In Case 1251/79

ITALIAN REPUBLIC, represented by Arnaldo Squillante, Consigliere di Stato, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Richard Wainwright, acting as Agent, assisted by Guido Berardis and Gianluigi Campogrande, members of its Legal Department, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision 79/898/EEC of 12 October 1979 concerning the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1973 (Official Journal 1979, L 278, p. 19) is void, in so far as it excludes from the expenditure recognized as chargeable to the Fund the sum of LIT 604 863 175 in respect of the payment of aid under long-term storage contracts for wine for the 1971/72 wine-growing year,

THE COURT

composed of: P. Pescatore, President of the Second Chamber, Acting as President, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco, A. Touffait 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 and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

A — Legislative framework

1. Article 5 of Regulation (EEC) No 816/70 of the Council of 28 April 1970, laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234), provides that aid shall be granted under certain conditions in respect of the private storage of certain table wines. Under Article 5 (5) of the regulation the grant of the aid is conditional upon the conclusion of storage contracts between the intervention agencies designated by the Member States and producers who apply for them. These may be long-term contracts or short-term contracts, as the case may be.

2. Under Article 5 (1) of Regulation No 816/70 private storage aid is to be granted when forward estimates show that the quantity available at the beginning of the wine-growing year exceeds total foreseeable requirements for that year by more than five months' consumption. The second subparagraph of Article 5 (5) of that regulation, as amended by Regulation (EEC) No 2504/71 of the Council of 22 November 1971 (Official Journal, English Special Edition 1971 (III), p. 962), provides as follows:

"In the case provided for in paragraph (1), contracts shall be valid for a minimum period of nine months. Such contracts (hereinafter called 'long-term contracts') may only be entered into during the period from 16 December to 15 February of the same wine-growing year".

Under Article 5 (2) and (3) of Regulation No 816/70 private storage aid may be granted in the case of certain imbalances in a wine-growing zone or part of a wine-growing zone or for a certain type of wine. In those cases the contracts are valid for a period of three months and are called "short-term contracts" (third subparagraph of Article 5 (5)).

It should be observed that as long as it remains possible to conclude long-term contracts for certain types of wine, the conclusion of short-term contracts is suspended for those types of wine (Article 5 (4)).

The detailed rules for the conclusion of the two types of storage contract are laid down by Regulation (EEC) No 1437/70 of the Commission of 20 July 1970 on storage contracts for table-wine (Official Journal, English Special Edition 1970 (II), p. 469). By the first subparagraph of Article 8 (1) that regulation provides *inter alia* that a contract "may not be concluded for a period beginning before the date of the conclusion of the contract".

3. By Regulation (EEC) No 2722/71 of the Council of 20 December 1971 (Official Journal, English Special Edition 1971, p. 1004), which came into force on

23 December 1971, the Council amended the requirement for the conclusion of long-term contracts as from the 1971/72 wine-growing year, replacing the words "five months" in Article 5 (1) of Regulation No 816/70 by "four months". According to the first recital of the preamble to Regulation No 2722/71, this reduction proved necessary because, despite the exceptional harvest, the procedure for long-term private storage contracts had not been able to operate in the 1970/71 wine-growing year.

Next, the conclusion of long-term storage contracts for the 1971/72 wine-growing year was made possible by Regulation No 2837/71 of the Commission of 27 December 1971 granting aid for the private long-term storage of certain table wines (Journal Officiel 1971, No L 285, p. 78), which entered into force on 30 December 1971.

Finally, by Regulation (EEC) No 176/72 of 26 January 1972 supplementing Regulation (EEC) No 1437/70 on storage contracts for table wine (Official Journal, English Special Edition 1965-1972, p. 44), the Commission added the following provisions to Article 8 (1) of Regulation No 1437/70:

"Notwithstanding the previous subparagraph, the period of validity of a storage contract for which written application is received by the competent agency between 1 December 1971 and 31 August 1972 shall commence on the day on which the application is received.

However, the period of validity of storage contracts for which written application is received by the competent agency after 29 December 1971 shall commence not more than 30 days before the date of the conclusion of the contract."

