

OPINION OF MR ADVOCATE GENERAL REISCHL
DELIVERED ON 28 OCTOBER 1980¹

*Mr President,
Members of the Court*

The proceedings on which I am today giving my opinion concern the submission of reports on the use of funds paid to the Italian Republic out of the agricultural budget of the Community.

By Article 4 (1) of Regulation No 130/66/EEC on the financing of the common agricultural policy (Official Journal, English Special Edition 1965-1966, p. 216) an amount of 45 000 000 units of account was paid to the Italian Republic for the year 1965/1966 (1967 budget) from the resources of the Guidance Section of the European Agricultural Guidance and Guarantee Fund for the purpose of making structural improvements in the production and marketing of olives, olive oil, fruit and vegetables.

Under Article 12 (1) of the same regulation the Italian Republic received for the year 1967/1968 (1969 budget) an amount of 15 000 000 units of account from the resources of the Guidance Section of the Fund which I have just mentioned for the purpose of making structural improvement in the production and marketing of raw tobacco.

The third subparagraph of Article 12 (4) of Regulation No 159/66/EEC 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) stipulated:

“In cases where, as regards a given year, the total amount of expenditure” (that is to say, the cost of interventions on the

internal market within the meaning of Articles 6 and 7 of the regulation) “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”.

Accordingly, in the period from March 1969 to December 1971, 87 299 539 units of account went to the Italian Republic for the years 1966 to 1969 which were also to be used for the purpose of making structural improvements in the production and marketing of fruit and vegetables.

On the basis of those provisions the Italian Republic has altogether received 147 299 539 units of account which were of course converted into lire at the official rate notified to the International Monetary Fund (1 unit of account = 625 Italian lire).

Article 4 (3) of Regulation No 130/66/EEC, to which also Article 12 of Regulation No 159/66/EEC makes reference, provided that before the end of the transitional period the Italian Republic was to submit to the Commission one or more reports, accompanied by supporting documents, on the expenditure incurred in respect of the measures referred to in paragraph (1) from 1 November 1965 for olives and olive oil, and from 1 January 1966 for fruit and vegetables.

Article 12 (3) of that regulation stipulated that:

¹ — Translated from the German.

"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 in paragraph (1). The Commission shall obtain the observations of the other Member States and where appropriate make any recommendations it considers expedient to the Italian Government.

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 paragraph (1)."

That last-mentioned time-limit was extended to 31 December 1971 by Regulation No 490/70/EEC of the Council of 17 March 1970 (Journal Officiel L 62 of 18 March 1970, p. 3). It was also provided in that regulation that before 31 December 1970 the Italian Republic was to submit an interim report concerning the position as regards implementation of the programme referred to in Article 12 of Regulation No 130/66/EEC.

The time-limit laid down in Article 4 (3) of Regulation No 130/66/EEC was extended to 31 December 1973 by Regulation No 966/71/EEC of the Council of 10 May 1971 (Official Journal, English Special Edition 1971 (I), p. 255). By that regulation the Italian Republic was further obliged to submit the following reports with supporting documents:

- "biannually, by 30 June and 31 December of each year, six-monthly reports on the use made of amounts paid under Article 4 (1) of Regu-

lation No 130/66/EEC and Article 12 (4) of Regulation No 159/66/EEC; these reports shall describe the state of progress of measures and works undertaken and shall state how much has been disbursed;

- annually, by 31 March of each year, supporting documents on expenditure in the previous year. Documents on expenditure incurred up to 31 December 1971 may, however, be submitted up to 30 June 1972."

Since in the Commission's view the Italian Republic had not properly fulfilled those obligations, after an initial urgent reminder by the Commission in 1973, an extensive exchange of letters took place. The Commission then decided to start proceedings under Article 169 of the EEC Treaty. That was done by letter of 11 February 1976 which, in addition to requesting the views of the Italian Republic, asserted that on 30 June 1975 the works for making structural improvements had only partially been carried out or not even commenced and the funds granted by the Community had only partially been disbursed. The Italian Republic thereupon attempted to vindicate itself in a letter of 17 March 1976 from its Permanent Representation alluding to problems of practical implementation, the length of administrative procedures and the recent allocation of powers to the regions which was a factor involved. It also stressed that the aims in view had been virtually achieved and for projects still uncompleted requested an extension of the time-limits stipulated.

On 16 November 1976 the Commission then delivered a reasoned opinion within the meaning of Article 169 of the EEC Treaty. It was stated in that opinion further to the assertions already contained in the letter of 11 February

1976 that on 30 June 1975, despite execution of the works, the amounts provided for had only been partially disbursed and final reports had still not been presented. That statement was accompanied by a call to remedy within two months the breach of Community law indicated.

