

basic agricultural products in order to raise the profitability of farms to a suitable level, whereas Regulation

(EEC) No 355/77 is concerned with improving the processing and marketing of agricultural products.

In Case 107/80

GIACOMO CATTANEO ADORNO, of Gabiano Monferrato, Italy, represented by Emilio Cappelli and Paolo de Caterini of the Rome Bar, acting as Agents, with an address for service in Luxembourg at the Chambers of Charles Turk, 4 Rue Nicolas Welter,

applicant,

supported by

THE GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Oscar Fiumara, Avvocato dello Stato, acting as Agent, with an address for service at the Italian Embassy in Luxembourg,

intervener,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Gianluigi Campogrande, a member of its Legal Department, acting as Agent, 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 the Commission's decision contained in letter No 01766 of 24 January 1980 from its Director-General for Agriculture rejecting the application for aid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund for 1979 submitted to the Commission through the Italian Government pursuant to Article 13 of Council Regulation No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (Official Journal 1977, L 51, p. 1), is void,

THE COURT

composed of: J. Mertens de Wilmars, President, Lord Mackenzie Stuart (President of Chamber), A. O'Keefe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. Articles 1 (3) and 6 of Regulation (EEC) No 729/70 of the Council of 21 April 1980 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) provides that the Guidance Section of the European Agricultural Guidance and Guarantee Fund [hereinafter referred to as "the Fund"] shall finance common measures decided on by the Council in accordance with the procedure laid down in the third subparagraph of Article 43 (2) of the Treaty in order to achieve the objectives set out in Article 39 (1) (a) of the Treaty, including structural adaptation necessary

for the proper working of the common market.

Such a measure is provided for by Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (Official Journal 1977, L 51, p. 1), as last amended by the Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties (Official Journal 1979, L 291, p. 17). The regulation provides for the award of capital grants for investment projects which form part of specific programmes drawn up by the Member States relating to facilities for processing and marketing agricultural products. In order to be eligible for a contribution from the Fund projects must, pursuant to Article 9 (1):

"contribute to improving the situation of the basic agricultural production sector in question; in particular they must

guarantee producers of the basic agricultural product an adequate and lasting share in the resulting economic benefits”.

Article 10 (c) provides that projects must also:

“contribute to the lasting economic effect of the structural improvement aimed at by the programmes”.

Lastly, according to Article 15 (2) of the regulation:

“Projects which are eligible for Community aid under other common measures within the meaning of Article 6 (1) of Regulation (EEC) No 729/70 shall not come within the scope of this regulation”.

The measures laid down in Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms (Official Journal, English Special Edition 1972 (II), p. 324) as last amended by Council Directive 80/370 of 26 March 1980 (Official Journal 1980, L 90, p. 43) constitute together another common measure within the meaning of Article 6 of Regulation (EEC) No 729/70. Under the terms of that directive Member States are to introduce a system of selective incentives to farms suitable for development, designed to encourage their operation and development under rational conditions. According to Articles 2 and 4 of the directive farms are considered suitable for development where the farmer draws up a plan for the development of the farm business which shows that, upon its completion, the farm undergoing modernization will be capable of attaining as a minimum a level of earned income comparable to that

received for non-agricultural work in the region in question.

2. Mr Cattaneo Adorno runs a farm in Gabiano Monferrato in the Piedmont area. The farm comprises two holdings of a total area of 176 hectares. Because of the inherent quality of the soil and its geographical location it is economically most suited to the growing of grapes. Mr Cattaneo Adorno is the tenant of the land and the buildings and runs them as a farmer. He produces mainly wine and grows in addition wheat and maize.

On 30 April 1979 Mr Cattaneo Adorno submitted through the Italian Government in accordance with Article 13 of Regulation No 355/77 an application for aid from the Fund made in accordance with the rules laid down in Commission Regulation No 219/78 of 13 January 1978 on applications for aid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund for projects to improve the conditions under which agricultural products are processed and marketed (Official Journal 1975, L 35, p. 10). The application concerns an investment project for the creation of a new wine-making centre designed to improve the processing into wine of the grapes produced on the farm, to rationalize the storage and preservation of the wine, to improve transport between the various terrains and to shorten the marketing channels for the wine. In his application Mr Cattaneo Adorno stated that he intended by means of this new venture to rationalize the process of making wine from the grapes produced on his farm and to improve marketing channels for the wine, at the same time improving the quality, presentation and market preparation of his product.