As the second recital of the preamble to Regulation No 176/72 indicates, the Commission took the view that for the 1971/72 wine-growing year the way in which the intervention agencies operated in one producer Member State did not yet permit storage contracts to be concluded promptly after the presentation of the application and that to mitigate the consequences of that situation for producers in that Member State provision should be made for a measure of retroactivity in respect of contracts for which applications were received after 30 November 1971.

This action concerns long-term storage contracts covered by Article 5 (1) of Regulation No 816/70, which, following the adoption of Regulation No 2837/71, were concluded pursuant to Regulation No 176/72.

4. Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) provides for a system of direct Community financing of refunds on exports to non-member countries and of intervention by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund for the purpose of stabilizing agricultural markets.

Under Article 4 of that regulation the Commission must make available the necessary funds to the competent national authorities and bodies.

Under Article 5 (2) (b) thereof the Commission must, on the basis of the annual accounts presented by the Member States, clear the accounts concerning the expenditure incurred by the national authorities and bodies.

According to Article 8 of Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section (Official Journal, English Special Edition, Second Series III), the decision clearing the accounts includes the determination of the amount of expenditure incurred in each Member State during the year in question recognized as chargeable to the Guarantee Section of the Fund.

B — The facts

1. By decision of 12 October 1979, notified to the Government of the Italian Republic by letter of 18 October 1979, the Commission determined the total expenditure by the Italian Republic recognized as chargeable to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

As the fourth recital in the preamble to the decision indicates, the Commission considered that "under Articles 2 and 3 of Regulation (EEC) No 729/70, only ... intervention intended to stabilize the agricultural markets, ... undertaken according to Community rules within the framework of the common organization of agricultural markets, may be financed: ... the inspections carried out show that a part of the expenditure declared amounting to LIT 1 359 433 433 does not satisfy the requirements of these provisions and therefore cannot be financed".

The contested part of that amount, namely LIT 604 863 175, relates to the payment by the Italian intervention agency (Azienda di Stato per gli Interventi nel Mercato Agricolo, hereinafter referred to as "AIMA") of aid for the long-term storage of wine for the 1971/72 wine-growing year, in respect of which the Government of the Italian Republic requested the clearance of the accounts for the 1973 financial year.

2. The source of the dispute is a conflict of opinion on the interpretation of the provisions inserted into Article 8 (1) of Regulation No 1437/70 by Regulation No 176/72.

During the preparation of the clearance of the accounts in respect of the Guarantee Section of the Fund for the 1973 financial year, the Commission examined the application of those provisions by AIMA. In the Draft Summary Report on the conclusions from the preliminary work for the clearance of the EAGGF Guarantee Section accounts for the year 1973 (Document No VI/369/79, p. 39) it adopted the following position on the matter:

"Long-term storage contracts declared by AIMA for the 1971/72 marketing year do not comply with Community rules; the second subparagraph of Article 5 (5) of Regulation (EEC) No 816/70 provides that long-term contracts may be entered into only between 16 December and the following 15 February. In Italy, however, long-term contracts were entered into after this date.

For the contracts for the 1971/72 campaign, AIMA applied Regulation (EEC) No 176/72, which authorizes the backdating of contracts to the date on which the application was received, in the case of applications received between 30 December 1971 and 15 February 1972. Thus, all the long-term contracts for 1971/72 were concluded by AIMA after the end of the period authorized by

Community rules, and nearly all contracts began on a date after the permitted limit under the maximum backdating of 30 days provided for in Regulation (EEC) No 176/72 in respect of applications submitted between 30 December 1971 and 15 February 1972.

Proper application of Community rules required that the exceptional provisions of Regulation (EEC) No 176/72 be read with the general rule contained in the basic regulation; as a result these contracts would in any case have had to be concluded within the authorized period and the initial date could be either that on which the application was submitted or the 30th day before the date of conclusion. Accounts for 1973 have been amended accordingly."

By a memorandum of 7 July 1979 the Italian agriculture authority disputed the view taken by the Commission and submitted that the aid had been paid in accordance with the Community and national rules in force. It confirmed its position during the meeting of the Fund Committee on 11 July 1979, which was devoted to the examination of the draft for the clearance of the accounts for the 1973 financial year.