However, that was not done; instead, in a letter of 24 January 1977 an account was given of the situation as at 31 December 1976 and emphasis was laid on the fact, first that clear decisions had been adopted in ministerial regulations on the use of the funds before the end of 1973 and secondly that the delays indicated were attributable to the need to make additional resources available in the Italian budget owing to price increases; an extension of the time-limit was then requested in the letter with an indication that the remaining amounts would be disbursed in the then current financial year.

The Commission acceded to that request only in so far as in a letter of 23 December 1977 it fixed 31 January 1978 as the very latest date for the submission of the reports. The Italian Republic complied in part in a letter of 31 January 1978. In that letter, however, an extension of the time-limit by fifteen months was again requested on the ground that all the amounts had already been firmly committed, the aims in view virtually achieved and on the ground that a period of twelve months was still required to complete the remainder of the projects.

But the Commission did not give its consent. Instead, on 14 June 1978, it brought the matter before the Court of Justice seeking a declaration that the

Italian Republic had failed to fulfil its obligations under Article 4 (3) of Regulation No 130/66/EEC as amended by Regulation No 966/71/EEC, under Article 12 (3) of Regulation No 130/66/EEC as amended by Regulation No 490/70/EEC and under the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC because it had not submitted reports and supporting documents in accordance with those provisions.

The proceedings before the Court dragged on for a considerable time. At the conclusion of the written procedure the Italian Republic was called upon to submit a summary by 1 March 1979 giving the latest position as to the reports which it had to submit. That was done and it can be seen from the letter received at the Court on 2 March 1979 that of the 87 300 000 units of account I first mentioned 62% had been used up at that time.

The oral procedure was then postponed several times with the consent of the Commission.

On 25 September 1980 the Commission lodged an additional application. It was stated therein that at the most recent updating (31 August 1980) the evidence showed that the sums referred to in Articles 4 and 12 of Regulation No 130/66/EEC (45 000 000 units of account and 15 000 000 units of account) had been disbursed on the projects envisaged. On that point therefore the Commission abandoned its action, with the reservation, however, that the costs of the proceedings be borne by the Italian Republic because the reports had nevertheless still been submitted late. As to the third issue, relating to the 87 300 000 units of account mentioned

earlier, according to the undisputed statements of the Commission it appears that on 31 August 1980 only 81.97% of that sum had been disbursed on completed projects. On that point therefore the Commission thought it important that the proceedings be continued.

As the proceedings now stand, and since the defendant has not opposed the Commission's application for costs — which concerns that part of the proceedings now settled — it only remains to consider the question whether that part of the application relating to the infringement of the third subparagraph of Article 12 (4) of Regulation No 159/66/EEC and of Article 4 of Regulation No 130/66/EEC as amended by Regulation No 966/71/EEC is well founded or not.

If I may say so at once, the answer to that question must be in the affirmative; indeed there is no difficulty in showing that the attempts undertaken by the Italian Republic from various viewpoints to justify its conduct cannot succeed.

— That is true first in regard to the defendant's argument that it is not necessary for the planned projects to have been completed and only then for a report to be submitted on the use of the resources from the Community budget; on a proper view the crucial point, argues the defendant, is whether before the time-limit mentioned (31 December 1973) is reached a decision has been adopted in formal ministerial decisions on the use of the amounts, which, says the defendant, is unquestionably the case here.

That is clearly not in accord with the plainly discernible spirit and objective of the regulations whereby it is in the interests of the Community that measures to improve production and marketing structures become *effective* within a certain period of time. The works needed should therefore have been completed within the time-limit set not least because, if there is delay in their use, the funds earmarked certainly yield less economic return owing to the constant reduction in the value of money. Here reference can be made not only to the wording of Article 4 (3) of Regulation No 130/66/EEC which specifically speaks of reports on the expenditure *incurred*, and thus not about expenditure firmly committed. That clearly requires expenditure on the structures in question and logically the completion and approval of them as all this precedes final payment. Regulation No 966/71/EEC extending the time-limit laid down in Article 4 (3) of Regulation No 130/66/EEC is also material here. In the recital thereto it is stated that the Italian Government has applied to the Commission for an extension to 31 December 1963 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*. That clearly shows that at the time when the regulation was adopted both the Italian Republic and of course the Council too assumed that the works had to be *completed* within the period mentioned and consequently that the reports had to cover the finished works and the expenditure thereon.

