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.

The Commission also seeks an order that the Italian Republic is to pay the costs.

As will be apparent, in outlining the Commission's application, I have sought to tender its somewhat complicated wording more easily comprehensible.

1.2. Admissibility of the second claim

The application must of course, as always, be considered in conjunction with the reasoned opinion which preceded it. In this case, however, the text of that reasoned opinion is of particular importance since the Italian Government deduces from it certain arguments in support of its view that, since it has complied with that opinion in every respect, the second part of the Commission's application is inadmissible. However, the Italian Government does not base that view on the operative part of the reasoned opinion. As far as the second part of its application is concerned, the Commission states, in the operative part of the opinion, that an infringement of the Treaty has been committed and its statement is couched in terms virtually identical to those used in the second part of the application. The Italian Government bases its view instead on a sentence contained in the second subparagraph of paragraph 5 of the reasoned opinion, which reads as follows: "The Commission observes in that connection" (that is to say, in connexion with the Italian Government's undertaking to prevent the renewal of *some* of the contested measures) "that only the immediate suspension of the application of the provisions in question can prevent any future infringement". That demand that the contested measures be suspended was, according to the Italian Government, complied with in due time. In the Italian Government's viw, therefore, the Commission's second claim is inadmissible under the second paragraph of Article 169 of the EEC Treaty.

In order that I may confine the remainder of my opinion to the substantive issues raised it is convenient to deal forthwith with the objection of inadmissibility. It is sufficient, for the dismissal of that objection to point out that the wording of the operative part of the reasoned opinion is broader than that of the sentence which I have just cited. I would add, however, that the first paragraph on page 2 of the Italian Government's reply to the reasoned opinion (Annex 6 to the application) clearly shows that the Italian Government also fully understood this and consequently requested the regional authorities not only to suspend the contested measures but also to bring about a fundamental and immediate adaptation of the Sicilian agricultural legislation in order to bring it into line with the Community rules (to which the Sicilian authorities, as appears from the second paragraph of the letter, responded somewhat evasively, merely undertaking to examine the legislation with a view to such alignment).

Finally, it is clear from the context in which the sentence in question appears that it represented the Commission's reply to the Italian Government's statement that it would approach the regional administration in order to prevent the renewal of the financing measures. The sentence in question therefore refers only to the effects of the contested provisions in the *immediate* future and not to their effects in the past or to the somewhat longer period which is necessary for their repeal. The objection that the second part of the application is inadmissible must therefore be dismissed.

1.3. The system for supervising national aid in the agricultural sectors in question

For a proper understanding of the application, it is important first of all to point out that the duty to give notice of the aid in question in accordance with Article 93 (3) of the EEC Treaty is now based on Article 42 thereof, in conjunction with Article 22 of Regulation No 2727/75 (cereals), Article 59 of Regulation No 337/79 (wine), Article 17 of Regulation No 506/77 (products processed from fruit and vegetables) and Article 31 of Regulation No 1035/72 (fruit and vegetables).

Before the entry into force of the market organizations in those sectors, that duty of notification was based on Regulation No 26 of 4 April 1962 (Official Journal, English Special Edition 1959-62, p. 129), the sole purpose of which, however, was to place the Commission, by means of a provision rendering Article 93 (1) and (3) of the Treaty applicable, in a position "to draw up a list of existing, new or proposed aids, to make appropriate observations to the Member States and to propose suitable measures to them" (final recital in the preamble to the regulation). At the time, the Commission was unable to adopt measures on the basis of Article 92 and Article 93 (2) of the Treaty. Regulation No 26/62 did not render those provisions applicable in the agricultural sector.

Following the adoption of the above-mentioned regulations establishing market organizations (and of Regulation No 1360/78 concerning producer organizations, to which reference has not yet been made), the system for supervising the grant of aid in the sectors concerned became more complex. The provisions extending the application of Articles 92 to 94 of the Treaty to production of and trade in the products concerned also lay down that those articles are applicable only in the absence of provisions to the contrary (in this case, stricter provisions) in the regulations in question. The second part of the Commission's application is based on those stricter provisions, with which the contested provisions of the Sicilian legislation are alleged to be incompatible. In such a case, the procedure to be followed is that provided for by Article 169 and not that provided for by Article 93 (1) and (2). Although various passages in the application (third sentence of the last paragraph on page 4, fifth sentence of the last paragraph on page 6 and last sentence of the first paragraph on page 10) seem to suggest that the Commission considers the conflict with Community law to lie in the Member States' *lack of power* to adopt measures which supplement regulations, that was denied by the Commission at the hearing in reply to a question which I put to it. The Commission considers the infringement of Community law to be exclusively of a substantive nature. Such an approach was endorsed by the Court, in particular in Case 72/79, *Commission* v *Italy*, [1980] ECR 4111. The legal difficulties relating to that point were fully clarified by Mr Advocate General Mayras in the Opinion which he delivered in that case and in which he also analysed the decisions of the Court concerning the similar problems involved in differentiating Article 92 from other provisions of the Treaty. As regards the judgment itself, I think it should be emphasized at this stage that the Court assessed the aid at issue in that case — since there too Articles 92 to 94 were similarly held to apply — in the light of specific

provisions to the contrary in the applicable regulation.