The Commission nevertheless maintained its position when it adopted the decision of 12 October 1979, which the applicant contests by this action.

3. The application was lodged at the Court Registry on 28 December 1979.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it invited the parties to produce further information on the reasons for the adoption of Regulation No 176/72 and on the storage contracts relating to the contested amount of aid.

The replies given indicate that at the meeting of the Management Committee for Wine on 22 December 1971 the Italian delegation asked whether, as had been possible for the previous year, the date of validity of the contracts could be that of the application and not necessarily that of the conclusion of the contracts. On that occasion the Italian delegation explained that AIMA was overburdened with work and that the Italian wine producers would be adversely affected if it were not possible to consider their applications for that reason.

As regards the second question, a synopsis of the contracts concluded by AIMA for the 1971/72 wine-growing year lodged by the applicant indicates the following:

— The amount of aid in dispute relates to approximately 100 long-term storage contracts;

— In all cases the applications were submitted before 15 February 1972 or on that date at the latest;

— The date of the formal conclusion of the contract is in every case after 15 February 1972;

— The date specified for the commencement of the period of validity of the contract is 15 February 1972 or an earlier date in approximately 35 cases and is a later date in the other cases.

II — Conclusions of the parties

The *applicant* claims that the Court should:

— Declare the decision of the Commission of the European Communities of 12 October 1979 void in so far as it excludes from the expenditure chargeable to the European Agricultural Guidance and Guarantee Fund the sum of LIT 604 863 175;

— Order the defendant to pay the costs.

The *defendant* contends that the Court should:

— Dismiss the application;

— Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *applicant* asserts first that the statement of reasons on which the contested decision was based is insufficient.

It then claims that, as far as the aid for long-term storage of wine is concerned, the decision was based on an incorrect interpretation of the term "conclusion of the contract" used in Article 8 (1) of Regulation No 1437/70, as amended by Regulation No 176/72. Furthermore, the decision was adopted in disregard of the purpose of the Community rules in question and, alternatively, in breach of the principle of the protection of legitimate expectation.

(a) Statement of reasons on which the decision was based

The *applicant* considers that the statement of reasons on which the contested decision was based is plainly insufficient.

Although the fourth recital in the preamble to the decision states that the Member State was informed in detail of the deduction made and that it was able to give its views thereon, there is no explanation of the reasons which led the Commission to maintain the exclusion despite the detailed observations of the national authority concerned.

The *defendant* considers that this submission is unfounded. It accepts that the decision does not include a detailed account of the specific reasons which determined its content, but contends that such an account would have required an extremely long and complicated statement of reasons.

However, the procedure followed for the adoption of the contested decision included not only the discussion by the Fund Committee of a report submitted to the Member States on the proposed clearance of the accounts for the financial year in question but also, likewise within the context of the Fund Committee, consultation of the Member States on the draft decisions. In the case in question, that consultation occurred at the meeting of the Fund Committee on 11 July 1979, during which a memorandum from the Italian Ministry of Agriculture and Forestry of 7 July 1979 was also discussed.

The defendant cites the judgment of the Court of 14 July 1977 in Case 61/76 (*Geist* v *Commission of the European Communities* [1977] ECR 1419), according to which a decision adversely affecting a person contains a sufficient statement of the reasons on which it is based if the supporting preparatory documents have been brought to the knowledge of the person concerned, have clearly informed him of the reasons underlying the decision in question and contain all the essential factors sufficient to make review by the Court possible.

(b) The term "conclusion of the contract"

The *applicant* states first that after the adoption of Regulation No 2837/71 AIMA took the appropriate measures with a view to granting the aid to the producers. The applications for aid must be submitted in duplicate to AIMA through the provincial agricultural inspectorates, which must verify the correctness of the information declared at the place of storage and forward the original application together with its own report to AIMA within a period not exceeding five days following the day on which the application is received.

AIMA then draws up the contract provided for by the Community regulations and sends it to the producer concerned for the purpose of its authentication by the signature of a notary. The period of nine months laid down by the Community regulations begins to run from the date of that signature. The aid is paid for the corresponding period, Article 8 of Regulation No 1437/70 having been construed as meaning that the contract may only have effect from the day on which it is concluded by a formal instrument.

