On those grounds,

THE COURT

hereby:

1. **Declares that by not having brought into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with the provisions of Council Directive No 74/577 of 18 November 1974 on stunning of animals before slaughter the Italian Republic has failed to fulfil its obligations under the Treaty;**

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

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 6 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 11 MAY 1978 [1]

Mr President,
Members of the Court,

In Council Directive No 74/577/EEC of 18 November 1974 on stunning of animals before slaughter (Official Journal L 316 of 26 November 1974, p. 10) the Council provided that: "For the slaughter of animals belonging to the following species: bovine animals, swine, sheep, goats and solipeds, Member States shall ensure that suitable measures are taken to induce death as rapidly as possible after stunning, in accordance with appropriate procedures". The directive lays down details as to the permissible means of

1 — Translated from the German

stunning and the testing of the equipment to be used. Article 5 provides:

"The Member States shall not later than 1 July 1975 bring into force the laws, regulations and administrative provisions necessary to comply with this directive and shall immediately inform the Commission thereof."

After a lengthy exchange of correspondence the Commission by a letter of 15 December 1976 initiated the procedure under Article 169 of the EEC Treaty for failure to fulfil Treaty obligations on the ground that the Italian Republic had not fulfilled within the prescribed period the duties arising out of the above provision; in view of the fact that the Italian Republic in addition did not comply with the formal opinion of the Commission of 5 May 1977 within the prescribed period the Commission commenced proceedings on 6 December 1977 claiming

(a) a declaration that the Italian Republic had failed to fulfil its obligations under Article 5 of the EEC Treaty and under the Council Directive of 18 November 1974; and

(b) an order that the Italian Republic should pay the costs.

The defendant raises the objection that the observance of the objectives of the directive is already ensured as a result of the implementation of Article 9 of Royal Decree No 3298 of 20 December 1928 but states that in order to ensure the precise application of the directive and above all on grounds of legal certainty, the Italian Government introduced into the Senate on 20 July 1977 draft Law No 840 on the stunning of animals before slaughter.

The defendant accordingly does not contest that it has failed to comply with its obligations arising from Article 5 of the EEC Treaty — keeping the Commission constantly informed regarding the measures taken — and from the Council Directive of 18 November 1974. The law designed for compliance with these obligations has not yet been passed although the period prescribed in Article 5 of the directive has long since expired. The conditions for a declaration that the Italian Republic has failed to fulfil Treaty obligations are therefore met.

The defendant's objection that in view of the Italian rules already in existence it cannot be accepted that the failure to comply with the Treaty calls in question the operation of the Common Market or permits cruel treatment of animals cannot lead to a different conclusion. Quite apart from the fact that the previous Italian rules dating from 1928 by no means comply with the obligations imposed by the Council directive, this directive is precisely designed to unify the legislation of the Member States regarding protection of animals as regards avoiding cruel treatment in the process of slaughter by the general introduction of methods of stunning recognized as suitable. This aim of the directive requires appropriate action on the part of the Member States. As the Court has declared in the judgment in Case 95/77 — *Commission* v *Kingdom of the Netherlands* — in paragraph 13 of the decision, it is of no importance that the failure to apply a directive has had no adverse effect on the functioning of the Common Market.

My opinion therefore is that the Italian Republic should be declared to be in default in accordance with the application of the Commission.