

In Case 166/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Gianluigi Campogrande, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Government in the person of Ivo M. Braguglia, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, by adopting and maintaining in force certain provisions of Law No 306 of 8 July 1975 on the formation of the producer sale price for milk, the Italian Republic has failed to fulfil its obligations under Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176),

#### THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keefe, G. Bosco, O. Due and U. Everling, Judges,

Advocate General: G. Reischl  
Registrar: H. A. Rühl, Principal Administrator

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

1. Italian Law No 306 of 8 July 1975 (*Gazzetta Ufficiale della Repubblica Italiana* No 194 of 23 July 1975, p. 5012) introduces, on the one hand, measures in favour of associations of agricultural producers in the field of animal husbandry and, on the other hand, rules for fixing the producer sale price for milk.

The price is fixed in respect of each agricultural year and each region by means of agreements between the trade groups concerned (producers, processing undertakings and dairies), in accordance with the criteria laid down by Articles 8 and 9 of the Law. Where the parties fail to reach agreement on their own initiative, then at the request of any one of them the Regional Authority is obliged under Article 10 to call them together for the purpose of negotiating the price to be fixed. Under the same article, the agreed price is to be published in the Regional Official Gazette (*Bollettino Ufficiale della Regione*) and is to be "binding on the parties".

Failing such an agreement, the price is fixed by a special committee which is appointed by the Chairman of the Regional Authority and comprises representatives of the trade groups concerned. The price is published in the Regional Official Gazette, thereby

becoming binding on the parties (Article 11).

Article 12 of the Law contains a transitional provision which adapts the rules described above, according to the circumstances, should the producers' associations not yet have become operative.

2. The Commission, taking the view that any unilateral action by a Member State interfering with the machinery for establishing the producer sale price for milk amounted to an infringement of the Community provisions setting up the common organization of the market in milk and milk products Regulation (EEC) No 804/68 of the Council of 27 June 1968, published in the Official Journal, English Special Edition 1968 (I), p. 176), sent a letter dated 28 July 1977 to the Italian Government, requesting it pursuant to Article 169 of the EEC Treaty to submit its observations within two months.

3. The Italian Government replied by a letter dated 4 November 1977, arguing that the system introduced by Law No 306 did not involve the fixing of the producer sale price for milk by a public authority. The Law was, it contended, designed to promote market stability by encouraging the creation of producers' associations and the conclusion of agreements between trade groups.

4. In the meantime, the question whether a system for fixing the producer sale price for milk, such as that provided

for by Law No 306, was compatible with the common organization of the market in milk and milk products was referred to the Court of Justice by the Tribunale Amministrativo Regionale per il Veneto [Regional Administrative Tribunal for Veneto] under Article 177 of the EEC Treaty. By judgment of 6 November 1979 (Case 10/79 *Toffoli v Regione Veneto* [1979] ECR 3301), the Court ruled that it was incompatible with the common organization of the market in milk and milk products for a Member State to fix directly or indirectly the producer price for milk.

5. Subsequently, on 26 May 1981, the Commission delivered to the Italian Republic the reasoned opinion required by Article 169 of the EEC Treaty and requested it to comply with the opinion within a period of two months.

6. By a telex message of 5 October 1981, the Italian Government informed the Commission that it undertook to lay before the Italian Parliament a draft law repealing Article 11 of Law No 306 and to replace Articles 11 and 12 with other provisions.

7. The draft law was submitted to the Commission on 19 November 1981. It provides for the replacement, at regional level, of the existing mandatory producer sale price for milk with a reference price agreed between the organizations in that sector, compliance with which would give traders priority in obtaining aid or subsidized loans from the State or the region. The same priority would be granted to approved producers' associations which took part in concluding the agreement on the reference price.

8. Since it took the view that the Italian Republic had not adopted the requisite

measures for putting an end to the infringement and that, on the contrary, the text of the draft law entailed new, and more serious, unilateral action by a Member State interfering with the machinery for fixing the producer sale price for milk, the Commission once again requested the Italian Government, on 9 March 1982, to rectify the situation and allowed it a further period of one month in which to do so.

9. By a letter of 15 April 1982 the Italian Government replied to the Commission, stating *inter alia* that the alleged aggravation of the infringement, referred to in the reasoned opinion of 26 May 1981, was unfounded.