1.4. Approach

I now propose to deal, in turn, with the alleged infringements of Article 93 (3) of the Treaty, Regulation No 2727/75, Regulation No 337/79, Regulation No 516/77 and Regulations Nos 1035/72 and 1360/78. Following some final remarks, I will conclude this Opinion with a summary of my views.

2. Alleged breach of the duty of notification

The Italian Government concedes that a delay occurred in the notification of the contested regional laws, Laws Nr. 49 and No. 83. Any doubt that the extension of the validity of aid must be regarded as an alteration thereof, within the meaning of the first sentence of Article 93 (3), has already been dispelled by the Court in its judgment in Case 70/72 (*Commission* v *Germany*, [1973] ECR 813). Moreover, in its judgment in Joined Cases 120 to 122 and 141/73 (*Lorenz*, [1973] ECR 1471, at p. 1481), the Court held that "the objective pursued by Article 93 (3), which is to prevent the implementation of aid contrary to the Treaty, implies that this prohibition [that is to say the prohibition contained in the third sentence of Article 93 (3)] is effective during the whole of the preliminary period" (paragraph 4 of the decision). Consequently, under the provisions of the agricultural regulations applicable in this case, the regional aid at issue should not, from the outset, have been implemented before the Commission had given its express or implied approval within a reasonable period following the belated notification of the contested measures. Accordingly, it is also clear that the suspension of the application of the measures in question *after* the reasoned opinion was delivered did not bring the infringement of the Treaty to an end.

3. Alleged infringement of Regulation No 2727/75 (Official Journal 1975, L 281, p. 1)

Article 10 of Sicilian Regional Law No 47 of 27 May 1980 extends the validity of, and also provides for a partial increase in, the aid granted for durum wheat by Regional Law No 22 of 18 July 1984. A sum of LIT 4 500 million was set aside to finance that aid in the 1980 financial year.

Article 2 of Regulation No 2727/75 provides for guaranteed minimum prices for durum wheat. Article 9 (1) and Article 10 of that regulation also provide for aid in respect of stocks remaining at the end of the marketing year and for the production of durum wheat. Clearly, supplementary national aid, in this case regional aid, distorts the functioning of the Community system of market conditions thus established and is therefore incompatible with it. In that respect a close parallel may be drawn with the infringements of Community law with which Italy was charged in Case 72/79, referred to earlier. The infringement of Article 5 of the Treaty, in conjunction with Regulation No 2727/75, alleged by the Commission must therefore be regarded as proven. The Italian Government's defence that

only the renewal of pre-existing aid was involved, against which the Commission raised no objection at the time, can in no way affect that conclusion. However, since a more general argument for the defence is involved here, I shall return to this point at the end of my Opinion.

4. Alleged infringement of Regulation No 337/79 (Official Journal 1979, L 54, p. 1)

Articles 2 and 3 of Sicilian Regional Law No 83 provide for interest subsidies in respect of the disposal of table grapes to grape-producer cooperatives, the purpose of which, as the Italian Government acknowledges, is to encourage the production of table wines and their distillation. A sum of LIT 1 000 million was set aside for that purpose for the 1980 financial year.

The first full recital on page two of the preamble to Regulation No 337/79 shows that the purpose of the regulation is *inter alia* to exclude table wines from the scope of all intervention measures, with the exception of those referred to in that recital and provided for in the regulation itself, as is confirmed by Article 6 (2) of the regulation. The final recital on the same page and the recitals on page three also make it clear that the purpose of the regulation is to limit production of table wines and of vine varieties intended for the production of such wines. Articles 2 to 4 regulate the system of prices for table wine, Articles 7 to 10 provide for grants of Community aid and Articles 11 to 15 provide for supplementary intervention measures where excess production is established, in particular for an intervention system — which is to be regarded as comprehensive and which is subject to strict conditions — designed to encourage the distillation of table wines. Titles III to IV of the regulation are also clearly aimed at restricting the production and disposal of table grapes and table wines. In that connexion, the Commission, in its application, refers in particular to Article 41 of the regulation.

Articles 2 and 3 of Regional Law No 83, which are intended to encourage the production of table wines and their distillation, are manifestly contrary to the purpose, which I summarized briefly, of the relevant provisions of Regulation No 337/79. Taken together, those provisions are clearly aimed at establishing a comprehensive organization of the market in the sectors governed by Articles 2 and 3 of the Law, and those articles are incompatible with it. The contested articles of Regional Law No 83 therefore constitute an infringement of the last sentence of Article 5 of the EEC Treaty, in conjunction with Regulation No 337/79. I would however point out that the analogy with Case 72/79 is less striking in the case of this infringement.