The applicant observes however that on 26 January 1972 Regulation No 176/72 was adopted in order to limit the adverse consequences suffered by the producers as a result of the considerable period of time elapsing between the date of the application and the date of the formal conclusion of the contract. That regulation provided that, during the period between 1 December 1971 and 31 August 1972, the period of validity of a contract was to begin on the day on which the application was received, but such retroactivity was limited to 30 days in the case of contracts for which application was received after 29 December 1971, that is for all the long-term contracts provided for by Regulation No 2837/71, which entered into force on 30 December 1971.

AIMA paid the aid under each contract in respect of a period beginning 30 days before the formal execution thereof.

Pursuant to Article 5 (5) of Regulation No 816/70, cited above, the aid was paid under contracts for which application was made and accepted before 15 February, although the formal execution of the contract was subsequent to that date.

The applicant maintains that it cannot subscribe to the Commission's argument to the effect that the contracts were "concluded" on a date subsequent to 15 February contrary to the conditions laid down by Article 5 (5) of Regulation No 816/70.

It submits that the contracts in question were all "concluded" during the period from 16 December to 15 February, even if their "formal execution" took place later.

In support of that view it puts forward two propositions whereby the contract between the producer and the intervention agency must be regarded either as a bilateral contract containing obligations burdening both the parties, or as a unilateral contract which contains obligations burdening a single party.

According to the first proposition the contract is concluded when the intentions of both contracting parties concur. However, in the case of storage aid the intention of the intervention agency is not unfettered, since, according to Article 6 of Regulation No 816/70, those agencies "shall conclude,

with producers who apply for them, storage contracts". In Italy, after the adoption of Regulation No 2837/71, once an application was submitted in the form prescribed by the Community provisions, it was immediately accepted by the intervention agency, provided that its content complied with the requirements laid down by the Community regulations. The applicant takes the view that the contract must be regarded as "concluded" at the time of such acceptance, which in every case occurred before 15 February.

According to the second proposition, that of the unilateral contract, the Community legislature envisaged a unilateral undertaking by the producer to store his produce. As soon as it is established that that undertaking has been observed, the intervention agency pays aid to the producer, which is certainly not the counterpart of a benefit, but merely a contribution by way of incentive. Under Article 1333 of the Italian Civil Code, once an offer by a producer to make such an undertaking has been submitted in due and proper form to the intervention agency, the contract must be regarded as concluded. According to this proposition too, the storage contracts were concluded before 15 February.

The applicant adds that the formal execution of the contract in writing, effected by AIMA in accordance with the prescribed forms and after various checks and formalities, merely constitutes the crystallization in documentary form of an already perfect contract. It admits that in the case in question such crystallization took place without exception after 15 February.

Finally, the applicant points out that the first subparagraph of Article 8 (1) of Regulation No 1437/70, which provides that "a contract may not be concluded for a period beginning before the date of the conclusion of the contract", cannot preclude the interpretation which it suggests. Whilst that provision was not felicitously phrased, it would appear, none the less, that when it speaks of a contract being "concluded", it is referring to the decisive moment from the point of view of substantive law, and that when, at the end, it speaks of "the conclusion", it is referring to the formal execution. Considered as a whole, that provision must therefore be understood as meaning that following conclusion of the agreement in the prescribed period, namely between 16 December and 15 February, the date on which the period of storage begins to run may not be prior to the "formal execution".

The *defendant*, for its part, observes that the function of the storage contract is to create reciprocal obligations between the producer, who untertakes to store a certain quantity of table wine and not to place it on the market for a certain period, on the one hand, and the intervention agency, on the other, which undertakes to pay the prescribed aid, after establishing that the conditions relating thereto are fulfilled.

In this connexion the first subparagraph of Article 8 (1) of Regulation No 1437/70 must be construed as meaning that the reciprocal obligations of both contracting parties come into being at the moment when the contract is formally concluded, after the intervention agency has carried out all the prescribed checks.