10. Following that reply, the Commission brought the present action by an application lodged at the Court Registry on 4 June 1982.

11. 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, the Court asked the Commission and the Italian Government to clarify the precise subject-matter of the application.

## II — Conclusions of the parties

The *Commission* claims that the Court should:

Declare that the Italian Republic, by applying the machinery for fixing the producer sale price for milk set up by

Law No 306/75, has failed to fulfil its obligations under the Treaty establishing the European Economic Community;

Order the Italian Republic to pay the costs.

The *Italian Government* contends that the Court should:

Reject the complaint that the defendant failed to adopt any measure capable of affording an effective guarantee that the system provided for by Article 11 of Law No 306/75 would not be applied pending its formal repeal;

Dismiss as inadmissible the applicant's request that the scope of the application be extended to the "measures" whose adoption was proposed to the Italian Parliament as a replacement for Articles 11 and 12 of Law No 306/75, which are due to be repealed.

### III — Submissions and arguments of the parties

1. In its application the *Commission* refers to the *Toffoli* judgment, mentioned above, in which the Court analysed the system introduced by Law No 306/75 for fixing the producer sale price for milk, in the light of the provisions governing the common organization of the market in that sector. The *Commission* refers to paragraph 11 of

that judgment and draws particular attention to the following passage: "... national legislation designed to promote and encourage, by any method, the establishment of a uniform producer price for milk, by agreement or by authority, at the national or regional level is, by its nature, outside the bounds of the powers given to Member States and runs contrary to the principle established by Regulation No 804/68, in particular Article 3 thereof, of attaining a target producer price for the milk sold by Community producers during the milk year on the Community market and on external markets."

The *Commission* observes that, according to a consistent line of decisions by the Court, merely to lay before the national parliament a draft law designed to repeal a national provision which is incompatible with the rules of Community law is not sufficient to prevent a State from failing to fulfil its obligations in the future. It is necessary for the unlawful situation actually to be brought to an end and for the obligations imposed by Community law to be fully discharged. Member States may not plead provisions or practices existing in their internal legal orders in order to justify non-compliance, or belated compliance, with their obligations. However, according to the *Commission*, the Italian Republic continues to keep Article 11 of Law No 306/75 in force and has failed to adopt any measure capable of affording an effective guarantee that it will not be applied pending its formal repeal.

Finally, the *Commission* observes that the draft law laid before the Italian Parliament for the purpose of replacing Article 11 is also inconsistent with the applicable rules of Community law.

2. In its defence, the *Italian Government* does not deny that Article 11 of Law No 306/75 is incompatible with the relevant provisions of Community law. However, it emphasizes that the alleged infringement resides in the fact that it maintained in force Article 11 of Law No 306/75 and failed to adopt any measure capable of affording an effective guarantee that the article would not be applied pending its formal repeal. In laying the draft law before the national parliament, which is still in the process of examining it, its intention was indeed to comply with the Commission's reasoned opinion.

Furthermore, the provisions of Article 11 were, the Italian Government claims, only very rarely applied in practice, and the Ministry of Agriculture and Forestry, after consulting the regional authorities and trade organizations, has requested the regional authorities, as the addressees of Article 11, to refrain from applying it in future. The Italian Government observes that, whilst it is true that the provisions, since they have not been repealed, are still in force *de jure*, it is none the less incorrect to say that no measure was taken to afford an effective guarantee that they would not be applied pending their formal repeal.

In its reply to a question from the Court, the Italian Government explained that the central and regional authorities had agreed to refrain from applying the aforesaid Article 11. It admits that the agreement has no legal force and is not binding on the regional authorities. As far as the application of Article 11 in the past is concerned, the Italian Government submitted to the Court a list of the cases in which it had been applied.

The Italian Government takes the view that the measures proposed to the national parliament for the purpose of replacing Articles 11 and 12 of Law No 306/75 will put an end to the infringement. Nevertheless, it contends that national measures which have been neither approved nor brought into force may not and should not be discussed in the context of the present case.

3. In its reply, the *Commission* points out that the Italian Government's defence confirms that the relevant legislative provisions are still in force, since the draft law which provides for their formal repeal is still being considered by the Italian Parliament.

