In Case 140/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, C. Maestripieri, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by A. Maresca, Ambassador, acting as Agent, assisted by G. Zagari, Sostituto Avvocato Generale dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under Regulation No 130/66/EEC of the Council of 26 July 1966 on the financing of the common agricultural policy (Official Journal, English Special Edition 1965-1966, p. 216) and No 159/66/EEC of the Council of 25 October 1966 laying down further provisions for the common organization of the market in fruit and vegetables (Journal Officiel No 192 of 27 October 1966, p. 3286),

THE COURT,

composed of: J. Mertens de Wilmars, President, P. Pescatore and T. Koopmans, Presidents of Chambers, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and O. Due, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Article 4 of Regulation No 130/66/EEC of the Council of 26 July 1966 on the financing of the common agricultural policy (Official Journal, English Special Edition 1965-1966, p. 216) provides in particular that

"an amount of 45 000 000 units of account shall be paid in advance to the Italian Republic for the year 1965/66 (1967 budget) from the resources of the Guidance Section of the Fund, for the purpose of making structural improvements in the production and marketing of olives, olive oil, fruit and vegetables".

Paragraph (3) of that article provides in particular that the Italian Republic must submit to the Commission, before the end of the transitional period, one or more reports, accompanied by supporting documents, on the expenditure incurred in respect of the measures referred to above from 1 November 1965 for olives and olive oil, and from 1 January 1966 for fruit and vegetables.

The time-limit for the submission of the reports by the Italian Republic was extended until 31 December 1973 by Regulation No 966/71 of the Council of 10 May 1971 extending the time-limit laid down in Article 4 (3) of Regulation No 130/66/EEC (Official Journal, English Special Edition 1971 (I), p. 255).

Article 12 of Regulation No 130/66/EEC cited above provides in particular that

"an amount of 15 000 000 units of account shall be paid to the Italian Republic for the year 1967/68 (1969 budget) from the resources of the Guidance Section of the Fund, for the purposes of making structural improvements in the production and marketing of raw tobacco".

Paragraph (3) of that article provides that the Italian Government shall before 1 July 1967 communicate to the Commission the programme of measures which it proposes to adopt in order to achieve the objective referred to above. It also provides that the Italian Republic shall before the end of the transitional period submit to the Commission a report, accompanied by supporting documents, on expenditure incurred within the framework of that programme from 1 July 1967 in respect of the measures referred to in Article 12 (1).

The time-limit for the submission of the reports was extended until 31 December 1971 by Regulation No 490/70/EEC of the Council of 17 March 1970 extending the time-limit laid down by the second paragraph of Article 12 (3) of Regulation No 130/66/EEC (Journal Officiel L 62 of 18 March 1970, p. 3).

Article 12 (4) of Regulation No 159/66/EEC of the Council of 25 October 1966 laying down further provisions for the common organization of the market in fruit and vegetables (Journal Officiel No 192 of 27 October 1966, p. 3286) provides in the third paragraph thereof:

"In cases where, as regards a given year, the total amount of expenditure repaid to the Italian Republic in accordance

with the second subparagraph of this paragraph is less than 40 000 000 units of account, the difference shall be paid to it on terms as laid down in Article 4 of Regulation No 130/66/EEC of the Council on the financing of the common agricultural policy."

2. The dates fixed for the submission of the reports were not met. The officers of the Commission and the Commission on the one hand and the Italian authorities on the other exchanged numerous memoranda on this matter.

On 11 February 1976 the Commission sent to the Italian Government a letter commencing the procedure laid down in the first paragraph of Article 169 of the EEC Treaty. In the belief that the observations submitted on 17 March 1976 by the government in question were not satisfactory the Commission on 16 November 1976 sent to the Italian Republic a reasoned opinion pursuant to that provision. That opinion invited Italy to take the measures to comply with it within a period of two months.

3. By a letter of 24 January 1977 the Permanent Representation of Italy to the European Communities replied to the reasoned opinion and requested an appropriate extension of the time-limit for the submission of the outstanding reports. On 23 December 1977 a letter from the officers of the Commission fixed 31 January 1978 as the latest date by which the reports had to be sent. By a letter of 31 January 1978 the Italian Government asked the Commission for a new extension of at least 15 months. On 14 June 1978 the Commission lodged this application.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preliminary inquiry.