The defendant points out that, before the formal conclusion of the contract, the producer who applies for it, is not yet certain that the intervention agency will conclude the contract; in those circumstances, he may freely dispose of his product. Cases are not uncommon where

the producer in fact sells his wine during the period between the submission of the application and the date fixed for the formal conclusion of the contract. The intervention agency, for its part, enjoys a certain discretion concerning the verification of the conditions which must be fulfilled under the Community regulations applicable.

For those reasons the defendant considers in the first place that it can rule out the theory put forward by the applicant to the effect that the storage contract is a unilateral contract. However, even if the theory of a bilateral contract is adopted, the distinction suggested by the applicant between the "conclusion" and the "formal execution" of the contract is not acceptable. Indeed, the manifestation of the two parties' intentions can occur only when the contract is formally executed, because it is only from that moment on that the contracting parties are bound to observe their respective obligations.

Furthermore, the defendant observes that the provisions of Article 9 (1) and of Article 12 of Regulation No 1437/70 show that the formal execution of the contract in writing is an essential part of the system established by that regulation. Moreover, acceptance of the applicant's argument would have the illogical consequence of compelling AIMA to bestow a gratuitous benefit upon the producer, since, pursuant to Article 15 of Regulation No 1437/70, AIMA would then have had to pay the quarterly instalments from the day on which the application was submitted, even if the contracts had been executed several months later.

The defendant states further that it had decided, by the adoption of Regulation No 176/72, to grant a derogation from the rule in the first subparagraph of Article 8 (1) of Regulation No 1437/70, having regard to the assertion by the Italian authorities that they were not in a position to carry out immediately the verifications required for the conclusion of the contracts, and also for the reasons stated in the preamble to Regulation No 176/72. Since the latter is a Commission regulation, it clearly cannot derogate from the basic regulation of the Council. The possibility of retroactive effect can therefore in no way affect the need to comply with Article 5 (5) of Regulation No 816/70 of the Council, which stipulates 15 February as the final date for the formal conclusion of the contract.

The defendant states that Regulation No 176/72 provided for a legal fiction in the sense that it dissociated the time at which the contract was formally concluded from that at which it took effect, bringing the latter forward to the time at which the application was received, whilst limiting the retroactivity to not more than 30 days. If the applicant's interpretation were accepted Regulation No 176/72 would cease to serve any purpose. If, indeed, the view were taken that the contract was "concluded" on the submission of the application, independently of the subsequent execution of a formal contract, it would not have been necessary to provide for such a derogation.

With regard to the term "conclusion of the contract", the *applicant* states in its reply that a margin of discretion on the part of the intervention agency in verifying the conditions required for the conclusion of the contract is inconceivable. Moreover, even if it were accepted that the verification must precede the conclusion of the contract, instead of being intended as a condition

subsequent of a contract already concluded, in practice such verification was carried out immediately after the submission of the application by the provincial agricultural inspectorate, acting on behalf of AIMA.

Under the contractual scheme adopted by the Community regulations, the concurrence of the parties' intentions, which, under Article 1326 of the Italian Civil Code, of itself determines the conclusion of the contract, occurs when the application from the producer reaches the intervention agency or, at the latest, when it is established by that agency that the application complies with the legal conditions. In the cases in question, those dates were prior to 15 February.

In its rejoinder, the *defendant* maintains that in the system established by the Community rules the formal conclusion of the storage contract between the producer and the competent intervention agency constitutes the essential condition for the grant of aid.

(c) The purpose of the regulations in question

The *applicant* recalls that the objective of the Community regulations is to withdraw from the market surplus quantities of wine, by virtue of the storage commitment which the producers assume, when the greatest surplus appears, namely between 16 December and 15 February, and for a minimum period of nine months, that is to say until the new wine harvest. It emphasizes that that aim was fully achieved in the case in question.

In fact, in the 1971/72 wine-growing year in Italy, the producers submitted their applications and undertook to store their produce well before 15 February 1972, even if the execution of formal contracts, which determined the beginning of the period of storage, took place after some months' delay.