In a letter of 24 January 1979 from the Director-General for Agriculture the Commission rejected the application on the ground that it fell within the scope of Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms. Under the terms of Article 15 (2) of Regulation (EEC) No 355/77 the project in question was therefore not eligible for aid from the Fund within the scope of that regulation.

3. By an application which was lodged at the Court Registry on 3 April 1980 the applicant brought the present proceedings under Article 173 of the Treaty for a declaration that the decision of the Commission contained in the letter of 24 January 1980 was void.

By an application which was lodged at the Court Registry on 4 August 1980 the Government of the Italian Republic applied to intervene. It was permitted to do so by an order of the Court of 17 September 1980.

On 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 requested the Commission to produce the complete file on the application for aid.

II — Conclusions of the parties

The *applicant* claims that the Court should:

- Declare the impugned decision void under Articles 173 and 174 of the EEC Treaty;
- Order the Commission 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's submissions are directed primarily against the interpretation of law on which the Commission's disputed decision was based. In rejecting the application under Article 15 (2) of Regulation No 355/77 on the ground that the project fell within the scope of Directive 72/159/EEC on the modernization of farms the Commission made a hypothetical and unjustifiable distinction between the scope of the regulation and that of the directive. The applicant makes five submissions in support of his objections.

First, he claims that the project which was submitted cannot be classified as a plan for improving existing farm structures, but is directed, rather, towards the creation of a new unit of production for processing and marketing. In view of the extent and nature of its features the project is certainly capable of contributing towards "the achievement of improvement and rationalization of processing and marketing structures in respect of agricultural products and of [having] a lasting beneficial effect on agriculture" (fourth recital in the preamble to Regulation No 355/77).

Secondly, the decision is vitiated by infringements of essential procedural requirements, in the first place, because it contains an insufficient statement of the reasons on which it is based, and in the second place, because it was adopted without the prior opinion of the Standing Committee on Agricultural Structures, as required by Articles 14 and

22 of Regulation (EEC) No 355/77, having been obtained.

In the third submission the applicant claims that Directive 72/159/EEC provides for a system of selective incentives to farms "suitable for development" and where the farmer has an income below that which is aimed at by the modernization. Contrary to what has been maintained by the Commission, therefore, the directive cannot apply to farmers who, like the applicant, run advanced and competitive agricultural undertakings. The regulation, by contrast, covers exclusively improvements to agricultural processing and marketing structures; consequently the projects which are submitted must be assessed solely in the light of their capacity for achieving those ends, without consideration of the circumstances connected with the income and development of the undertakings in question.

Next he points out that under the provisions in Directive 72/159/EEC it is for the national authorities to determine who are to be the actual beneficiaries of the system of structural aid. The Commission may not substitute itself for those authorities; it has therefore no power to adopt a different decision, once the appropriate national institutions have given the favourable opinion which accompanies the application sent to the Commission, on the question whether the project involved is in conformity with the programmes for rationalizing the development and marketing of agricultural products provided for in Title I of Regulation (EEC) No 355/77.

Lastly, the applicant considers that the Commission's decision discriminates

between those who are farmers and those who are not. In his opinion the application for aid would certainly have been accepted if it had been submitted by someone who was not a farmer, but it was classed with those applications concerning the modernization of farm structures solely because it was submitted by a farmer.

The *defendant* opens its case by setting out its views on the relationship between Directive 72/159/EEC and Regulation No 355/77.

Originally measures relating to agricultural structures, including their financing, were covered in a general fashion by Part Two of Regulation No 17/64 of the Council of 5 February 1964 on the conditions for granting aid from the European Agricultural Guidance and Guarantee Fund (Official Journal, English Special Edition 1963-1964, p. 103). Article 6 of Regulation (EEC) No 729/70 on the financing of the common agricultural policy, however, provided for the progressive substitution of financing of common measures for the financing of the measures envisaged in Regulation No 17/64. By contrast Directive 72/159/EEC, which constitutes a common measure within the meaning of Article 6 of Regulation (EEC) No 729/70, laid down exhaustive rules of Community policy in relation to the modernization of farms. Hence the directive constitutes a *lex specialis* covering exclusively part of the general sphere covered by Regulation No 17/64.