Moreover, the Commission claims that, contrary to the assertions of the Italian Government, the proposed measures for replacing Articles 11 and 12 do not fall outside the scope of the present case. In its opinion, the action taken by a Member State in the course of an infringement procedure such as the present, and in particular the action taken in response to the complaints contained in the reasoned opinion, forms part of the *causa petendi* of the application made under the second paragraph of Article 169 of the EEC Treaty. Such action is, it claims, nothing other than the manifestation, in the form of conclusive acts, of the State's legal opinion on the subject-matter of the proceedings; it is, indeed, a reply to the legal arguments put forward by the Commission both in its letter drawing attention to the infringement and in its reasoned opinion.

The Commission maintains that, since it is to be inferred from article 171 that the judgment given should eliminate any

doubt which has arisen on points of law in the case in question, the Court must also inevitably consider the legal problems underlying the conduct of the Member State during the procedure prior to the application to the Court.

The draft law submitted to replace Articles 11 and 12 reflects the view that a Member State may take unilateral action to promote agreement upon a producer sale price for milk. It reflects the opinion that is compatible with the common organization of the market to fix, at regional level, a reference price for milk which has been agreed between the producer organizations in that sector and observance of which gives traders priority in obtaining aid or subsidized loans from the State or the region.

The Commission considers that the above view is unfounded. It is therefore also necessary, it claims, for the Court to give judgment on those differing interpretations of Community law, which are liable to have a direct and far-reaching influence on the measures which the Italian State may be induced to adopt in order to comply with the judgment of the Court.

4. In its rejoinder, the *Italian Government* observes that the present proceedings are concerned with establishing whether the Italian Republic is still in breach of Community law inasmuch as it has failed to repeal, either *de facto* or *de jure*, the system for fixing the producer sale price for milk laid down by Article 11 of Law No 306/75. The scope of the proceedings cannot be altered or extended by the Commission so as to encompass the draft law proposed by the

Italian Government to the Italian Parliament as a replacement for Articles 11 and 12. The Italian Government observes that an alteration or extension of that kind would also be precluded if the draft law were already approved. In support of its point of view it cites the Court's judgment of 10 March 1970 (Case 7/69 *Commission v Italy* [1970] ECR 111; paragraph 5 of the decision.

It is incorrect to maintain, as does the Commission, that the draft law represents the *opinio juris* of Italy as a Member State. Furthermore, actions for a declaration that a State has failed to fulfil its obligations are clearly concerned with failures which have already taken place and not with the opinion of a Member State.

Finally, the Italian Government emphasizes that the legal problems which would arise from a consideration of the measures contemplated by the draft law would be much more extensive and quite different from the problem which led to the present infringement proceedings, which concern Article 11 of Italian Law No 306/75.

5. In its reply to a question from the Court, the Commission stated that the action is not exclusively concerned with Article 11. It repeated the quotation, cited earlier, from the *Toffoli* judgment and observed that the application concerned all the provisions of Law No 306/75 — namely Articles 10 and 11 — which allowed for intervention by public authorities designed to encourage the determination, by agreement or by the authorities, of a uniform producer price for milk.

IV — Oral procedure

represented by Gianluigi Campogrande, also acting as Agent, presented oral argument.

At the sitting on 4 October 1983, the Government of the Italian Republic, represented by Ivo M. Braguglia, acting as Agent, and the Commission,

The Advocate General delivered his opinion at the sitting on 8 November 1983.

## Decision

- 1 By application lodged at the Court Registry on 4 June 1982, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty seeking a declaration that, by adopting and maintaining in force certain provisions of Law No 306 of 8 July 1975 (*Gazzetta Ufficiale della Repubblica Italiana* No 194 of 23 July 1975, p. 5012) on the formation of the producer sale price for milk, the Italian Republic had failed to fulfil its obligations under Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (*Official Journal*, English Special Edition 1968 (I), p. 176).
  
- 2 According to Articles 8 and 9 of the aforesaid Italian law, the producer sale price for milk is fixed for each agricultural year and each region by means of agreements between the trade groups concerned (producers, processing undertakings and dairies). If the negotiations aimed at reaching such an agreement have not commenced in due time, then at the request of any one of the parties concerned the Regional Authority is required under Article 10 to convene the parties with a view to negotiating the price to be fixed. Under the same article, the agreed price is to be published in the Regional Official Gazette and is "binding on the contracting parties". If no agreement is reached under the rules of Article 10, Article 11 provides that the price is to be determined by a special committee appointed by order of the Chairman of the Regional Authority and comprising representatives of the parties concerned. The committee's decision is published in the Regional Official Gazette and thereby becomes binding on the parties.