On the one hand, the producers were obliged to store their produce for a much longer period than that laid down by the Community regulations, since Regulation No 176/72 does not allow their contracts to be back-dated by more than one month. On the other hand, the longer withdrawal of the product from the market certainly helped to stabilize prices. If, in the final analysis, AIMA had not concluded the storage contracts with the producers, the aim of the regulations would not have been achieved, and the adoption of Regulation No 176/72 would have served no purpose.

In interpreting the Community regulations excessive formalism, which distorts their scope and their effects, must therefore be avoided.

As regards the achievement of the objectives of the Community regulations, the *defendant* asserts that the argument put forward by the applicant is untenable. It points out that, as the inspections carried out by the Fund clearly indicated, the contracts for the 1971/72 wine-growing year were concluded with considerable delays, which in some cases even extended beyond the normal period of validity of nine months, reckoning from 15 February 1972. During those delays the applicant producers considered that they were free to market their products, which they in fact did in certain cases. Such a situation is likely to prejudice the attainment of the objective of the regulations in question.

Finally, the situation created by the conduct of AIMA certainly did not

promote the additional function of the storage contracts, which consists in ensuring accurate knowledge of the market with a view to new measures of intervention.

(d) The alleged breach of the principle of the protection of legitimate expectation

Finally, the *applicant* relies, in the alternative, on the judgments of 7 February 1979, in which the Court stated that the rules of Regulation (EEC) No 729/70 must be interpreted as meaning that the Commission is bound to charge to the Fund expenditure incurred by Member States in a manner which did not comply with the Community rules as a result of an erroneous interpretation thereof, when the incorrect application of Community law is attributable to an institution of the Community (Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, and Case 18/76 *Federal Republic of Germany* v *Commission* [1979] ECR 343).

In this regard, the applicant claims that it was the lack of clarity of the Community regulations which gave rise to the difficulties. The problem of the damage incurred by producers as a result of the foreseeable delay in the execution of a formal contract, which gave rise to the adoption of Regulation No 176/72, is closely linked with AIMA's belief that the period of storage begins to run when the formal contract is executed and not from the date when the contract is concluded.

By enacting Regulation No 176/72 the Commission adopted the view taken by AIMA, with which it was perfectly familiar. If AIMA's conception was based on an incorrect interpretation of the Community regulations, the Commission should have requested AIMA to alter the procedure followed and to "execute formal contracts" before 15 February.

By reason both of the imperfect wording of the Community rules and in view of the confirmation, implied at least, of AIMA's interpretation by the Commission, that allegedly incorrect interpretation must be deemed to be attributable to the Community institutions.

The *defendant* states that it never supported, even by implication, a view which was different from the one which it is defending in this case. It authorized the derogation contained in Regulation No 176/72 fully aware that the final date for the conclusion of the contracts was 15 February 1972.

Furthermore, the derogations previously authorized for the 1970/71 wine-growing year, as formulated in Regulation (EEC) No 436/71 of the Commission of 26 February 1971 (Official Journal, English Special Edition 1971 (I), p. 101) and Regulation (EEC) No 617/71 of the Commission of 24 March 1971 (Official Journal, English Special Edition 1971 (I), p. 165) plainly reveal the clear distinction made between the application by the producer and the conclusion of the contract. The provisions of those regulations show that AIMA could not be unaware of the Commission's view on that matter.

IV — The parties presented oral argument at the sitting on 15 October 1980.

The Advocate General delivered his opinion at the sitting on 16 December 1980.

Decision

1 By application lodged at the Court Registry on 28 December 1979, the Italian Republic brought an action under Article 173 of the EEC Treaty for a declaration that Commission Decision 79/898/EEC of 12 October 1979 concerning the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1973 (Official Journal 1979, L 278, p. 19) is void, in so far as the Commission did not accept as chargeable to the Fund the sum of LIT 604 863 175 in respect of the payment of aid under long-term storage contracts for wine for the 1971/72 wine-growing year.

