

JUDGMENT OF THE COURT  
4 MARCH 1970<sup>1</sup>

**Commission of the European Communities  
v Government of the Italian Republic<sup>2</sup>**

Case 33/69

Summary

*Agriculture — Common organization of the markets — Wine market — Viticultural land register — Preparation — Obligation of the Member States*

*(Regulation No 24 of the Council on the progressive establishment of a common organization of the market in wine, Article 1; Regulation No 92/63/EEC of the Council amending Article 1 of Regulation No 24)*

Article 1 of Regulation No 24 and Regulation No 92/63/EEC must be interpreted as meaning that Member States were required within the period laid down by those pro-

visions to prepare a viticultural land register capable of fulfilling its purpose in accordance with the criteria laid down by Regulation No 24.

In Case 33/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giancarlo Olmi, acting as Agent, with an address for service in Luxembourg at the offices of Émile Reuter, Legal Adviser to the Commission, 4, boulevard Royal,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Embassy of the Italian Republic,

defendant,

1 — Language of the Case: Italian.

2 — CMLR.

Application under the second paragraph of Article 169 of the EEC Treaty for a ruling that the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 1 of Regulation No 24 of the Council on the progressive establishment of a common organization of the market in wine (OJ, Special Edition 1959–1962, p. 123) as amended by Regulation No 92/63/EEC of the Council (OJ, Special Edition 1963–1964, p. 44) by its failure to prepare a viticultural land register within the period fixed by the said article,

## THE COURT

composed of: R. Lecourt, President, R. Monaco, President of the Chamber, A. M. Donner, A. Trabucchi and W. Strauß (Rapporteur), Judges,

Advocate-General: J. Gand

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Summary of the facts

1. Article 1 of Regulation No 24 provides: 'Member States shall, not later than 30 June 1963, prepare a viticultural land register which shall thereafter be kept up to date. This register, based on the general vineyard census, shall include the following minimum information:

- (a) the total area under vines;
- (b) the area under vines subdivided according to type of production;
- (c) the method of management of plantations;
- (d) the classification of vine plantations according to surface area;
- (e) the classification of areas under vines according to age of vine-stocks;
- (f) classification of vine varieties according to year of planting.'

In the Italian version the first paragraph of this article is worded as follows:

'Entro il 30 giugno 1963 gli Stati membri istituiscono un catasto viticolo che sarà tenuto aggiornato.'

The preamble to the regulation states that, faced with difficulties in the wine-growing economy of certain States caused by surpluses of a permanent nature, the common organization must 'aim at stabilizing markets and prices by adjusting supplies to requirements'. It continues: 'Whereas the necessary steps to bring about this adjustment require that the potential output be known ...' and states *inter alia* that 'the preparation of a viticultural land register ... should make it possible to obtain the statistical information essential for a knowledge of the market'.

The provisions relating to the preparation of this register, its maintenance and keeping it up to date are dealt with by two regulations of the Commission of the EEC, namely:

Regulation No 143 of 23 November 1962 (OJ, Special Edition 1959-1962, p. 293);

Regulation No 26/64/EEC of 28 February 1964 (OJ, Special Edition 1963-1964 p. 112).

Article 2 of this latter regulation provides: '1. As soon as the viticultural land register

is prepared, and not later than 30 June 1965, Member States shall communicate to the Commission the following information:

- the number of vine plantations;
  - the total area of such plantations;
  - the total area under vines subdivided according to:
    - (a) nature of produce,
    - (b) type of cultivation.
2. Not later than 30 September 1966, Member States shall communicate to the Commission in the form of comparable tables the information listed in the Annex to this Regulation.'

2. By a letter of 29 March 1963 addressed to Mr Mansholt, the Vice-President of the Commission, the Permanent Representative of Italy stated in particular that:

- according to the interpretation of Italian experts and those from other Member States, Article 1 of Regulation No 24 merely required the Member States, within the period prescribed, to 'prepare the appropriate machinery to begin the necessary operations';
- 'on the other hand, in the Management Committee a literal interpretation (of this article) has gained acceptance according to which 30 June 1963 must be regarded as the final date by which the operations preparing the viticultural land register must be completed';
  - if this interpretation were accepted, 'it would be a practical impossibility to complete all the necessary work by 30 June 1963 since complex and onerous surveys are required';
  - 'on the basis of those considerations, ... the Italian Government has decided to request the adoption of the procedure for granting an extension until 31 December 1964 for complying with the provisions of Article 1 of Regulation No 24 of the Council'.

Since other governments had made similar requests, the Council, on the proposal of the Commission, in its Regulation No 92/63/EEC of 30 July 1963 (OJ, Special Edition 1963-1964, p. 44) substituted 31 December 1964 for 30 June 1963.