Bearing in mind the aims of the directive and the principle laid down in Article 38 (1) of the Treaty, the concept of the "modernization of farms" must embrace any operation concerned with developing an undertaking, covering both the

production and the initial processing and marketing of the products of the undertaking in question, provided that the operation satisfies the concept of a "plan for the development" of a farm business referred to in Article 2 (d) of the directive and provided that it is carried out by a farmer without altering the strictly agricultural character of his business. By contrast, activities designed to enable the farmer to process or market principally the products of third parties are not covered by that concept at least inasmuch as they deprive the business of the agricultural character.

Regulation (EEC) No 355/77, for its part, introduced another common measure within the meaning of Article 6 of Regulation (EEC) No 729/70, the purpose of which was to improve the conditions for processing and marketing of agricultural products. It thus covers another portion of the general sphere of application of Regulation No 17/64. However, as compared with the above-mentioned directive the regulation constitutes a piece of legislation which is not special, but complementary. Article 15 (2) of the regulation shows that the regulation can only concern measures for improving marketing, processing and structures which do not form part of a modernization plan within the meaning of the directive. Accordingly the defendant has interpreted the concept of "projects which are eligible for Community aid under other common measures" in Article 15 (2) of that regulation as meaning that it is bound to consider the nature of the proposed project as it stands. It is not necessary, therefore, to decide in each individual case whether the other conditions to which the directive makes provision of aid from the Fund subject, such as those

relating to the status of the applicant, or to his business, have been met.

It adds that its interpretation is supported first by a consideration which is historical in character, namely that Article 15 (2) provided expressly for the criterion which was adopted earlier for Regulation No 17/64 and which is designed to prevent matters covered by the directives from being also the subject-matter of other provisions concerning the financing of the structural policy. Next, strictly speaking the examination the Commission is called upon to make in connection with Article 15 (2) must be restricted to the general aim of the project, within the meaning of the concept of a "project" as defined in Article 6 of that regulation, taking no account of considerations relating to the status of the beneficiary, which is referred to in Article 19 of the regulation, or the form of the business in question. Moreover, as far as the system of common measures is concerned, it is inconceivable that the legislature intended to allow aid on the more advantageous terms of the regulation to go to investments concerned exclusively with the modernization of a farm when they correspond neither to the underlying concept of it, nor to the criteria defined in, the directive.

For all those reasons the Commission excluded *ab initio* from the scope of Regulation (EEC) No 355/77 all projects such as that submitted by the applicant which by reason of the nature and purpose of the investment fell within the scope of Directive 72/159/EEC even if, for reasons extraneous to the size of the business or the status of the farmer, the latter was not entitled to the aid

provided for in the directive. In fact the project which was submitted by the applicant is for the modernization of his farm by extending the processing and marketing facilities without altering the essentially agricultural character of the business.

As to the submissions made by the applicant the defendant makes the following observations.

As regards the first submission, it points out that whilst the various activities of the applicant may represent production units which are distinct from each other, nevertheless the business presents the legal structure of a single undertaking within which the improvement of one of the production units contributes towards the modernization of the whole. Now, as may be seen from the file which was submitted, the project is concerned precisely with modernizing the farm's structures and equipment without altering its agricultural nature. The position could be different, for the purposes of applying Regulation (EEC) No 355/77, only if an agricultural concern proposed to modify the balance of its activities so as to direct them largely towards processing and marketing products from other farms. A project of that nature represents a new, non-agricultural activity on the part of the undertaking which is capable of enabling other businesses in the same sector to share in the ensuing advantages within the meaning of Article 9 of the regulation.

As to the alleged failure to state the reasons on which the decision challenged was based the defendant considers that the wording of its letter of 24 January 1980 was sufficient to enable both the addressee and the courts to reconstruct the process of reasoning which led it to that decision.

As regards consultation with the Standing Committee on Agricultural Structure the defendant observes that scrutiny of applications to determine whether or not they are eligible lies within the exclusive competence of the Commission since Article 22 of the regulation is a provision which is operative within the bounds of the regulation's sphere of application. Moreover, the Standing Committee gave its opinion on the Commission's general proposal concerning the projects submitted on 1 May 1979, although it was not possible to obtain a majority either for or against the proposal. Like the Fund's Committee, it was therefore given an opportunity of stating its views on the Commission's proposal to decide that Mr Cattaneo Adorno's project fell outside the scope of Regulation (EEC) No 355/77.

