No 2727/75.

20 The Italian Republic has therefore failed to fulfil an obligation under the Treaty by granting aid at a fixed rate for the production of durum wheat.

Compatibility of Articles 2 and 3 of Regional Law No 83/80 with Regulation No 337/79

21 Article 2 of Regional Law No 83/80 provides for financial assistance from the Sicilian Region for the payment of interest on agricultural loans contracted by grape-producer cooperatives for the purpose of granting advances to their members who supply them with table grapes for processing. Article 3 of the same Law provides that the advance referred to in Article 2 must amount to at least 80% of the minimum price fixed every year by the Community for wine obtained by processing table grapes and intended for distillation.

22 In the Commission's view, that measure promotes vinification of table grapes and thus produces effects which are wholly contrary to the objectives pursued, within the framework of the common organization of the market in wine, by Council Regulation No 337/79. In any event, the measure in question is an independent measure unilaterally adopted by Italy in a sector wholly regulated by the Community intervention system.

23 The Italian Government, however, contends that the measure in question is designed to promote the formation of agricultural associations, thereby facilitating the disposal of table grapes for processing and subsequently distillation, as provided for by the relevant Community legislation.

24 The arguments put forward by the Italian Government cannot be accepted. It is clear from Article 2 of the regional law in question, read in conjunction with Article 3 thereof, that by the processing of table grapes the regional legislature means vinification and not distillation, which is a stage subsequent to vinification.

25 It is clear particularly from recitals 20 to 26 in the preamble to Regulation No 337/79 that the Community wishes to restrict the vine varieties intended for the production of table wines and also the production of table wines, because they are considered to be of insufficient quality. In that connection, the ninth recital also contemplates the distillation of such wines — described in the regulation itself as a preventive measure — "at a buying-in price which is not such as to encourage production of wine of insufficient quality".

26 For those purposes, Article 6 (2) of the regulation excludes table wines from all intervention measures, with the exception of those provided for by the regulation itself which are not applicable in this case. Article 15, which provides for the implementation of the provisions laying down the conditions for the distillation of table wines, also provides in paragraph (2) (b) that those conditions "shall not be such as to encourage the production of wine of insufficient quality".

27 Furthermore, Title III of the regulation contains rules concerning production and for controlling planting, the essential feature of which is the prohibition of the cultivation of wine varieties not authorized by the Community (Articles 29, 30 et seq.).

28 Article 57 provides that intervention measures may be adopted by the Council to the extent necessary to support the market in table wines.

29 From the foregoing analysis of the Community rules, it is possible, first of all, to deduce that they are complete and comprehensive in character and, secondly, to identify the objectives of the Community legislation relating to intervention in this area.

30 The measures provided for by Articles 2 and 3 of Regional Law No 83/80 pursue an objective which is irreconcilable with the abovementioned objectives of the Community legislation applicable in the present case. The conclusion must therefore be drawn that the Italian Republic has failed to fulfil an obligation under the Treaty.

Compatibility of Articles 8 and 9 of Law No 83/80 with Regulation No 516/77

31 Articles 8 and 9 of Regional Law No 83/80 provide for the grant of aid to associations of tomato producers and to producer cooperatives in order to promote the processing of tomatoes by canning undertakings. In that regard, the Commission raises the same objection as before, namely that the measure in question amounts to State intervention in an area wholly regulated by the common organization of the market, in particular by Regulation No 516/77.

32 The Italian Government, whilst acknowledging that the measures in question provide for the grant of aid, contends that their purpose is to promote the development of the cooperative movement without intervening directly in the market sector regulated by the Community measures.

33 Articles 3 a to 3 c of Regulation No 516/77, which were added by Council Regulation (EEC) No 1152/78 (Official Journal 1978, L 144, p. 1), lay down a comprehensive set of Community rules on the market in products processed from fruit and vegetables, including tomatoes, which are intended to stabilize the Community market by means of a Community system of prices and aid and preclude the grant of further aid by the Member States.

34 The detailed rules for the application of the articles in question are set out in Article 20 of the regulation, which provides for the intervention of Community bodies.

35 It therefore follows that the aid granted by the Italian Republic is incompatible with the relevant Community legislation and that that State has consequently failed to fulfil an obligation under the Treaty.

Compatibility of Articles 10 and 11 of Regional Law No 83/80 with Regulation No 516/77

36 Articles 10 and 11 of Regional Law No 83/80 provide for the grant of loans at favourable interest rates to canning undertakings established in Sicily which undertake to pay the purchase price of Sicilian tomatoes to producers within five days after delivery of the product. According to the Commission, that measure distorts trade and has the effect of encouraging agricultural production beyond the limits of Community policies. Furthermore, it enables Sicilian processing undertakings to obtain payment of Community aid considerably earlier than would be possible under Article 3 b (5) of Regulation No 516/77, which makes payment of such aid conditional on verification of due payment of the minimum price to the producers. Thus, in the Commission's view, the national aid in question enables recipients to assert their right to the Community aid earlier.

37 In the Italian Government's view, the contested measure is intended to facilitate access to agricultural loans and does not constitute aid supplementing the Community measures.