3. By letter of 30 November 1964 the Commission's departments requested Italy

and other Member States to supply them with such information as would allow them to ascertain the progress in preparing the register. The Italian Government did not reply to this request despite several reminders between December 1964 and March 1965.

4. On 14 September 1965 the Italian Government communicated to the Commission information which it described as 'information on Italian viticulture within the meaning of Article 2 of Regulation No 26/64/EEC'.

5. On 29 December 1965 the President of the Italian Republic promulgated Decree No 1707 entitled 'Preparation (Istituzione) of the Viticultural Land Register in Implementation of the Regulations of the EEC' which was published in the Gazzetta Ufficiale of 23 May 1966. Under the terms of this measure (hereinafter referred to as 'Decree No 1707'),

- 'The national viticultural land register provided for by Regulations Nos 24 ... of the EEC shall be prepared (istituito) and kept by the Minister for Agriculture and Forestry. The provincial Inspectors of Agriculture shall acquire the information in question' (Article 1);
- 'The operations relating to the preparation (istituzione) of the viticultural land register shall be carried out by the Minister for Agriculture and Forestry jointly with the Central Statistics Institute. The Minister shall be authorized in addition to employ the services of the public bodies operating in the agricultural sector, in accordance with the detailed provisions which shall be fixed by the legislation in implementation of the present decree to be adopted on the proposal of the Minister for Agriculture and Forestry in conjunction with the Minister for the Treasury' (Article 2);
- 'For the implementation of the present decree a credit of 3 800 million lire shall be made available ... The Minister for the Treasury shall be authorized to make by decree the necessary amendments to the budget' (Article 3).

6. In a letter of 17 June 1966 addressed to the Italian Government the Commission stated in particular that:

- it appeared 'that except for certain preliminary studies no concrete measures for the preparation of a viticultural land register have as yet been taken';
- the communication of 14 September 1965 (cf. 4 above) 'cannot be regarded as presupposing even the partial fulfilment of the obligation to establish the register' since this communication is founded on different basic facts from the register; the obligation laid down in Article 2 of Regulation No 26/64/EEC, the provision to which the said communication refers, presupposes the prior preparation of the register (cf. 1 above *in fine*);
- in those circumstances the Italian Government has failed to fulfil its obligation to prepare the viticultural land register not later than 31 December 1964 (cf. 2 above).

The letter continues: 'Consequently, in accordance with the provisions of Article 169 of the Treaty, the Commission requests the Italian Government to submit its observations within the period of one month from receipt of this letter'.

7. By letter of 1 August 1966, the Permanent Representative of Italy replied in particular that:

- 'the delay which has occurred in the preparation of the national viticultural land register has been caused by the specific technical difficulties occasioned by the complex and uneven structure of Italian viticulture';
- 'this state of affairs has led the departments concerned to make a careful study ... of the practical means of drawing up and completing this register, which took longer than anticipated';
- with regard to the Commission's remarks on the communication of 14 September 1965: 'It should be noted that, in order to lessen the inevitable delay in preparing the register, an appropriate survey has been carried out the results of which ... completely fulfil the requirements set out in Article 2 of the regulation (No 26/64 EEC)';
- the measure in implementation of

Decree No 1707 is currently being drafted 'whilst plans are being drawn up for the practical harmonization of the work which is expected to commence in the very near future';

- having regard to the scope and complexity of the working plan it is anticipated that the national viticultural land register will be completed in the course of 1968'.

8. In a letter in reply on 18 November 1966 the Commission:

- declared that it 'noted' the Italian Government's declaration of intent;
- in order to be able 'to take a decision on the action required in this matter, for example proposing to the Council another postponement of the date for the preparation of the register', requested the Italian Government to inform it whether the above-mentioned implementing provisions had been adopted and 'to provide it with all the information relating to the organization of the work and the stages planned for its completion'.

By letter of 9 January 1967 the Permanent Representative of Italy replied that the said provisions were 'in the course of completion'; furthermore, he provided information on the content which those provisions would have and on various practical measures which had been undertaken in the meantime.

9. On 24 June 1967 the Commission proposed that the Council should adopt a regulation 'laying down additional provisions on the common organization of the market in wine' (OJ of 21.8.1967, p. 201). Those proposals stated that in view of the fact that 'more time is needed to enable the work of preparing the viticultural land register to be satisfactorily completed in certain Member States where the matter raises particularly complex problems', the period for preparing the register (Article 22 (3) should be extended until 31 December 1968.

By letter of 28 June 1967 the Commission notified the Italian Government of this proposal and requested it to convey to the Commission 'as soon as possible the pro-

gramme for the completion of the register and the exact dates of the various stages', together with the text of the provisions in implementation of Decree No 1707. The Council rejected the above-mentioned proposal.

