

OPINION OF MR ADVOCATE-GENERAL GAND

DELIVERED ON 4 FEBRUARY 1970¹

*Mr President,
Members of the Court,*

I

On 4 April 1962 the Council of the EEC adopted Regulations Nos 19 to 24 inclusive on the progressive establishment of a common organization of the market in various products, namely cereals, pigmeat, eggs, poultrymeat, fruit and vegetables and finally wine.

This last sector is the only one the organization of which has not yet attained its final form and is concerned in the case on which you are called upon to give a ruling today. The Commission of the European Communities, acting on the basis of Article 169 of the Treaty, asks you to declare that the Italian Republic, by failing to prepare the viticultural land register within the period fixed by Article 1 of Regulation No 24, as amended by Regulation No 92/63 of 30 July 1963, that is to say, before 31 December 1964, has failed to fulfil its obligations under this provision.

I can be brief in my observations as the report of the hearing and the submissions which you have heard have given you very full information on the respective positions of the parties and the scope of the dispute. For the Commission the article in dispute requires the complete fulfilment before the date prescribed of all the necessary operations, administrative, material and topographic, to make the register operational, and it is not disputed that those operations were not concluded when the application was made and that today they have still to be concluded.

According to the defendant the Commission's argument rests on a confusion between the two different concepts of 'preparation' and 'operation'. The sentence 'Member States shall, not later than 30 June 1963, prepare ('istituisciono') a viticultural land register' must be understood in a purely legal sense. It requires the States to

take a decision to establish the register as an institution in their administrative organization, to lay its foundations; it does not imply that all the material and topographical implementing measures should be completed within the period fixed by the regulation so that the register is at this point 'operational'. Decree No 1707 of the President of the Republic of 29 December 1965 established the national viticultural land register in Italy and for this purpose made available a credit of 3 800 million lire. Thereafter the Minister for Agriculture and tp Central Statistics Institute worked towards its completion but this met with considerable difficulties because of the extreme subdivision of the plantations. This is sufficient to prove that the Italian Republic has in no way failed to fulfil its obligations.

II

Of the two arguments submitted here I must say from the outset that I think we must accept the Commission's for reasons pertaining both to the wording of the provisions and to the *ratio legis* and for reasons which moreover accord with the view maintained by the Italian Government until the application was lodged.

1. First, a reasonable interpretation of the provision cannot merely consider the verb 'istituire' used in the Italian edition; as the four versions are equally valid the words 'établir', 'einrichten' and 'instellen' appearing in the other three versions must be considered. Although it might be assumed for the sake of argument that the Italian expression must be interpreted to refer exclusively or more particularly to prepare in the sense of giving legal status to the register, the words used in the other languages in no way appear to confirm this interpretation.

First and foremost, however, the expression in dispute can only take on its true meaning

1 — Translated from the French.

if it is seen in the context of the regulation in which it appears.

Article 1 of Regulation No 24 reads as follows:

'Member States shall, not later than 30 June 1963, prepare a viticultural land register *which shall thereafter be kept up to date*.

This register, based on the general vineyard census, shall include the following information: ...'

This is followed by a list including the total area under vines, that area subdivided according to type of production, the method of management of plantations, the classification of vine plantations according to surface area, the classification of areas under vines according to age of vine-stocks and classification of vine varieties according to year of planting.

I cannot comprehend how it would be possible to keep up to date a register which was not already actually in existence. Thus this preparation, which the first paragraph of this article requires the Member State to effect within a specified period, involves gathering all the documents prepared on the basis of surveys or of administrative operations, enabling a detailed impression to be given of the intensity, the situation and the type of plantation. This requires the actual realization of an institution not merely a legal measure to this effect.

The second paragraph of Article 1 confirms this impression since it lays down in detail the information which 'this register' must include, that is to say, the register which the foregoing paragraph provided should be prepared within a given period, since it also states that it shall be based on the general vineyard census. Article 1 of the regulation certainly refers to the actual outcome of a series of operations as a result of which it will in fact be possible for the register to operate.

Finally, if there were any doubts remaining as to the meaning to be given to the sentence in dispute, it would be sufficient to refer to Regulation No 92/63 of the Council the sole objective of which was to amend the first paragraph of Article 1 of Regulation No 24 and to postpone to 31 December 1964 the date of 30 June 1963 initially prescribed.