II — Conclusions of the parties

1. In its application the *Commission* claims that the Court should:

(a) Declare that the Italian Republic, by not submitting reports and supporting documents within the period prescribed by the regulations referred to below, has failed to fulfil its obligations under Article 4 (3) of Regulation No 130/66/EEC of the Council of 26 July 1966, as amended by Regulation No 966/71/EEC of the Council of 10 May 1971, under Article 12 (3) of the said Regulation No 130/66/EEC, as amended by Regulation No 490/70/EEC of the Council of 17 March 1970, and under the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC of the Council of 25 October 1966;

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

2. The *Government of the Italian Republic* claims that the Court should:

— Reject the application made by the Commission with all the consequences which follow therefrom.

III — Submissions and arguments of the parties

1. In its application the Commission states that the reports sent by the Italian

Government as at 31 December 1976, a date close to the date on which the period fixed by the reasoned opinion expired, appeared as follows, the state of those reports on 31 December 1973 being given for the purpose of comparison: [1]

I — Regulation No 130/66/EEC — Article 4 — aid amounting to 45 000 000 units of account (or approximately Lit 28 125 000 000) for structural improvements with respect to olives, olive oil, fruit and vegetables

(in millions of lire)

	Financial commitments		Sums paid to beneficiaries	
	31. 12. 1973	31. 12. 1976	31. 12. 1973	31. 12. 1976
Olives and olive oil	14 810·1	13 677·1	7 170·9	11 066·0
Fruit and vegetables	13 585·3	24 553·7	5 592·0	15 279·6
Total	28 395·4	38 230·8	12 762·9	26 345·6

II — Regulation No 130/66/EEC — Article 12 — aid amounting to 15 000 000 units of account (or approximately Lit 9 375 000 000) for structural improvements in the production and marketing of raw tobacco

(in millions of lire)

Financial commitments		Sums paid to beneficiaries	
31. 12. 1973	31. 12. 1976	31. 12. 1973	31. 12. 1976
11 443·9	11 017·9	2 187·0	9 454·7

III — Regulation No 159/66/EEC — Article 12 — aid amounting to 87 299 539 units of account (or approximately Lit 54 562 000 000) for structural improvements in the production and marketing of fruit and vegetables only

(in millions of lire)

Financial commitments		Sums paid to beneficiaries	
31. 12 1973	31. 12. 1976	31. 12. 1973	31. 12. 1976
39 309·0	58 564·2	2 757·7	22 752·9

The Commission claims that on the defendant's own admission the obligations laid down by the regulations cited above have not been fulfilled by the defendant. It points out that since the expiry of the extended period granted by the Council more than four years have elapsed as regards the obligations laid down in Regulation No 130/66/EEC (Article 4 (3)) and No 966/71/EEC as well as Regulation No 159/66/EEC;

1 — The amounts expressed in units of account have been converted into lire at the official exchange rate notified to the IMF (1 u.a. = Lit 625) while the payments made by the national authorities are calculated in lire with no allowance being made for the devaluation of the Italian currency which has occured in the meantime.

more than seven years have gone by since the period fixed for the obligations laid down by Regulation No 130/66/EEC (Article 12 (3)) and No 490/70/EEC expired.

It maintains that the delay incurred in the carrying out of the obligations imposed by the Community has caused the Community measures to lose much of their advantage owing to the devaluation of the lire. It accordingly believes that it is not permissible for it to go no further than ascertaining that the funds allocated have been applied and disbursed, rather it is entitled and under a duty to require that the projects being financed are carried out in full and that they are in operation.

The Commission contends that the various grounds relied on by the Italian authorities to justify the considerable delay have no legal foundation, as the Court has repeatedly confirmed in its case-law, the last occasion being in its judgment of 11 April 1978 in Case 100/76 *Commission* v *Italy* [1978] ECR 879; it maintains that they lose all credibility anyhow because of the considerable length of the delay.