10. On 3 February 1969 the Commission delivered a reasoned opinion under Article 169 of the Treaty in which it found that Italy had failed to fulfil its obligations under Article 1 of Regulation No 24. The opinion states *inter alia* that it appears to the Commission, especially as a result of a meeting of experts held at Brussels on 23 January 1969 that 'not only has there been a failure to complete the register but in addition certain of the preparatory works to this end have not yet been completed'. This opinion was notified by letter of 7 March 1969 to the Italian Government which was required to conform with it within a period of 45 days.

11. Since it considered that the Italian Government had neither taken action on the opinion nor fulfilled its obligations, even after the opinion had been delivered, the Commission initiated the present application which was lodged at the Court Registry on 23 July 1969.

## II — Conclusions of the parties

In its application the *Commission* claims that the Court should:

- (a) Declare that the Italian Republic, by failing to prepare the viticultural land register within the period fixed in Article 1 of Regulation No 24 on the progressive establishment of a common organization of the market in wine, as amended by Regulation No 92/63/EEC, has failed to fulfil its obligations under this provision;
- (b) Order the Italian Republic to bear the costs.

In its statement of defence the *Italian Government* contends that the Court should: — dismiss the application of the Commission ...

— order the Commission to bear the costs. In reply and rejoinder the *parties*, the Commission by implication and the Italian Government expressly, maintain their earlier conclusions.

## III — Procedure

The procedure followed the normal course. 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. The parties presented oral argument at the hearing in open court on 14 January 1970. The Advocate-General delivered his opinion at the hearing in open court on 4 February 1970.

## IV — Submissions and arguments of the parties

In its application the *Commission* states that at the present time the work on the preparation of the viticultural land register, provided for by Decree No 1707, has only been completed to a very small extent; indeed the Italian Government has not yet notified the Commission that it has adopted the implementing provisions laid down in the said decree. This is decidedly prejudicial to the establishment of the common organization of the market in wine.

Although Italy had been required to prepare the register not later than 31 December 1964, the Commission would have been satisfied if this had been achieved not later than 31 December 1968. In its statement of defence the *Italian Government* replies that the adoption of Decree No 1707 'suffices to show that the application is unfounded'.

The Commission confuses the 'preparation' ('istituzione') of the viticultural land register with 'keeping' it. The Community regulations in question cannot be interpreted as meaning that all the operations necessary to enable the register to function must be completed within a specific period, all the more so in the case of those States where such a register did not previously exist.

Moreover, it is incorrect to say that the operations in question have not been commenced. In fact, 'in addition to the endeavours of the Italian Minister for Agriculture in this sphere', the Italian Central Statistics Institute is in the course of completing the task entrusted to it.

With regard to the implementing provisions contemplated for Decree No 1707 it ap-

peared that it was unnecessary to adopt them 'both in view of the endeavours of the Minister for Agriculture and by reason of the Minister's decision to employ the services of the Central Statistics Institute'. In addition the Italian Government informed the Commission that the operations in question had been shown to be particularly complex on account of the extent, variety and extreme subdivision of the areas under vines.

In its reply the *Commission* states in particular as follows:

(a) Regulation No 24 plainly requires the Member States not only to 'provide a legal basis' for the register but 'actually to set it up'.

In fact, even if it were to be admitted that the expression 'istituire' employed in the Italian version of Article 1 of this regulation may also bear the meaning 'provide a legal basis', the versions in the other three languages ('établir', 'einrichten' and 'installen') suggest that a different interpretation must nevertheless prevail.

If 'prepare' were a synonym for 'provide a legal basis', the register would have been directly 'prepared' by the provision in dispute. The provision entrusted this task to the Member States since it did not merely involve a purely legal measure but a combination of practical operations which only Member States could carry out. Furthermore, 'the fixing of a period of time relates to the actual completion of the register and not merely to making legal provision for it'.

The argument put forward by the Italian Government also runs counter:

— to the phrase 'register which shall thereafter be kept up to date' appearing in the provision in question;

— to the last recital of the preamble to Regulation No 92/63 which states 'Whereas more time is needed to enable the work of preparing the viticultural land register to be satisfactorily completed in certain Member States where the matter raises particularly complex problems ...';

— to the terms of Article 2 of Regulation No 26/64/EEC which provides that 'As soon as the viticultural land register is prepared, and not later than 30 June

1965', Member States are to communicate to the Commission certain information as is indicated in the heading of the regulation, this information constitutes the 'management' of the register and thus presupposes its completion.

Moreover, the Italian Government itself has always admitted this interpretation, as is clear in particular from its letters of 29 March 1963 and 17 June 1966.

(b) Decree No 1707 was not intended 'to prepare' the register and only conferred on certain bodies the powers necessary for its preparation.

(c) The significant point is not whether the operations for establishing the register have been initiated but whether they have been completed.