- 3 The Commission, taking the view that the above system for fixing and publishing the producer price for milk was in fact a body of mandatory national rules and was incompatible with the Community provisions establishing the common organization of the market in milk and milk products, sent to the Italian Republic, pursuant to Article 169 of the EEC Treaty, a letter dated 28 July 1977 formally inviting it to submit its observations.
  
- 4 The Italian Government replied by letter of 4 November 1977, arguing that the system introduced by the aforesaid Law sought to achieve agreements between producers and processing undertakings by means of collective negotiations and that publication in the Regional Official Gazette was not designed to vest the agreed price with mandatory force.
  
- 5 In the meantime the Court, in reply to a question submitted for a preliminary ruling the Tribunale Amministrativo Regionale per il Veneto [Regional Administrative Tribunal for Veneto] in connection with a dispute concerning the application of Article 11 of the Law, delivered a judgment on 6 November 1979 (Case 10/79 *Toffoli v Regione Veneto* [1979] ECR 3301) in which it held that it was incompatible with the common organization of the market in milk and milk products established by Regulation No 804/68 for a Member State to fix directly or indirectly the producer price for milk. Paragraph 12 of that judgment reads as follows: "In sectors covered by a common organization of the market, *a fortiori* when that organization is based on a common price system, Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation at the production and marketing stages established under the common organization. It follows that national legislation designed to promote and encourage, by any method, the establishment of a uniform producer price for milk, by agreement or by authority, at the national or regional level is, by its nature, outside the bounds of the powers given to Member States and runs contrary to the principle established by Regulation No 804/68, in particular Article 3 thereof, of attaining a target producer price for the milk sold by Community producers during the milk year on the Community market and on external markets."



- 6 Subsequently, the Commission delivered to the Italian Republic, on 26 May 1981, a reasoned opinion as provided for by Article 169 of the Treaty and requested it to comply therewith within two months. In its reasoned opinion the Commission refers to the aforesaid judgment, from which it quotes the passages cited above, and in conclusion states that the Italian Republic, by applying the machinery for fixing the producer sale price for milk set up by Law No 306/75, has failed to fulfil its obligations under the Treaty.
  
- 7 By a telex message of 5 October 1981, the Italian Government informed the Commission that it undertook to lay before the Italian Parliament a draft law repealing Article 11 of Law No 306/75. The text of the draft was forwarded to the Commission by a letter dated 19 November 1981. In its definitive version it sought to replace price-fixing by the regional committee under Article 11 with a system of reference prices which would be agreed between the organizations in the sector in question and compliance with which would give traders priority in obtaining national aid or subsidized loans from the State or the region.
  
- 8 The Commission took the view that the system proposed by the draft law was liable to aggravate the infringement referred to in the reasoned opinion and, in a letter of 9 March 1982, requested the Italian Government to replace the draft law as swiftly as possible with a text repealing Article 11 and to refrain from applying the latter pending its repeal. The Commission further requested it to take the necessary measures to avoid, in the publication of the milk price in the regional gazettes, any ambiguity regarding the private-law status of the prices fixed.
  
- 9 By a letter of 15 April 1982 the Italian Government, replying to the Commission, stressed *inter alia* that the system envisaged by the draft law contained no mandatory features and was entirely consistent with the free interplay of market forces.