2. In its defence the *Italian Government*, having summarized the aid in question provided by the Fund points out that the Italian administration has repeatedly stated that it could, within the time-limits provided, furnish reports, not only on intervention programmes actually put into effect, but above all on the financing decided on by formal commitments envisaging the use of all of the funds allocated. Yet later on the Italian administration explained to the competent bodies of the Commission the legal reasons and administrative technicalities which made it impossible to complete the programmes and pay out the aid allotted by the Fund within a period which was proving totally insufficient. It was necessary, the Italian administration said, to bring those funds, which are incidentally, allocated in separate successive tranches, either within the scope of laws in the course of being adopted (Green Plan No 2) or to deal with them by special laws authorizing expenditure on the completion of the intervention programmes. The Italian Government also stresses that it had to go through laborious administrative procedures before financing the projects and it maintains that the delay was technically necessary to implement programmes often of considerable size.

The Italian Government also points out that it drew the Commission's attention to the fact that the institutional structure in Italy had been changed as a result of the creation of regions with their own status on which Decree No 11 of the President of the Republic of 15 January 1972 conferred powers in many spheres of Italian agriculture, including powers concerning intervention in the sphere of reformative and marketing structures for agricultural and zootechnic products.

The Italian Government stresses the numerous contacts which took place with the competent officers of the Commission and the good faith which it showed in providing the Commission with progress reports. An agreement thereon was reached with the officers referred to.

Having thus gone over the ins and outs of the case and having drawn particular attention to the correspondence with the Commission the Italian Government claims that the allegations of infringement of the Community regulations in question are totally without foundation. The chief mistake of the Commission lies in its assertion that only expenditure on completed installations is to be regarded as "having been reported". The Italian Government believes that such an assertion is unfounded and illogical in that, for example, virtually all the expenditure to be allocated in order to complete the reports on interventions under Regulation No 159/66/EEC concerned installations of considerable size and national importance which had sometimes to be changed during construction.

The Italian Government insists that delay is inherent in the approval procedure after the works have actually been completed, and also in the administrative formalities which must be undertaken before the files are closed. It then outlines the state of completion of a number of projects.

In conclusion the Italian Government submits that the funds allocated to Italy under the Community regulations in question were entirely used by the Italian administration to implement concerted intervention programmes adapted in time to the difficult and unpredictable economic and monetary circumstances and to the technical requirements of the various projects. It believes that under those conditions the reports furnished by the Italian Government were consistent with the funds allocated and in keeping with the Community provisions.

3. In its reply the *Commission* makes the preliminary point that only the proper, precise performance of the obligations imposed by the Community regulations, within the time-limits fixed by them, and no later than the time-limit set in the reasoned opinion, may afford a valid defence. On the date laid down by the reasoned opinion the Italian Government had not complied with the Commission's request. The failure to comply is shown in two ways: first, the time-limits fixed in accordance with the information given by the Italian Government were clearly not kept, and secondly, the regulations in question were infringed not only in the letter. It is evident from the recitals to, and provisions of, those regulations that the funds allocated to Italy were for a specific purpose, that is to say, for the improvement of agricultural structures in Italy so that those funds should actually have been disbursed and the works completed; therefore it is not sufficient simply to "commit" the funds by including them in the budget.

Although it considers that those factors alone suffice to resolve the dispute nevertheless the Commission comments on some of the statements contained in the Italian Government's defence. In particular it denies that the Italian Government gave reports to the extent to which it claims that it did; it points out that the communication of six-monthly progress reports was not made pursuant

to agreements with its officers but represented the application of paragraph (2) of the sole article of Regulation No 966/71/EEC. It stresses that the situation existing on the expiry of the period fixed in the reasoned opinion is the one which matters. On that date, it argues, the Italian Government had not disbursed the funds allocated to it between 1968 and 1972 and the works to be financed had not been finished.