2 Article 5 (5) of Regulation (EEC) No 816/70 of the Council of 28 April 1970, laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234), makes the grant of the storage aid conditional on the conclusion of long-term or short-term storage contracts. The same provision, as amended by Regulation (EEC) No 2504/71 of the Council of 22 November 1971 (Official Journal, English Special Edition 1971 (III), p. 962), states that long-term contracts shall be valid for a minimum period of nine months and that such contracts may only be entered into during the period from 16 December to 15 February of the same wine-growing year. With regard to the application of that provision, Article 8 (1) of Regulation (EEC) No 1437/70 of the Commission of 20 July 1970, on storage contracts for table wine (Official Journal, English Special Edition 1970 (II), p. 469), provides that a contract may not be concluded for a period beginning before the date of the conclusion of the contract.

3 For the 1971/72 wine-growing year Regulation No 2837/71 of the Commission of 27 December 1971, granting aid for the private long-term storage of certain table wines (Journal Officiel L 285, p. 78), made possible the conclusion of long-term storage contracts for certain types of table wine.

4 During the period within which long-term contracts for that wine-growing year could be concluded the Commission adopted Regulation (EEC) No 176/72 of 26 January 1972 supplementing Regulation (EEC) No 1437/70 on storage contracts for table wine (Official Journal, English Special Edition 1965—1972, p. 44), which added the following paragraphs to Article 8 (1), cited above, of the latter regulation:

"Notwithstanding the previous subparagraph, the period of validity of a storage contract for which written application is received by the competent agency between 1 December 1971 and 31 August 1972 shall commence on the day on which the application is received.

However, the period of validity of storage contracts for which written application is received by the competent agency after 29 December 1971 shall commence not more than 30 days before the date of the conclusion of the contract."

5 The expenditure which is the subject of the application represents the amount of aid paid under long-term storage contracts for table wine for the 1971/72 wine-growing year by the Azienda di Stato per gli Interventi nel Mercato Agricolo (hereinafter referred to as "AIMA"), which is the Italian intervention agency competent to conclude storage contracts and to pay the aid relating thereto. In the contested decision the Commission refused to charge that expenditure to the Fund, having established that the Italian authorities had failed to observe the rules governing the grant of the aid in question by entering into long-term contracts after 15 February 1972, which was the final date for the conclusion of those contracts under the applicable Community regulations.

6 The Italian Government puts forward three submissions in support of its application, concerning respectively the statement of reasons on which the contested decision was based, the interpretation of the applicable Community regulations, and the protection of legitimate expectation. It is convenient to deal with the second submission first.

7 The Italian Government explains that the act which it describes as the "formal execution" (stipulazione formale) of the contract by AIMA could only occur at the end of a procedure consisting of various stages: first, the submission through the provincial agricultural inspectorates of an application by the producer concerned, containing all the information referred to in Regulation No 1437/70; secondly, verification at the place of storage of the correctness of that information by the competent provincial inspectorate and the forwarding by the latter of the file to AIMA; finally, the drawing up by AIMA of a list of conditions and of an instrument of acceptance, which it sent to the producer concerned for authentication by the signature of a notary. The government admits that in the case of the long-term contracts referred to in the application that "formal execution" occurred after the final date of 15 February 1972.

8 The Italian Government maintains, however, that the contracts in question were "concluded" between 16 December 1971 and 15 February 1972, even if their "formal execution" occurred subsequently. It relies for that purpose on the general rules of the law on contract, according to which a contract is concluded at the point at which the intentions of the two parties concur. By publicly announcing the possibility of concluding long-term contracts on conditions laid down by the Community regulations, the intervention agencies make an offer to the public, which is accepted by the wine producer as soon as his application is submitted.

9 The Italian Government acknowledges that after the submission of the application the intervention agency must verify various items of information in order to check whether the application complies with the applicable Community regulations, but it takes the view that if that examination produces a negative result that must be regarded as a condition subsequent of an already concluded contract.

10 It is important to emphasize first that the long-term storage aid for table wine is intended, as the Commission rightly argued, to allow the removal from the market, in a situation of considerable surplus, of the excess quantities from the beginning of the wine-growing year until the following wine harvest, with the particular objective of stabilizing the markets. The requirement that the long-term contracts must be concluded between 16 December and 15 February of the same wine-growing year, and also the period of validity of nine months laid down for those contracts, are aimed at achieving that objective. It is in that context that the term "conclusion" of the contract must be understood.