As regards the third submission, the defendant observes that the structural policy as a whole is designed to help the greatest number of farms capable of further development to achieve certain levels of income and living and working conditions, and from that point of view it provides no justification for Community financing to modernize a concern which is already at an advanced stage of development. However, aid for concerns of that kind is justified if, because it is applied after the production stage, it passes on to producers other than the beneficiary the resulting economic benefits, by virtue of the special set of conditions referred to in Article 9 of Regulation (EEC) No 355/77.

Apart from that no proof has been put forward of the facts relied upon as regards the applicant's income. Moreover, the project submitted by the applicant was classified as one eligible for the aid provided for in the directive and hence excluded from the scope of

Regulation (EEC) No 355/77 on the basis of considerations having to do with the nature and intended use of the investment, that is to say, regardless of the farm's profitability.

The Commission did not, therefore, proceed to identify the beneficiary, which according to the fourth submission it has no power to do.

For the same reason the allegation of discrimination raised in the last submission is equally unfounded for the distinction drawn by the Commission was made, not on the basis of the person submitting application, but in an objective fashion, based on the nature of the project. The distinction must be drawn not between farmers and those concerned in different sectors, but between projects intended exclusively to modernize a farm, on the one hand, and projects intended to extend economic benefits to agricultural producers other than the beneficiary on the other hand. Projects of the latter type, even if carried out by a farmer on his farm, are not eligible for aid under the directive because they alter, at least in part, the essentially agricultural character of the business.

In his reply the *applicant* observes, first, that the description of the Community system relating to agricultural structures presented by the Commission does not reflect the aims of the common agricultural policy which underline it. In a brief sketch of the parallel development of market and pricing policy on the one hand, and structural policy on the other, the applicant emphasizes the fundamental choice made by the Commission

itself in its memorandum "Agriculture 80" of 1968 (Mansholt Plan No 2) in favour of large-scale agriculture based on profitable and competitive farming.

That was the premise on which the three directives of 1972 on agricultural structures were adopted, as also, subsequently, the directives relating to disadvantaged and hill regions and those concerning re-afforestation and technical assistance. Regulation (EEC) No 355/77 was adopted in the same context.

The special features of that regulation are attributable to the fact that it has its legal origin in an area in which structural policy and market policy overlap. The purpose of the regulation is to improve processing and marketing for agricultural products since that "opens up wider markets and improves the return obtained, thus contributing towards increased agricultural productivity" (first recital in the preamble). The market structures referred to in Article 1 may be defined as those structures in an agricultural undertaking designed to improve outlets for products the value of which has been enhanced. Thus the regulation bears out the Commission's basic argument, set out above, that structural policy and market policy are two aspects of one and the same policy.

On those grounds the applicant contests the arguments put forward by the defendant concerning the relationship between the regulation and the directive.

It refers in that regard first to Title II of Directive 72/159/EEC asserting that it

does not concern solely businesses which are "suitable for development" (see in particular Article 14 (2) of the directive).

Secondly, it concedes that the concept of the "modernization of a farm" insisted upon by the Commission may apply to businesses suitable for development. However, the view taken by the Commission defies understanding in so far as the test for "modernization" lies in the distinction between work relating to the processing of the products of that concern alone and work which applies equally to the processing of the products of other concerns. In so far as such a test is designed to restrict the advantages conferred by Regulation (EEC) No 355/77 exclusively to products made by more than one concern it contravenes not only Article 19 (1) of the regulation and the principle of non-discrimination but also goes against the Commission's opinion that projects must be assessed without regard to the status of the person running the business.

As to the allegedly complementary nature of Regulation (EEC) No 355/77 the applicant claims that Article 15 (2), interpreted in the light of all the Community rules concerning agricultural structures and the logic of the regulation itself, contains merely a prohibition against the aggregation of aids for a single project. The regulation constitutes in fact a piece of special legislation governing market structures and the purpose of Article 15 (2) is to avoid aggregation of aids in cases where a project concerning market structures coincides with a development project.

In short, the scope of Directive 72/159/EEC and that of Regulation No 355/72 are not mutually exclusive. The purpose of the directive is to improve production conditions by modernizing farm structures, whereas the regulation is concerned with ensuring that as much as possible of the enhanced value goes to the farmers by improving market structures, whether within or outside the farm.