4. In its rejoinder the *Italian Government* maintains the standpoint which it adopted in its defence namely that Italy has complied in substance with the obligations imposed upon it by the Community regulations in question. The defendant argues that before 31 December 1973 the Italian administration had wholly decided on the use of all the sums made available to it by the European Economic Community. It insists that it is not possible to agree with the view maintained by the Commission that only works which are completely finished should be regarded as having been reported; that argument overlooks economic reality. The Italian Government also denies that it is necessary to take into consideration the situation existing on the expiry of the period fixed in the reasoned opinion; it refers to the reports on expenditure incurred up to 31 December 1977 which it sent to the Commission by letter of 31 January 1978. That statement of expenditure discloses the following:

Funds allocated	Sector	Installations completed		Installations in the course of completion		Total expenditure in millions of lire
		No	Total expenditure in millions of lire	No	Total expenditure in millions of lire	
15 000 000 units of account 9 375 000 000 lire	tobacco (Reg. No 130/66, Art. 12)	413	9 785·6	3	434·8	10 220·4
45 000 000 units of account 28 125 000 000 lire	fruit, vegetables and oil (Reg. No 130/66, Art. 4)	199	27 285·4	20	4 333·4	31 618·8
87 299 000 units of account 54 652 000 000 lire	fruit and vegetables (Reg. No 159/66, third subparagraph of Art. 12 (4)	259	15 861·9	64	13 013·3	28 875·2
		871	52 932·9	87	17 781·5	70 714·4

The Italian Government contends that the documents sent to the Commission show very clearly what were the objectives of the structural improvements envisaged and achieved thanks to the financial assistance from the Community; it points out that during a time of economic crisis Italy had made

considerable efforts and provided financial aid much in excess of the rise in the cost of construction materials and labour. The Italian Government further contends that it included in the budget sums which were equivalent to a supplement of 100% of the funds allocated by the Community.

In view of those considerable efforts with which it has persevered the Italian Government believes that it is not in accordance either with the spirit or the letter of the Community provisions relied on by the Commission to concentrate on purely formal considerations and lose sight of the general thinking behind the regulations namely to achieve substantial and positive results which is what the administration and Italian traders have in fact done.

At the request of the Italian Government the hearing, originally fixed for 14 March 1979, was postponed several times with the Commission's agreement.

The Italian Government submitted within the procedural time-limits fresh reports updated to 31 August 1980. According to the Commission it is evident from those documents that the amounts granted by the Fund for the first two aid programmes in question in this dispute, namely 45 000 000 units of account for the purpose of making structural improvements in the production and marketing of olives, olive oil, fruit and vegetables (Article 4 of Regulation No 130/66/EEC) and 15 000 000 units of account for the purpose of making structural improvements in the production and marketing of raw tobacco (Article 12 of Regulation No 130/66/EEC) have actually been disbursed.

Owing to that rectification of the situation, the Commission, by a letter received at the Court Registry on 25 September 1980, stated its intention to abandon its application in regard to those two amounts of aid, on the understanding that the defendant would be ordered to pay the costs pursuant to Article 69 (4) of the Rules of Procedure.

In regard to the remainder of its application the Commission requested that the procedure continue since the payments by the Italian authorities under the third aid programme concerning intervention expenditure under the common organization of the market in fruit and vegetables (Article 12 of Regulation No 159/66/EEC) amounted to only 44 722 000 000 lire on 31 August 1980, which is 81.97% of the amount granted, or 54 562 000 000 lire (87 299 539 units of account).

When invited to submit its written observations on the partial withdrawal by the Commission of its application the Italian Government did not meet that request within the period accorded to it.

IV — Oral procedure

The Italian Government, represented by G. Zagari, Avvocato dello Stato, and the Commission, represented by its Legal Adviser, C. Maestripieri, acting as Agent, presented oral argument at the hearing on 7 October 1980.

The Advocate General delivered his opinion on 28 October 1980.

Decision

1 By application lodged at the Court Registry on 14 June 1978 the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty which action, as it now stands after amendment during the procedure, seeks a declaration that by not submitting reports and supporting documents within the time-limits prescribed by the regulation referred to below has failed to fulfil its obligations under Article 4 (3) of Regulation No 130/66/EEC of the Council of 26 July 1977 on the financing of the common agricultural policy (Official Journal, English Special Edition 1965-1966, p. 216), as amended by Regulation No 966/71/EEC of the Council of 10 May 1971 (Official Journal, English Special Edition 1971 (I), p. 255) and under the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC of the Council of 25 October 1966 laying down further provisions for the common organization of the market in fruit and vegetables (Journal Officiel No 192, p. 3286).