11 It must then be borne in mind that the inspections and verifications which have to be carried out by the intervention agency or, as in this case, by the provincial agricultural inspectorates acting on behalf of the competent intervention agency are designed to establish whether the application submitted by the wine producer satisfies the essential conditions laid down by the Community regulations and to determine for that purpose, in particular, whether the product is table wine of the category covered by those regulations, whether the producer who made the application is the owner of the wine and whether the wine is stored in bulk.

12 Under those circumstances an interpretation of the term "conclusion" of the contract which would enable a right to the Community aid to be established, even before it was determined that the conditions governing that aid were fulfilled, cannot be accepted. Indeed, the result of such an interpretation would be that the action needed in order to verify whether those conditions were fulfilled could take place at any time during the nine months' period of validity laid down for the contract, or even after the expiry of that period.

13 It follows from that that there are no grounds for drawing a distinction between the "conclusion" of the contract and its "formal execution". Moreover, Article 9 of Regulation No 1437/70, which lays down the written form for the contract, is based on the assumption that the contract does not become perfect until the preparation of the written instrument, after verification of all the relevant information by the intervention agency. The argument put forward by the Italian Government must therefore be rejected.

14 The Italian Government also submits that Regulation No 176/72 of the Commission made possible the conclusion of long-term contracts after 15 February 1972. The retroactive effect provided for by that regulation would serve no purpose if the contracts had nevertheless to be concluded before that date.

15 That argument cannot be accepted. Regulation No 176/72 of the Commission amended Article 8 (1) of Regulation No 1437/70, a provision which is concerned only with the commencement of the period of nine months for which a contract may be concluded. But the period during which the contracts must be concluded (the period between 16 December and 15 February) was unaffected by that amendment; that period was determined by Council regulations, in particular by Regulations Nos 816/70 and 2504/71.

16 The third submission concerns the protection of legitimate expectation. The Italian Government maintains that the Commission adopted Regulation No 176/72 in order to take account of the difficulties encountered by AIMA, which had indicated that its action in the field of storage contracts was subject to delays, in particular owing to the considerable period of time which elapsed between the date of the application and that of the formal conclusion of the instrument incorporating the contract. The Commission

thus gave the impression that it was acceding to AIMA's request by adopting Regulation No 176/72 and is no longer entitled to seek refuge behind arguments of a formal nature in order to contest the validity, under the Community regulations, of the contracts formally concluded after 15 February 1972.

17 It follows from the considerations regarding the second submission that the practice followed by the Italian authorities arises from an incorrect interpretation of Community law. In such a case the Commission is not obliged to charge expenditure incurred on that basis to the Fund unless the incorrect interpretation may be attributed to a Community institution.

18 The Italian Government informed the Court that the request by AIMA to which it refers was made orally and that no written documents exist relating to that request. However, the Commission supplied the Court with the minutes of the 56th meeting of the Management Committee for Wine held in December 1971, which indicate that the Italian delegation requested that "the period of validity of a contract might be allowed to commence on the date of the application and not necessarily on the date of the conclusion of the contract" in order to take account of the fact that the Italian intervention agency was overburdened with work. By altering the beginning of the period of validity of the nine-month contracts, Regulation No 176/72 gave effect to that request.

19 From those circumstances it is clear that the Italian Government has not been able to establish that its incorrect interpretation of Regulation No 176/72 was attributable to the conduct of the Commission.

20 Finally, the submission based on the insufficient statement of the reasons on which the contested decision was based must be considered. In so far as this submission concerns the interpretation of Regulation No 176/72, the problem has already been dealt with above; for the rest, it must be said that it disregards the fact that the Italian Government was closely involved in the process by which the decision came about and that it was therefore aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the Fund.

21 Under those circumstances, and in the particular context of the preparation of the decisions concerning the clearance of accounts, the statement of the reasons on which the contested decision was based must be regarded as sufficient.

22 It follows that the application must be dismissed.

Costs

23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs; since the applicant's action has failed, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

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

Pescatore Mackenzie Stuart Koopmans

O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 27 January 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber,
Acting as President