- 10 Following that exchange of letters, the Commission brought the present action on 4 June 1982. In its application it again quoted paragraph 12 of the above-mentioned judgment. In addition, it referred to the correspondence concerning the draft law and argued that merely to lay a draft law before the national parliament was not sufficient to put an end to the infringement, that the Italian Government had not adopted any measure capable of guaranteeing that Article 11 of Law No 306/75 would not be applied pending its formal repeal and that the amendment proposed in the draft law was not such as to remove the infringement.
- 11 In its defence the Italian Government interpreted the Commission's arguments to mean that the Italian Republic had failed to fulfil its obligations because it continued to maintain in force Article 11 of Law No 306/75 and had not adopted any measure capable of affording an effective guarantee that the article would not be applied pending its formal repeal. In that regard the Italian Government stressed that the article had very seldom been applied in practice and that the minister responsible had, after consulting the regions and trade organizations, requested the regions not to apply it in future. It further contended that the draft law fell outside the scope of the present proceedings and should not therefore be discussed within the context thereof.
- 12 In its reply, the Commission made no comment on the Italian Government's description of the failure with which the Italian Republic was charged. On the other hand, the Commission maintained that the scope of the present action extended to the draft law laid before the Italian Parliament. It argued that the action taken by a Member State, during the infringement procedure, with regard to the matters covered by the procedure and the representations made in the reasoned opinion, formed part of the *causa petendi* of the application made under the second paragraph of Article 169.
- 13 In its rejoinder the Italian Government acknowledged that the Italian Republic had infringed Community law by adopting and formally maintaining in force the system provided for by Article 11 of Law No 306/75. However, it requested the Court to dismiss the remainder of the application as inadmissible.

- 14 In its written reply to a question put by the Court, the Commission stated that, as far as the present text of the Law was concerned, the action was directed against Articles 10 and 11. During the oral procedure, it stressed that the provisions of Article 10 which dealt with the convening of the parties and the publication of the agreed price allowed, in its opinion, for intervention on the part of the regional authorities which was incompatible with Community law. For its part, the Italian Government contended that the action could relate only to Article 11.
- 15 It follows that, before the Court considers the substance of the case, it must decide on the admissibility of the Commission's claims in order to define the subject-matter of the application.

### Admissibility

- 16 In that connection it should be recalled that in a consistent line of decisions the Court has held that the scope of an action brought under Article 169 of the Treaty is delimited both by the preliminary administrative procedure provided for by that article and by the conclusions set out in the application and that the Commission's reasoned opinion and its application must be founded on the same grounds and submissions.
- 17 That observation is sufficient to eliminate from the debate the draft law designed to replace Article 11 of Law No 306/75. That draft, which was submitted to the Commission after the delivery of the reasoned opinion, was not dealt with in the preliminary procedure and the Court cannot therefore examine it in the context of these proceedings.
- 18 On the other hand, the Italian Government's contention that the action relates solely to Article 11 of Law No 306/75, to the exclusion of any other provision of that Law, cannot be upheld.
- 19 According to the letter formally inviting the Italian Republic to submit its observations, the failure with which it is charged relates to "the measures contained in the Italian Law which provide for the fixing of regionalized milk prices". In both the reasoned opinion and the application to the Court,

the Commission's conclusions refer to the "machinery for fixing the producer sale price for milk set up by Law No 306/75" and, in the introductory sentence of the application, the Commission defines the subject-matter of the action as being the adoption and maintenance in force of "certain provisions of Law No 306 of 8 July 1975 concerning the formation of the producer sale price for milk". Even if those phrases fail to specify, as precisely as might have been wished, the provisions to which the procedure relates, they none the less suggest that the scope of the procedure goes beyond Article 11 alone.

- 20 It is true that, after the draft law had been submitted to the Commission, the discussions between the parties and the arguments put forward by the Commission centred on Article 11 and on the amendments which the draft was designed to make to that article. However, the reference which not only the reasoned opinion but also the application makes to the judgment of the Court of 6 November 1979, in particular the quotations from the decision, demonstrate that the action is not concerned solely with the fixing of prices by public authorities under Article 11 but extends to the other provisions of the Law in question, in so far as they are intended to promote and encourage the establishment of a uniform price by agreement.
- 21 The fact that the Commission, in its reply, did not express its opinion on the allegations made by the Italian Government in its defence concerning the limited nature of the action is insufficient to support the conclusion that the Commission did indeed narrow the scope of its action, as alleged.
- 22 In those circumstances it must be concluded that the action relates as far as the Italian Law which is in force at present is concerned, not only to Article 11 but also to Article 10, inasmuch the latter provides for the convening, by the Regional Authority, of the parties involved and for the publication of the agreed price in the Regional Official Gazette. the Commission's objections to those provisions should therefore be examined, whilst the remainder of the application should be dismissed as inadmissible.