2 Under the regulations referred to above the Italian Republic received payment from the resources of the Guidance Section of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the EAGGF") in the form of a fixed amount of financial aid including 45 000 000 units of account for the purpose of making structural improvements in the production and marketing of olives, olive oil, fruit and vegetables, 15 000 000 units of account for the purpose of making structural improvements in the production and marketing of raw tobacco, and an additional 87 299 539 units of account for the purpose of making structural improvements in the production and marketing of fruit and vegetables. The regulations provided that before the end of the transitional period the Italian Republic was to submit reports to the Commission together with supporting documents on the expenditure on the measures envisaged. The time-limits for the submission of the reports were extended by subsequent regulations.

3 After the reports had not been submitted within those time-limits to the satisfaction of the Commission the Italian authorities and the Commission exchanged numerous memoranda on the matter. On 11 February 1976 the Commission sent to the Italian Government a letter commencing the procedure contemplated by the first paragraph of Article 169 of the Treaty. In the belief that the observations submitted by the government in question on 17 March 1976 were not satisfactory, the Commission on 16 November

1976 sent to the Italian Government a reasoned opinion pursuant to that provision. That opinion invited Italy to take the steps to comply with it within a period of two months. Following a final exchange of letters, in which the Italian Government requested fresh extensions of the time-limits, on 14 June 1978 the Commission brought this action.

4 At the request of the Italian Government the hearing was postponed several times with the Commission's agreement. During the procedure the Italian Government submitted new reports updated to 31 August 1980. It is evident from those documents that the sums granted by the EAGGF amounting to 45 000 000 units of account for the purpose of making structural improvements in the production and marketing of olives, olive oil, fruit and vegetables and 15 000 000 units of account for the purpose of making structural improvements in the production and marketing of raw tobacco have actually been paid by the Italian authorities to the persons who have completed the installations for the improvement of those structures. The Commission has consequently declared its abandonment of its application so far as those two sums of aid are concerned, on the understanding that the defendant should be ordered to pay the costs pursuant to Article 69 (4) of the Rules of Procedure. In regard to the third sum of aid of 87 299 539 units of account granted within the framework of the common organization of the market in fruit and vegetables, because only 44 722 700 000 lire (81.97%) of that amount has been accounted for, the Commission has requested that the proceedings be continued.

5 In the case of the latter sum of aid the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC cited above refers to the conditions laid down by Article 4 of Regulation No 130/66/EEC also cited above. Paragraph (3) of that last-mentioned article provides that:

"The Italian Republic shall, before the end of the transitional period, submit to the Commission one or more reports, accompanied by supporting documents, on the expenditure incurred in respect of measures referred to ..."

That time-limit was extended to 31 December 1973 by Regulation No 966/71/EEC cited above, the third recital to which is worded as follows:

"Whereas the Italian Government has applied to the Commission for an extension to 31 December 1973 of the time-limit which expired on 31 December 1969 and which was not met on account of the time needed to carry out administrative formalities and complete the relevant works."

6 According to the information provided by the parties the situation concerning the reports is as follows. The 87 299 539 units of account were roughly equivalent to 54 562 000 000 Italian lire. On 31 December 1973, the date on which the extended time-limit set by the regulations was reached, the Italian Government had undertaken financial commitments to the recipients for 39 309 000 000 lire but had paid only 2 757 700 000 lire thereof. On 31 December 1976, a date near to the expiry date laid down in the Commission's reasoned opinion, the government had undertaken financial commitments exceeding the aid from the EAGGF, but had paid only 22 752 900 000 lire. On 31 August 1980, the date of the most recent reports, the Italian Government had paid 44 722 700 000 lire which represents 81.97% of the amount in lire originally paid to the Italian Republic by the EAGGF.