As to the allegation that the statement of reasons was inadequate, the applicant adds that any assessment of projects which are submitted must be supported by a study of the facts for the purposes of establishing whether the project actually falls within the scope of Directive 72/159. The decision does not refer to any such study which is, moreover, solely a matter for the national authorities.

As to the third submission the plaintiff observes, further, that no provision of Community law prevents a farm which is itself well developed, efficient and competitive from being eligible for aid "after the production stage", without its being necessary for the benefit gained therefrom to be shared directly with other producers.

In connection with the submission concerning lack of competence it refers to the "division of powers between the officers of the Commission and the national administrations" long since

recognized in legal works (Ventura, 'Principes de Droit Agraire Communautaire', Brussels 1967, p. 102).

In its reply the *defendant* refers to the Memorandum on Agricultural Reform in the European Community (*Bulletin des Communautés Européennes* 1969, 1, Supplement) in support of its contention that it was the situation on the social plane, especially agricultural incomes which were generally well below those of other comparable occupations, which led the Community legislature to take action concerning agricultural structures. That action was applied on the one hand, by means of directives aimed directly at farms and on the other hand, by complementary measures taking effect at a later stage in the production chain, such as those contained in Regulation (EEC) No 355/77. Whilst it is true that the basic choice which has been made concerning structural policy favours the concept of efficient and competitive farms, the purpose of the structural policy is not to encourage farms which are already efficient but, on the contrary, to make efficient farms which are not yet so and which are suitable for development.

Still on the same subject, the defendant observes further that giving incentives to a farm which is already efficient by improving the processing and marketing facilities for treating the products of that farm only would tend to jeopardize opportunities for developing other farms in the same area owing to its inevitable repercussions in the field of competition.

Furthermore, it claims that if Article 15 (2) was designed merely to prevent the aggregation of aids for a single project it is obvious that all farmers would opt for

the aid provided for in Regulation (EEC) No 355/77. The result would be that farm modernization projects aimed at the marketing of the farms' own products alone would fall outside the terms of the directive.

Lastly it claims that whilst its interpretation of Article 15 (2) has the result of conferring an advantage on projects submitted by cooperative associations it does not preclude aid being given, under the terms of the regulation, to an individual project provided that it helps to improve the situation in the sector in question. Moreover, a policy choice which helps, within the terms of the regulation, to encourage the formation of associations, is in conformity with the new guidelines for the common agricultural policy (see the Council Resolution of 25 May 1971, Section II, 4, Official Journal, English Special Edition, January 1974, Second Series IX, p. 44). That is why in the programme for the wine sector notified by the Italian Government to the Commission on 17 December 1979 and approved pursuant to Article 5 of Regulation (EEC) No 355/77 by Commission Decision 80/399 of 20 March 1980 (Official Journal, L 97, p. 48) it was stated that "priority will be given in granting aid for the four years from 1980 to 1983 to establishments which are in the form of cooperatives or associations".

The Italian Government, the *intervener*, considers that the criterion on which the Commission based its exclusion of Mr Cattaneo Adorno's project from the scope of Regulation (EEC) No 355/77 is inadmissible in law.

In order to demonstrate the relationship between Directive 72/159/EEC and

Regulation (EEC) No 355/77 the intervener draws a twofold distinction. It observes, first, that according to the fifth recital in the preamble the directive is designed to encourage "rational methods of production" through "reform of the structure of agricultural production". The regulation, by contrast, is designed to encourage the "improvement and rationalization of processing and marketing structures in respect of agricultural products" and to ensure "a lasting beneficial effect on agriculture" (fourth recital). The two instruments have therefore two specific, and separate, spheres of application. However, owing to the interrelationship of those two spheres overlapping may occur. Thus, for instance, a development project under the directive may concern likewise the initial processing of products and affect the marketing of such products. By contrast an investment project within the meaning of the regulation not only enables wider markets to be opened up but equally "improves the return obtained [on products], thus contributing towards increased . . . productivity" (first recital).

Secondly, the scope of the directive is restricted by the limited nature of its purpose, which is exclusively the modernization for agricultural purposes of farms (see the judgment of the Court of 6 May 1980 in Case 152/79 *Lee v Minister for Agriculture* [1980] ECR 1495) in order to achieve a certain level of income. That purpose serves at the same time to determine the characteristics which those eligible for aid must have. By contrast the regulation, as may be seen in Articles 1, 9 and 10, has much wider aims. Consequently the group of persons who are eligible for aid from the

Fund is defined in very general terms in Article 19 thereof.