— What is more, the defendant's claim that it has *substantially* fulfilled its obligations cannot be accepted. Apart from the fact that, with respect to the issues in dispute here, that was just not

true when the period expired on 31 December 1973, nor indeed when the period stipulated in the Commission's opinion expired (indeed, according to the undisputed statements of the Commission, on 31 December 1977 only 54% of the sum still in issue had been used and only 28% thereof spent on completed and wholly financed projects), it is surely necessary for obligations laid down in Community regulations to be met *in full*. So long as that is not the case — even now there is nearly still 20% outstanding — the Commission cannot be denied the right to seek a declaration in court proceedings that there has been a failure to fulfil obligations under Community law.

— Nor is anything to be gained from further attempts to justify the delay complained of by alluding to economic difficulties, technical problems or certain legal factors.

Plainly the Italian Government was thereby adverting to the economic crisis in Italy in the previous years and the related rise in the cost of materials and labour which created havoc with the original financial plans. The argument was put forward that it was partly a question of constructing installations for cooperatives and completing exceptionally large projects and for certain reasons, some of a technical nature, an alteration of the programme became necessary. It was also pointed out — and

here we come to legal considerations — that special laws had to be passed (Green Plan, Law of 8 August 1973, budget laws authorizing additional resources made necessary by inflation) and time-consuming administrative procedures had to be followed owing on the one hand to the conferment meantime of certain powers on the regions (see Decree of 15 January 1972) and on the other to the fact that prior to final payment projects have to be approved by special commissions and by the promulgation of ministerial decisions.

On this point it has to be said — and this applies also to the arguments about economic and technical problems which have been put forward — that it does not seem very likely that the proven and considerable delay arose in that way. It should not in any event be forgotten that the resources were granted from 1969 to 1971 and that the time-limit given in the reasoned opinion of the Commission, which has to be taken as the ground of the action, expired in February 1977, or rather January 1978, after the extension. It must be remembered, too, that it has been repeatedly held in case-law concerning proceedings under Article 169 of the EEC Treaty that a Member State cannot rely upon domestic difficulties or provisions of its national legal system, even its constitutional system, for the purpose of justifying a failure to comply with obligations and periods resulting from Community directives (see, for example, the judgment in Case 100/77 [1978] ECR 879, at p. 887, paragraphs 21 and 22). Furthermore the defendant must recognize that if in fact the completion of the planned projects was hindered by insurmountable obstacles making it

impossible to observe the time-limit it should have taken action as it did earlier in 1971 and obtained an extension of the time-limit from the competent Community organ (it was the Council which adopted the regulations).

— Finally, it is not possible to discern what the defendant seeks to achieve by its allusions to agreements made with the officers of the Community and to the conduct of the Commission on certain occasions. The defendant maintains in this connexion that it relied on certain oral agreements allegedly made at the time when visits were made for the purpose of carrying out checks in some regions and in accordance with which a report was to be submitted by 31 December 1973 on all projects, including those not completed, an account was to be given every six months on the position as regards payments to those receiving the funds and supporting documents at the Italian Ministry of Agriculture were to be placed at the Commission's disposal. It also claimed that the Commission agreed to stay these proceedings on the one condition that a report be submitted by 31 December 1978 on the projects completed by that date.

The fundamental point to be borne in mind on this issue is that any kind of

agreement, particularly with the officers of the Commission, would not be suitable as a basis for making derogations from the texts of regulations which the Council has fixed in a plain manner and has not expressly amended. It is important to remember that the Commission has denied that there were any such agreements and specifically emphasized that so far as the submission of six-monthly reports is concerned they are not the result of an agreement but follow directly from Regulation No 966/71/EEC. Then, as regards the Commission's conduct shortly before these court proceedings were commenced and while they were taking place, first, it is plain that the purpose of its letter of 23 December 1977, which mentions the submission of a full list of the completed projects and of those still not completed, was not to confine the reports required to completed projects only. That much is clear from the opening two paragraphs of that letter. Secondly, it also seems clear to me, where the Commission's agreement to postpone these proceedings until the end of 1978 is concerned, that the Commission did not thereby intend to signify its acceptance of the incomplete fulfilment by the Italian Republic of the obligations incumbent upon it. That would not only be incomprehensible in view of the Commission's earlier, consistent view to the contrary but the Commission would not have had the power to do so either.

Accordingly, the only possible conclusion is that so far as it has not been withdrawn by the application of 25 September 1980 the action is well founded. Therefore it must be declared that the Italian Republic, by not submitting full reports within the time-limit provided on the use of the resources made available to it under the third paragraph of Article 12 (4) of Regulation No 159/66/EEC, has failed to fulfil its obligations under Ar-

ticle 4 of Regulation No 130/66/EEC as amended by Regulation No 966/71/EEC. Furthermore, in accordance with the Commission's application the Italian Republic should be ordered to pay all the costs of the proceedings pursuant to Article 69 (2) and (4) of the Rules of Procedure.