5. Alleged infringement of Regulation No 1035/72 (Official Journal, English Special Edition 1972 (II), p. 437) and of Regulation No 516/77 (Official Journal 1977, L 73, p. 1) as amended by Regulation No 1152/78 (Official Journal 1978, L 144, p. 1)

Articles 8 and 9 of Sicilian Regional Law No 83 provide for the grant of aid to tomato producers who have joined together to form the producer organ-

izations referred to in that Law and to the producer organizations themselves. The aid serves to promote the processing of tomatoes by the canning industry. A total amount of LIT 850 million was set aside for that purpose in the budget. Articles 10 and 11 of the Law provide for the grant of loans to canning undertakings at a reduced interest rate of 4% in order to promote the processing of tomatoes. An amount of LIT 2 000 million was set aside for that purpose in the budget. Contrary to the view expressed by the Italian Government, there is no doubt that such loans must also be regarded as aid within the meaning of Article 92 of the EEC Treaty. As is clear from the case-law of the Court (see Joined Cases 6 and 11/69, *Commission* v *France*, [1969] ECR 523), it is sufficient for that purpose if the rate of interest payable is lower than the rate of interest normally charged in Italy. In the present case, moreover, it is also lower than the normal rate of interest in other Member States. Finally, the fact that the loan is in the nature of aid is confirmed by the size of the fund set aside for that purpose in the budget. Article 12 of the Law sets aside LIT 2 000 million by way of interest subsidies for citrus-fruit producers who are members of cooperatives and Articles 15 and 17 set aside LIT 5 250 million for structural improvements in connection with the production of almonds, hazelnuts and pistachio nuts.

The Commission regards all the aid in question, provided for by Law No 83, as contrary to Regulation No 516/77 or, in the case of citrus fruit, to Regulation No 1035/72. In the penultimate paragraph on page 7 of its application, the Commission refers, as regards tomatoes, in particular to Articles 3a and 3b, which were inserted in Regulation No 516/77 by Regulation No 1152/78. Those articles provide for the grant of Community production aid for the processing of *inter alia* tomatoes. In its rejoinder, the Italian Government acknowledges, in relation to Articles 8 and 9 of Law No 83, that the grants are in the nature of supplementary production aid. Once again, therefore, there is a close parallel with Case 72/79.

However, the Italian Government maintains that Articles 10, 11, 12, 15 and 17 have different objectives.

As far as Articles 10 and 11 are concerned that contention is in my opinion unfounded. It is clear from the nature — which I have already described — of the aid provided for by those articles (encouragement of the processing of tomatoes by means of interest subsidies) that it is of the same nature as the production aid provided for by Regulation No 516/77. Article 3a (2) shows quite clearly that such Community aid may also be granted for the processing of tomatoes by canning undertakings. Supplementary national aid intended to encourage the processing of tomatoes must be regarded as contrary to that provision.

Article 12 of the contested Law must, according to the Italian Government, be regarded as granting aid to promote the development of producer associations and I will consider it from that point of view. The Commission has not made it sufficiently clear why it considers that aid also to be contrary to the common organization of the market in fruit and vegetables.

The general arguments put forward by the Commission are too far removed from Article 31 of Regulation No 1035/

72 which, as far as the applicability of Articles 92 and 93 of the Treaty is concerned, contains a reservation solely in respect of *provisions* to the contrary in the regulation. In contrast to Case 72/79 and to its approach with regard to the other infringements which it alleges in this case, the Commission has not clearly identified *which* provisions of the regulation the contested aid is said to be in conflict with.

As regards Articles 15 and 17, the Italian Government maintained in its rejoinder and at the hearing that the provisions in question were protective measures adopted on ecological grounds in support of endangered crops. The wording of those articles also seems to indicate, as I have already observed, that the measures involved are concerned with structural policy rather than with marked policy. That argument was not seriously challenged by the Commission. The Commission has not even argued that the almonds and hazel-nuts at issue in this case also benefit from Community aid, although — contrary to the view expressed by the Italian Government — they fall within the organization of the market in fruit and vegetables (Regulation No 1035/72 — see Article 1 thereof in conjunction with heading No 08.05 of the Common Customs Tariff). However, the Commission has not explained why it considers the aid in question to be contrary to Regulation No 1035/72, which, unlike Regulation No 516/77, does not provide for a Community system of production aid.

I conclude, therefore, that it has not been established that Articles 15 and 17 of the Law in question infringe Regulation No 1035/72.