In the opinion of the Italian Government Article 15 (2) of the regulation is intended to prohibit the accumulation of double benefit where a project has features which satisfy simultaneously the criteria of the directive and those of the regulation. It remains to be seen whether the project which is in theory eligible for the benefits provided for by the two provisions in question should be granted such benefit wholly under one or other of those instruments on a test of priority or, on the contrary, partly under one and partly under the other, according to whether the various operations planned fall within the respective aims of each of the provisions.

However, Article 15 (2) cannot be interpreted as meaning that the directive is concerned equally with processing and marketing projects, those being included in the general concept of modernization. Indeed the directive refers explicitly to modernizing farms which have not yet achieved a certain level of development. By comparison an investment project for improving and rationalizing processing and marketing structures for agricultural products, with lasting beneficial effects for agriculture, falls outside the concept; there can be a project of that kind only in the case of a concern which is already profitable.

Furthermore, the argument that the area covered by Community action in favour of farming as such is exclusively catered for by the directive appears to be illogical inasmuch as Regulation (EEC) No 355/77 makes provision for ambitious investment projects requiring financial contribution considerably greater than that required for a simple development project.

Finally, there is no support to be found in the wording of Article 9 of the regulation for the argument that the grant of economic aid provided for by the regulation for producers other than the person who is eligible depends on whether the latter intends to process and market his own products or also those of others.

Accordingly, even if the scope of the directive is held to extend to the

improvement of facilities for processing and marketing agricultural products and the action envisaged by the regulation is of a complementary nature, it must be stressed that whether or not the directive applies must be decided not in the abstract, as maintained by the Commission, but on the basis of the individual case. In addition, where the directive does not apply — and that is a decision which is solely for the national authorities to make — the regulation may apply.

IV — Oral procedure

The parties presented oral argument at the sitting on 25 February 1981.

The Advocate General delivered his opinion at the sitting on 8 April 1981.

Decision

- 1 By an application lodged at the Court Registry on 3 April 1980 Mr Cattaneo Adorno brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission's decision of 24 January 1980, refusing to grant aid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund [hereinafter referred to as "the Fund"] for an investment project submitted by the applicant under Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (Official Journal, L 51, p. 1), is void.
- 2 The applicant runs a farm located at Gabiano Monferrato in the Piedmont area. The undertaking comprises two holdings which consist of land covering approximately 176 hectares, traditionally devoted to wine-growing and

capable of producing high-quality wine. By means of the investment project which is at issue the applicant proposed the creation of a new wine-making centre designed to improve the processing into wine of the grapes produced on the farm, to rationalize the storage and preservation of the wine, to improve transport between the two farms and, to shorten the marketing channels for the wine, at the same time improving the quality, presentation and market preparation of his product.

- 3 The decision which is at issue states that the project is not eligible for aid from the Guidance Section of the Fund. The Commission stated in its decision that the application for aid in question fell within the scope of Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms (Official Journal, English Special Edition 1972 (II), p. 324); that the measures laid down in that directive constituted a "common measure" within the meaning of Article 6 (1) of 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); and that by virtue of Article 15 (2) of Regulation (EEC) No 355/77 projects which were eligible for Community aid under other common measures did not fall within the scope of that regulation.

- 4 The five submissions made relied upon by the applicant are based, in order, on infringement of Regulation (EEC) No 355/77, in particular Articles 1, 6 and 15 (2); on the failure to state the reasons on which the decision in question is based; on the misapplication of Directive 72/159/EEC, especially Articles 1 and 2; on the Commission's lack of power to determine those who are eligible to receive aid under the directive; and on breach of the principle of non-discrimination.

- 5 Since the dispute is principally concerned with defining the scope of each of Regulation No 355/77 and Directive 72/159/EEC, it is convenient to commence with an examination of the first and third submissions taken together.