After referring to Regulation No 24 and Regulation No 143 of the Commission on

the initial provisions for the preparation of the viticultural land register, there appears a recital giving the following reasons for the extension of the period:

'Whereas more time is needed to enable the work of preparing the viticultural land register to be satisfactorily completed in certain Member States where the matter raises particularly complex problems, owing more especially to the numerous on-site inquiries to be carried out and to the time required for analysing the information obtained.'

If it should be thought that the meaning of the earlier provision required clarification this is provided by the recital of the preamble to the regulation amending it: the Council intended to extend the period prescribed for the completion of all the operations which in its view constituted the preparation of the register.

2. To those arguments based on the wording of the provision in dispute must be added another derived from its rationale. According to the argument expounded by the Italian Government, the Member States are obliged before the specified date to pass legislation setting up the viticultural land register; however, rendering this institution part of their legal and administrative systems fulfils their obligations under the regulation on the progressive establishment of a common organization of the market in wine, but they are free to decide the date and stages of the subsequent completion of the work to make the register operational.

This view takes no account of the place allotted by the authors of the regulation to the register in the organization of the market in wine. The organization must prevent surpluses of a permanent nature — which exist in the case of too many agricultural products — and must aim at stabilizing markets and prices by adjusting supplies to requirements, such adjustments being directed towards quality production. It is therefore necessary to know the potential output and the state of harvests and of stocks and with this in view it was decided to prepare the register and set up a system of declarations; such are the two categories of measure of which Regulation No 24 is comprised. But the register can only serve

this purpose after its completion when the documents which it contains provide the necessary information. The date when its legal existence begins is of little importance; what is important is its completion in actual fact and it is only for this that there is reason to fix a limit.

3. Moreover, the Italian Government has for a long time concurred in such an interpretation of Article 1 of the regulation, as is clear from the correspondence exchanged with the Commission.

I shall first of all cite a letter from its Permanent Representative of 29 March 1963 when the limit prescribed was still fixed at 30 June 1963. This states that, in the opinion of the Italian experts formed on the basis of the technical difficulties presented by the surveys necessary for the register, this date must have represented the maximum period granted to make ready the machinery necessary to commence operations; yet it was interpreted by the Management Committee as referring to the completion of the operations for setting up the register. Since it did not appear possible to complete those operations before 31 December 1964, the Italian Government requested 'an extension' until that latter date 'for the preparation provided for in Article 1 of Regulation No 24 of the Council'. This constituted an implied acceptance of the interpretation prevailing in the Management Committee and it was in acceding to this request that Regulation No 92/63 of the Council fixed the period mentioned by the Italian Government.

The Italian Government's position remained constant until the Commission made its application. In reply to the letter of 17 June 1966 whereby the Commission initiated the procedure under Article 169, the Italian Government's observations dated 1 August 1966 do not dispute that a delay had occurred in preparing the viticultural land register, whilst attributing it to practical technical difficulties presented by the complex and uneven structure of Italian viticulture. In the observations the completion of the register was foreseen in the course of 1968. It was to take account of this situation that the Commission made a proposal to the Council on 24 June 1967

further to postpone to 31 December 1968 the date fixed in Article 1 of Regulation No 24 as amended, but as is known, this proposal was not acted upon.

III

Such are the reasons why I accept the Commission's interpretation of the provision in dispute and submit that the Italian Republic has in fact failed to fulfil its obligations under it. Nevertheless I should not wish to leave unanswered two arguments invoked by the defendant in support of its view, which were particularly emphasized in the course of the oral procedure.

1. On the basis of the notion that the period in Article 1 of Regulation No 24 related solely to the introduction of the register, its establishment in law and not in actual fact, the Italian Government maintained that the Decree of the President of the Republic of 29 December 1965 had completely fulfilled this obligation.