6. Alleged infringement of the provisions of Regulations No 1035/72 and No 1360/78 concerning producer associations

In the light of my previous observations, all that remains to be determined is whether Article 12 of Regional Law No 83 is contrary to the Community legislation concerning producer organizations. The only relevant provision in the connection is Article 14 of Regulation No 1035/72. That article permits, subject to certain conditions and restrictions, the grant of national aid in support of producer organizations. The Commission has not shown that those conditions and restrictions were not complied with in the present case. Consequently, it has not been established that Article 12 of Regional Law No 83 constitutes an infringement of Community law.

7. Final remarks and conclusion

7.1. Final remarks

Having come to the end of my Opinion, I should like to make some additional remarks concerning the procedural aspects of the present case.

In the first place, it is regrettable that the Commission set out the reasons for the conclusions contained in its application, or at least for certain of those conclusions, in an extremely concise manner and, in the instances which I have indicated, did not even refer with sufficient accuracy to the provisions of the regulations which are said to have been infringed. Moreover, the Commission has failed to submit the texts of

the Sicilian Laws at issue, which are necessary to ensure a proper understanding of the case. If the Commission takes the view that an alleged infrigement of Community law is sufficiently serious to be submitted to the Court under Article 169 of the EEC Treaty for its consideration, it is primarily for the Commission and not for the Court to ensure that all information relevant to the case is made available. The texts to which I refer, at any rate the most important ones, were not produced to the Court until the Italian Government submitted them as annexes to its defence. Admittedly, the application and the reasoned opinion which preceded it were sufficiently clear to enable the Italian Government to defend itself. From my previous observations, however, it will be apparent that, in my view, the Commission's arguments regarding certain points were not sufficiently precise to enable the conclusion to be drawn that the Treaty was infringed by all the provisions of the Sicilian legislation which the Commission referred to in its application. It cannot be the Court's task to seek out and interpret of its own motion relevant provisions of regulations on which the Commission has not clearly expressed its views and on which the Member State concerned has therefore not had the opportunity to express its own, possibly conflicting, views. I believe that account should be taken of those failings in the order as to costs.

In the light of the need to ensure that the proceedings progress smoothly, it is also regrettable that the Italian Government was so persistent in its contention that the second part of the application was inadmissible that its submissions on the substance thereof were only put forward in its rejoinder and at the hearing and, moreover, in a relatively concise form. The risk of relying on such a concise defence must of course be borne by the Italian Government, in so far as the arguments adduced by the Commission are sufficiently detailed to demonstrate — following their appraisal in the light of the provisions of the regulations concerned — that those provisions were infringed by the Sicilian measures granting aid in the most important sectors of intervention considered (durum wheat, table grapes and wine, and tomatoes).

The Italian Government's argument that the Commission raised no serious objections to the aid in question at the time of its introduction is, as I said earlier, unfounded in my view. Excess production of certain agricultural products, and the need to tighten the Community rules in relation to that excess production and in relation to other agricultural products, can always be deemed to justify stricter supervision in order to ensure proper observance of the rules of the common organizations of the market, which in most cases have themselves become stricter. The possibility increasingly created by those common organizations of assessing national aid directly on the basis of provisions which are sufficiently detailed for that purpose is in itself worthy of support. The extent of the problems involved in the assessment of agricultural aid in accordance with the complicated procedure prescribed by Article 93 of the Treaty is thus reduced. If, however, the provisions of the regulations concerned are not sufficiently explicit in that regard, it is necessary, in accordance with the relevant provisions of those

regulations, to fall back on the old procedure provided for by Article 93 of the Treaty itself. The effect of the Commission's attitude in these proceedings is to deprive of virtually any practical significance those provisions of the regulations concerned which render Articles 92 to 94 of the Treaty applicable. Such an interpretation seems to me to be inconsistent with the letter and spirit of the provisions concerned and with the judgment of the Court in Case 72/79.

The argument put forward by the Italian Government to the effect that even a number of measures granting aid for table grapes, wine and tomatoes may be regarded as aid to producer associations cannot detract from the validity of the finding that the purpose and effect of such aid is, in view of the detailed rules for its implementation, chiefly to regulate the market. The aid must therefore be assessed primarily in the light of the rules of the common organizations of the market.

7.2. Conclusion

I conclude that:

1. the Italian Republic, 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;

2. the Italian Republic, by adopting measures involving intervention in support of agriculture such as those provided for by Article 10 of Sicilian Regional Law No 47 and by Articles 2, 3, 8, 9 and 10 and 11 of Sicilian Regional Law No 83, has failed to fulfil its obligations under Article 5 of the EEC Treaty in conjunction with Regulations No 2727/75, No 337/79 and No 516/77;

3. the Commission's application must be dismissed as regards the other alleged infringements of Community law;

4. pursuant to Article 69 (3) of the Rules of Procedure, the parties should be ordered to bear their own costs.