- 6 The applicant claims that Directive 72/159/EEC is not applicable to his case. The system of incentives laid down in that directive is designed in fact to enable "farms suitable for development" to adapt themselves to economic

progress through an appropriate development scheme. The farms which may benefit from the system under the directive are those where the farmer's earned income is below the level of a fair return, or where the structure is such as to jeopardize the maintenance of that income at such a level. Those conditions are not met in the case of operators who, like the applicant, run farms where an earned income has been achieved which is comparable to, or even greater than, that received for non-agricultural work in the region in question.

- 7 The applicant further maintains that in those circumstances his case is not caught by Article 15 (2) of Regulation (EEC) No 355/77. That provision, according to which projects "which are eligible for Community aid under other common measures" within the meaning of Regulation (EEC) No 729/70 do not come within the scope of Regulation (EEC) No 355/77, is solely designed to prevent the aggregation of Community aids for the accomplishment of one and the same project.

- 8 The Commission rejects the applicant's interpretation of Article 15 (2) of Regulation (EEC) No 355/77. In its opinion it is inconceivable that the Community legislature intended to confer the greater benefit provided for under the regulation for investments concerned solely with the modernization of a farm which is covered by Directive 72/159/EEC, when those investments do not meet the conditions laid down by the directive. On those grounds the Commission excluded at the outset from the scope of the regulation all projects which, like that submitted by the applicant, fell within the scope of the directive by reason of the nature of the investment proposed, even if the farmer was not eligible for the aid provided for by the directive for reasons other than the nature of the project but pertaining to the size or profitability of the farm.

- 9 The Italian Government, the intervener, criticized the abstract fashion in which the Commission reached its decision on the project submitted by the applicant. An analysis of the provisions of Regulation (EEC) No 355/77 and Directive 72/159/EEC and of the recitals in the preamble to each of them reveals that the two texts have specific, distinct spheres of application. The directive is designed to encourage rational production methods by reforming the structure of agricultural production; the regulation, by contrast, is

intended to encourage the improvement and rationalization of processing and marketing structures for agricultural products. That being so, the Commission ought to have scrutinized the investment project submitted to it in order to determine its scope and purpose in the light of the criteria and definitions contained in the two instruments in question, rather than be content to describe the project as a “modernization” project.

- 10 In addition, the Commission claims that the aid provided for in the directive is meant to finance farms whereas the contributions envisaged in the regulation are intended for non-farming activities concerned with initial processing or marketing, even where these are carried out by persons who at the same time follow an agricultural occupation. The true purpose of Regulation (EEC) No 355/77 is not to ensure an adequate income for farmers but to improve market structures. That has led the Commission to conclude that a farmer is not eligible for the aid provided for by the regulation unless he is planning, by improving his facilities for initial processing or marketing, to alter the balance of his activities in such a way as to direct them clearly towards processing and marketing products from other farms. That is not the case of the project submitted by the applicant.
- 11 That last argument must be considered first, for if it is well founded it is decisive, the applicant not having claimed that the project he submitted was designed to direct his farming activities clearly towards processing and marketing products from farms other than his own.
- 12 An analysis of the text of, and preamble to, Regulation (EEC) No 355/77 does not support the conclusions maintained by the Commission. According to Article 19 the aid from the Fund provided for by the regulation may be granted to, among others, natural persons who are ultimately responsible for the cost of carrying out the project. Article 6 provides that for the purposes of the regulation “project” means *inter alia*, any project involving private material investment relating wholly or in part to buildings or equipment for rationalizing or developing storage, market preparation, preservation or

processing of agricultural projects — with no stipulation as to where these products must come from — and improving marketing channels. Projects must according to Article 7, relate to the marketing of the agricultural products set out in Annex II to the Treaty or to the production of the processed products also set out therein.

- 13 The net result of those provisions is that projects for improving the processing and marketing of agricultural products from the same farm as that in which the investment is to be made are in no way excluded from the scope of the regulation if they are capable of making an effective contribution towards rationalizing processing and marketing structures.

- 14 It is true that Article 9 of the regulation provides that projects must contribute to improving the situation of the basic agricultural production sector in question and in particular must guarantee the producers of the basic agricultural product an adequate and lasting share in the resulting economic benefits; but that provision, which recognizes that persons other than the producers of the basic agricultural product may benefit from the aid provided for by the regulation, does not restrict the scope of the regulation to that case alone.