7 In its defence the Italian Government first contends that the Italian administration had decided within the time-limits laid down by the regulations, that is to say, before 31 December 1973, on the use of the entire amount of the funds allocated by the Community, and that, in any event, financial commitments exceeding the amount of the aid in question had been entered into before the period allowed in the reasoned opinion expired. In the view of the Italian Government the programmes cannot be required to have been completed and the funds to have been actually paid before those dates. Besides, the government had made considerable financial efforts to get the installations in question finished by adding to the Italian budget additional sums to a degree which largely exceeded the increase in costs resulting from inflation. Since the objectives of the Community regulations were thereby achieved it is not in accordance either with the spirit or with the letter of the provisions relied on by the Commission to refer to purely formal considerations.

8 That argument cannot be accepted. The obligations which Community rules impose on Member States must be complied with in full and it is apparent both from the wording of Article 4 (3) of Regulation No 130/66/EEC and from the recitals to Regulation No 966/71/EEC that the reports required by those provisions must be on the sums paid to recipients after the works have been completed and not on the expenditure committed to future works or works in progress.

9 The Italian Government further invokes numerous legal, technical and administrative difficulties which allegedly made the completion of the programmes and the payment of the aid allocated by the EAGGF objectively impossible in the periods laid down by the regulations. First of all those funds had to be brought within the scope of laws in the course of being adopted (notably Green Plan No 2). Then it was necessary to take into account the creation of regions in Italy on which Decree No 11 of the President of the Republic of 15 January 1972 conferred powers in many spheres of activity in agriculture, including powers to intervene in the sphere of reformative and marketing structures for agricultural products. Finally, the government insists that the delays were technically necessary to put into effect programmes of considerable size.

10 Even if the system of fixed amounts of financial aid from the EAGGF, now abolished, may have caused administrative difficulties for the Member States receiving it and even if the circumstances to which the Italian Government adverts may explain at least in part the delays which arose those circumstances do not expunge the failure to fulfil its obligations with which it is charged. According to well-established case-law a Member State may not plead provisions, practices or circumstances existing in its internal legal systems in order to justify the failure to comply with obligations and time-limits resulting from Community rules.

11 Lastly the Italian Government refers to the numerous contacts which took place between the Italian administration and the competent officers of the Commission and to the agreements reached on those occasions. It contends

that the Commission accepted by implication the method of accounting used by the Italian administration.

12 Even if the Commission showed a good deal of understanding for the difficulties described above the fact remains that it never waived the submission pursuant to the regulations cited above of full reports on the sums actually paid representing the aid granted by the EAGGF. What is more, the Commission was not empowered to alter the obligations under those regulations.

13 It is therefore appropriate to declare that as regards the aid fixed at 87 299 539 units of account granted by the EAGGF in the fruit and vegetable sector, the Italian Republic, by its delay in the submission of its reports on the expenditure incurred and by submitting them for the period up to 31 August 1980, only in respect of 44 722 700 000 lire or 81.97% of the aid granted, has not satisfied the requirements of the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC and of Article 4 (3) of Regulation No 130/66/EEC as amended by Regulation No 966/71/EEC and that for that reason it has failed to fulfil its obligations under the EEC Treaty.

Costs

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

15 Under Article 69 (4) of the Rules of Procedure a party who discontinues or withdraws from proceedings shall be ordered to pay the costs, unless the discontinuance or withdrawal is justified by the conduct of the opposite party.

16 In those circumstances the Italian Republic should be ordered to pay the costs of the whole action.

On those grounds,

THE COURT

hereby:

1. **Declares that as regards the aid fixed at 87 299 539 units of account granted by the EAGGF in the fruit and vegetables sector, the Italian Republic, by its delay in the submission of its reports on the expenditure incurred and by submitting them for the period up to 31 August 1980, only in respect of 44 722 700 000 lire or 81.97% of the aid granted, has not satisfied the requirements of the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC of the Council of 25 October 1966 laying down further provisions for the common organization of the market in fruit and vegetables and of Article 4 (3) of Regulation No 130/66/EEC of the Council of 26 July 1966 on the financing of the common agricultural policy, as amended by Regulation No 966/71/EEC of the Council of 10 May 1971; for that reason it has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the Italian Republic to pay the costs.**

Mertens de Wilmars Pescatore Koopmans

Mackenzie Stuart O'Keeffe Bosco Due

Delivered in open court in Luxembourg on 10 December 1980.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President