## Substance

- 23 In its judgment of 6 November 1979, mentioned above, the Court held that any national legislation designed to promote and encourage, by any method, the establishment of a uniform producer price for milk, by agreement or by the authorities, at the national or regional level is, by its nature, outside the bounds of the powers given to Member States and runs contrary to the principle established by Regulation No 804/68, in particular Article 3 thereof, of attaining a target producer price for the milk sold by Community producers. The arguments put forward by the Italian Government in the course of these proceedings are not such as might lead to a modification of that interpretation of the Community rules.
- 24 It follows from that interpretation that Article 11 of Law No 306/75, which provides for the fixing of a uniform producer price for milk by a committee appointed by order of the Chairman of the Regional Authority concerned, constitutes an infringement of Community law. It should be added that neither the fact that the provision in question has only seldom been applied in practice nor the existence of an agreement between the central and regional authorities to desist from applying it is sufficient, as indeed the Italian Government itself has acknowledged, to put an end to the infringement.
- 25 On the same grounds, Community law prohibits any legislative measure which provides for any intervention whatsoever on the part of a public, national or regional authority with a view to promoting and encouraging the establishment by agreement of a uniform producer price for milk. Such is indeed the case with Article 10, which provides for the convening of the parties by the Regional Authority and requires publication of the price agreed upon in the Regional Official Gazette.
- 26 It must therefore be held that, by adopting and maintaining in force Law No 306 of 8 July 1975, the Italian Republic has failed to fulfil its obligations under Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products, in so far as Article 10 of the said Law provides that the Regional Authority is to convene the parties concerned with a view to negotiating the producer price for milk

and that the price agreed upon must be published in the Regional Official Gazette and in so far as Article 11 provides that, in the absence of agreement, the price is to be fixed by a committee appointed by the Chairman of the Regional Authority.

### Costs

- 27 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, pursuant to the first subparagraph of Article 69 (3), the Court may order the parties to bear their own costs in whole or in part where each party succeeds on some and fails on other heads.
- 28 Since both parties have failed in some of their submissions, they should be ordered to bear their own costs.

On those grounds,

### THE COURT

hereby:

1. Declares that, by adopting and maintaining in force Law No 306 of 8 July 1975, the Italian Republic has failed to fulfil its obligations under Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products, in so far as Article 10 of the said Law provides that the Regional Authority is to convene the parties concerned with a view to negotiating the producer price for milk and that the price agreed upon must be published in the Regional Official Gazette and in so far as Article 11 provides that, in the absence of agreement, the price is to be fixed by a committee appointed by the Chairman of the Regional Authority;

2. For the rest, dismisses the application as inadmissible;

3. Orders the parties to bear their own costs.

Mertens de Wilmars	Koopmans	Bahlmann	Galmot	
Pescatore	O'Keeffe	Bosco	Due	Everling

Delivered in open court in Luxembourg on 7 February 1984.

P. Heim  
Registrar

J. Mertens de Wilmars  
President

OPINION OF MR ADVOCATE GENERAL REISCHL  
DELIVERED ON 8 NOVEMBER 1983 <sup>1</sup>

*Mr President  
Members of the Court,*

In this case, which concerns the alleged failure of a State to fulfil its obligations under the EEC Treaty, the Court must decide on the compatibility of the provisions introduced by Italian Law No 306 of 8 July 1975 (Gazetta Ufficiale No 194 of 23 July 1975), fixing a producer price for milk, with the common organization of the market in milk and milk products created by Regulation (EEC) No 804/68 of the Council of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p 176). Since both legislative texts were the subject of the Court's judgment in the *Toffoli* case <sup>2</sup>

and were set forth in detail therein, it is sufficient to recall their basic features in so far as they are relevant to the present case.

As the Court of Justice has already emphasized in the *Toffoli* case <sup>2</sup> it is one of the principal objectives of the common organization of the market in milk and milk products to guarantee to producers a milk price related to a target price, the machinery provided for that purpose in the regulation being controlled *exclusively* by the Community.

Italian Law No 306, on the one hand, provides that the sale of milk by members of a cooperative is to be effected through the cooperative alone

1 — Translated from the German.

2 — Judgment of 6 November 1979, Case 10/79 *Gaetano Toffoli and Others v Regione Veneto* [1979] ECR 3301.