- 15 Furthermore, in the preamble to Regulation (EEC) No 355/77 it is stated that the improvement of the processing and marketing of agricultural products envisaged by the regulation may be achieved by improving the quality and presentation of such products, and the rationalization of processing and marketing structures for agricultural products must have a lasting beneficial effect on the agricultural sector. Projects submitted by farmers may contribute to the achievement of such aims in so far as they may, on completion, have results which, whilst improving agricultural production, are capable of affecting processing and marketing structures in a certain area or on a certain market.

- 16 According to the file submitted to the Commission by the applicant the project at issue is not principally aimed at developing those activities which are related to production of the basic product, that is to say, grapes, but to rationalizing the storage and preservation of the wine, improving the quality, presentation and market preparation of wine products and shortening the marketing chain. It follows from the foregoing considerations that such efforts to rationalize are precisely those which are covered by Regulation (EEC) No 355/77 and that in principle the project which was submitted by the applicant must be considered to be an investment project within the meaning of Article 6 of that regulation.
- 17 That being so, it must be established whether Article 15 (2) of the regulation, which excludes from the scope of the regulation projects which are eligible for Community aid under other common measures, is applicable in the present instance, and it must be ascertained in particular whether the project submitted by the applicant may be classed as a modernization project under Directive 72/159/EEC.
- 18 The purpose of Directive 72/159/EEC is to initiate the reform of agricultural structures. The fifth recital in the preamble states that such reform should be directed towards the formation and development of farms capable of adjusting to economic developments, that is to say, those on which the farmer has adequate occupational skill and competence, on which profitability is verified by accounts and which are capable, through the adoption of rational methods of production, of ensuring a fair income and satisfactory working conditions for persons working thereon. Articles 2, 3, 4, 11 and 12 deal with those different factors, whilst other provisions provide for aid in relation to schemes for irrigation or for land reparation and for the construction of farm buildings or for land improvement operations.
- 19 It is apparent, therefore, that the aid provided for under the directive is designed to improve production conditions for basic agricultural products in order to raise the profitability of farms to a suitable level.
- 20 In consequence Directive 72/159/EEC has a special scope which does not, as a rule, coincide with that of Regulation (EEC) No 355/77.

- 21 Since the purpose of the project submitted by the applicant is not to raise the profitability of his farm by improving production conditions for basic agricultural products but to improve the processing and marketing of those products it does not fall within the scope of the directive.
- 22 As a result the decision at issue has no proper legal foundation inasmuch as the applicant's application for aid was therein held to fall within the scope of Directive 72/159/EEC and inasmuch as consideration of the application in the context of Regulation (EEC) No 355/77 was therein refused without its having been ascertained whether the conditions laid down by that regulation were met.
- 23 In the circumstances the decision at issue must be declared void and it is not necessary to consider the other submissions made by the applicant.

Costs

- 24 Pursuant to Article 69 (2) of the Rules of Procedures the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful it must be ordered to pay the costs, excluding those of the intervener, who has made no application for them.

On those grounds,

THE COURT

hereby rules:

1. The Commission's decision of 24 January 1980 refusing aid from the Guidance Section of the European Agricultural Guidance and Guarantee Fund for an investment project submitted by the applicant under Council Regulation No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (Official Journal 1977, L 51, p. 1) is declared void.

2. The Commission of the European Communities is ordered to pay the costs excluding the costs of the intervener.

Mertens de Wilmars	Mackenzie Stuart	O'Keeffe	
Bosco	Touffait	Due	Everling

Delivered in open court in Luxembourg on 3 June 1981.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 8 APRIL 1981¹

*Mr President,
Members of the Court,*

1. This opinion concerns an action brought by a private individual under the second paragraph of Article 173 of the EEC Treaty. The applicant, Mr Cattaneo Adorno, is an Italian national and the proprietor of an agricultural estate in Piedmont which produces mainly wine; his action is for the annulment of the Commission's decision of 24 January 1980 rejecting the application for aid which he submitted on 30 January 1979 pursuant to Council Regulation No 355/77 of 15 February 1977 (concerning common measures to

improve the conditions under which agricultural products are processed and marketed).

The applicant asked for financial aid from the European Agricultural Guidance and Guarantee Fund [hereinafter referred to as "the Fund"] for an investment project designed to improve and expand the manufacture and marketing of wine from the grapes produced on his farm. He proposed the construction of a wine-making centre [Enopolio] to replace the old wine-making facilities, and to modernize not only the production but also the preser-

¹ — Translated from the Italian.