If one accepts the meaning which I have suggested should be given to the article in dispute, this argument is plainly irrelevant. I must add that even according to the interpretation adopted today by the Italian Government the Decree of 29 December 1965 is insufficient to justify its argument, as it appears to me, and to the Commission, that it does not prepare the register, but merely delegates powers for its preparation. This is clear from Article 1 of the decree which reads as follows:

'The national viticultural land register provided for by Regulation No 24 of the EEC ... shall be prepared and kept by the Minister for Agriculture and Forestry (istituto e tenuto del Ministero dell'Agricoltura e delle Foreste).'

Two factors are closely connected by the provision and it appears to me quite arbitrary to discern two operations in this phrase: the establishment in law of the register is the action of the author of the decree and such establishment is thereby completed — and keeping the register which is entrusted by this authority to the Minister for Agriculture.

Article 2 adds: 'The operations relating to the preparation (relative all'istituzione) of the viticultural land register shall be effected

by the Minister for Agriculture and Forestry jointly with the Central Statistics Institute'. It does not say 'operations *following* the preparation of the register', although the use of this participle to indicate the past would be logical if such preparation were already completed by the fact of the foregoing article.

It must be concluded from this that the words 'istituire' and 'istituzione', appearing in the decree do not relate to the establishment in law of a register, but to its creation in fact and in this sense the decree merely prepares and organizes the operations.

Moreover this is the only meaning which the Italian authorities conferred on this provision when it came into being at a time when they had not yet distinguished between preparation and operation, between establishment in law and creation in fact. In their above-mentioned observations of 1 August 1966 in response to the initiation of the procedure under Article 169, in referring to this decree they did not say that it 'had prepared' but that it '*had prescribed the preparation of the viticultural land register*' (stabilisce l'istituzione del catasto viticolo).

2. The other argument is based on the sequence and the conjunction of the provisions issued by the Council and by the Commission respectively.

The Italian Republic emphasizes that in this case the original regulation of the Council required the Commission to clarify the conditions for the implementation of the disputed Article 1 and thus the information in the register to be prepared, which it did in its Regulations Nos 143/63 and 26/64. Adopting the solution of national legal systems which distinguish between the status of parliamentary legislation and the administrative orders of the executive, the defendant considers that the Council's provision constitutes a 'primary' rule requiring the Member States to prepare the register and fixing a period within which they must do so, whilst the Commission's regulations only have the status of 'secondary' or implementing rules the sole purpose of which is to establish the details of the actual form of the register. In fact to adopt the Commission's view on this point would

result in giving to 'secondary' provisions priority over 'primary' law, as the practical effect of the period fixed by the Council depends on the relative dispatch with which the Commission adopted its own regulations.

Direct transposition of the solutions of national law into Community law is subject to grave reservations and at this point I shall not broach the problem, in certain respects a delicate one, of the sources and extent of the Commission's power to adopt those regulations. But the present case does not require the question to be settled. This institution was empowered by an express delegation to lay down the conditions for the application of the article in dispute, which indirectly affect the length of the period in fact at the disposal of the Member States for fulfilling their obligations. If the Commission had failed to take the necessary measures prescribed by the Council, it would have rendered itself liable to a sanction under Article 175, and it would have had to take into account the effects of its own delay on the progress of a Member State in completing the register, if it were required to appraise any delay by a Member State within the framework of Article 169. Nevertheless, all those solutions are fully compatible with the interpretation which I suggest the Court should give to the provision in dispute, and the argument of the Italian Republic seems to me to be irrelevant.

Finally it seems to me certain that the original Regulation No 24 of 4 April 1962 required the actual formation of the register by 30 June 1963. This provision was quite unrealistic, so much so that it was necessary to postpone the date until 31 December 1964. No doubt this period was also too short since the Commission unsuccessfully proposed its extension until 31 December 1968, as the Italian Republic had requested. In those circumstances, it is understandable that the Commission should exercise the discretion conferred upon it by Article 169 and thus suspend the proceedings initiated. It is also understandable that it should resume them in 1969: by then the Italian Republic had had almost seven years to prepare (to give this word the meaning it has in Regulation No 24) the viticultural land

register and could not put forward any previous delay in applying this provision.
additional valid excuse for continuing its

I am of the opinion that the Court should declare that by its failure to prepare the viticultural land register the Italian Republic has failed to fulfil its obligations under the combined provisions of Article 1 of Regulations Nos 24/62 and 92/63 of the Council and that the Italian Republic should bear the costs.