38 As regards the Commission's first argument, it has failed to demonstrate, either in the written statements which it has submitted to the Court or at the hearing, why payment of the purchase price of tomatoes to producers within five days after delivery of the product constitutes a measure which is capable of distorting trade and encouraging the production of tomatoes.

39 As regards the second argument advanced by the Commission, it should be noted that Article 3 b (5) of Regulation No 516/77 lays down three conditions for payment of the Community aid to those concerned:

(a) producers must have been paid the minimum price;

(b) the products must have been processed; and

(c) products after processing must comply with the quality standards in force.

The Commission does not explain how, notwithstanding the three conditions required, compliance with one condition alone, namely verification of due payment of the minimum prices, can entitle the canning undertaking concerned to payment of the Community aid.

40 Consequently, the arguments put forward by the Commission cannot be accepted. This part of the application must therefore be dismissed.

Compatibility of Article 12 of Regional Law No 83/80 with Regulation No 1035/72

41 Article 12 of Regional Law No 83/80 grants to citrus-fruit producers who are members of cooperatives and to associations the contributions provided for by Regional Law No 24 of 3 June 1975, as subsequently amended. According to the Commission, that measure constitutes aid contrary to the common organization of the market in fruit and vegetables, established by Regulation No 1035/72.

42 The Italian Government considers that the measure is designed to promote the development of the cooperative movement.

43 The Commission has omitted to explain — and has not even submitted the complete text of the provisions to which the contested article refers — the nature of the contributions provided for by the article and why they are considered equivalent to aid. Furthermore, the Commission has also failed to identify the provisions of Regulation No 1035/72 with which the contested article is alleged to be compatible.

44 Therefore, irrespective of the reply given by the Italian Government, which is equally concise, this part of the application cannot be upheld.

Compatibility of Articles 15 and 17 of Regional Law No 83/80 with Regulation No 1035/72

45 Articles 15 and 17 of Regional Law No 83/80 provide for the allocation of funds for almonds, hazel-nuts and pistachio nuts. The Commission maintains that the measures constitute aid to cooperatives and their consortia designed to bring about structural improvements in production and are incompatible with Regulation No 1035/72.

46 The Italian Government on the other hand contends, first, that the measures are protective measures adopted in support of endangered crops cultivated on a small scale and to promote ecological and environmental balance and, secondly, that the measures relate to a sector which does not seem to form part of a common organization of the market.

47 As far as the latter argument is concerned, it must be pointed out that the products in question fall within the scope of Regulation No 1035/72, as is clear from Article 1 thereof in conjunction with headings Nos 08.05 A, B and D of the Common Customs Tariff.

48 However, in this part of its application also, the Commission has failed to explain why the allocation of the funds in question is in the nature of aid to cooperatives. Moreover, the Commission has not identified the provision of the regulation with which the aid is alleged to be incompatible, regard being

had to the fact that Article 14 of the regulation authorizes the grant of aid to producer organizations on certain conditions.

49 Accordingly, this part of the application must be dismissed.

Costs

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

51 However, under Article 69 (3) of the Rules of Procedure, 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.

52 Since the Commission has been unsuccessful in some of its submissions, the parties are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Italian Republic has failed to fulfil its obligations under the EEC Treaty by failing to notify to the Commission the draft laws which subsequently became Sicilian Regional Laws No 47/80 (Article 10), No 49/80 and No 83/80 (Articles 2, 3, 8 to 12, 15 and 17) until after their adoption;**

2. **Declares that the Italian Republic has failed to fulfil its obligations under the Treaty as a result of the adoption by the Sicilian Region of the measures provided for by Article 10 of Regional Law No 47/80 and by Articles 2, 3, 8 and 9 of Regional Law No 83/80.**

3. Dismisses the remainder of the application;

4. Orders the parties to bear their own costs.

Mertens de Wilmars Koopmans Galmot

Mackenzie Stuart Bosco Everling Kakouris

Delivered in open court in Luxembourg on 27 March 1984.

The Registrar
by order

H. A. Rühl
Principal Administrator

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 7 DECEMBER 1983 [1]

Mr President,
Members of the Court,

1. Introduction

1.1. The application

In its application of 10 June 1982 (Case 169/82) the Commission requests the Court to declare that the Italian Republic:

(a) by giving notice of the draft laws which subsequently became Sicilian Regional Laws No 47 of 27 May 1980, No 49 of 4 June 1980 and No 83 of 12 August 1980 after their adoption, has failed to fulfil its obligations under Article 93 (3) of the EEC Treaty;

(b) by adopting measures involving intervention in support of agriculture such as those provided for in Article 10 of Sicilian Regional Law No 47 and in Articles 2, 3, 8, 9, 10, 11, 12, 15 and 17 of Sicilian Regional Law No 83, has failed to fulfil its obligations under Article 5 of the EEC Treaty, in conjunction with Regulations (EEC) No 2227/75, No 337/79, No 516/77, No 1035/72 and No 1360/78.

1 — Translated from the Dutch.