(d) The Commission noted, not without surprise, the statement alleging that the adoption of the provisions implementing Decree No 1707 were superfluous. This attitude is probably to be explained by the fact that the Italian Government considered that its co-operation with the Central Statistics Institute was sufficient. Furthermore, this co-operation formed the subject of an agreement approved by Ministerial Decree of 27 December 1968; the considerable delay in taking this preliminary step shows that the register was still far from completion.

In its rejoinder the *Italian Government* considers that basically Article 1 of Regulation No 24 merely sets out a programme. The contrary view indeed conflicts with the fact that:

— implementing Regulation No 143 — which in the actual words of its title only laid down 'initial provisions for the preparation of the viticultural land register', which moreover is confirmed by Regulation No 26/64/EEC — appeared only *seven months before* the expiry of the period (30 June 1963) fixed by the said Article 1;

— numerous details relating to the actual form of the register were only settled by implementing Regulation No 26/64/EEC adopted *after* the above-mentioned date. Moreover Regulation No 92/63/EEC:

— under the terms of the first recital of its preamble and 'as an authentic interpretation', states that the date of 30 June

1963 relates only to the preparation ('istituzione') of the register;

- under the terms of the second recital confirms that Regulation No 143 merely lays down 'initial provisions' of implementation.

The view that no date was fixed for the 'actual formation' of the register is further confirmed by the fact that Regulation No 92/63/EEC preceded Regulation No 26/64/EEC, the scope of which has just been set out.

On the basis of the priority of the 'primary' regulations of the Council over 'secondary' regulations of the Commission, the Italian Government:

- emphasizes that in this case the regulations of the Council required the Commission to clarify through implementing provisions the details of the register in question;
- states that the Commission's view amounts to classifying the 'secondary' legislation above the 'primary' legislation; in fact the Commission's argument makes the actual extent of the periods in question dependent on the relative dispatch with which the Com-

mission adopted the implementing regulations.

Repeating the words of Decree No 1707 the Italian Government maintains that this measure fulfilled the requirements set out by the regulations in question; in fact:

- far from being a mere grant of powers, it prepared ('istituito') the register which was not previously in existence; likewise, it made provision for the factors referred to in the said regulations;
- in addition it dealt with the actual completion of the register.

The arguments which the Commission bases on the correspondence prior to the present dispute are irrelevant since the controversy between the parties relates exclusively to the interpretation of the Community provisions in question. 'It is thus not merely to salve its conscience' that the Italian Government has appended to the rejoinder various legislative and administrative provisions adopted in 1969 reflecting the current state of progress with the register which continues 'at an increased speed in accordance with the predetermined plan'.

## Grounds of judgment

The subject-matter of the dispute

- 1 Following its reasoned opinion of 3 February 1969, the Commission by an application lodged on 23 July 1969 requested the Court under Article 169 of the EEC Treaty 'to declare that the Italian Republic, by failing to prepare the viticultural land register within the period fixed by Article 1 of Regulation No 24 (OJ, Special Edition 1959-1962, p. 123), as amended by Regulation No 92/63/EEC (OJ, Special Edition 1963-1964, p. 44), has failed to fulfil its obligations under this provision'.
- 2 It is clear from the documents in the case and from the oral part of the proceedings that the Commission is requesting the Court to rule whether the failure existed at the end of the period fixed by the reasoned opinion.

Substance

- 3 The applicant considers that the duty imposed upon the governments of the Member States refers to the completion of a register capable of fulfilling its

purpose, whilst according to the defendant it only relates to the creation of the legal basis for the subsequent establishment of such a register.

- 4 In support of its interpretation the defendant first of all invokes the Italian version of the first paragraph of Article 1 of Regulation No 24 which is worded as follows: 'Entro il 30 giugno 1963 gli Stati membri istituiscono un catasto viticolo che sarà tenuto aggiornato'.

In its view the term 'prepare' ('istituire') has the same legal implications as 'provide a legal basis for'.

- 5 As a comparison of the four versions of the above-mentioned provision in the various languages does not lead to a decisive result, the meaning of Regulation No 24, particularly Article 1 thereof, must be analysed.

Under the terms of the second paragraph of that provision: 'This register, based on the general vineyard census, shall include the following minimum information:

- (a) the total area under vines;
- (b) the area under vines subdivided according to type of production;
- (c) the method of management of plantations;
- (d) the classification of vine plantations according to surface area;
- (e) the classification of areas under vines according to age of vine-stocks;
- (f) classification of vine varieties according to year of planting'.

- 6 It follows from those provisions that the 'register' was required to include all the above-mentioned information and comprise a complete documentation in accordance with this list. Such an interpretation is confirmed by the requirement that this information shall be 'kept up to date' in accordance with the first paragraph of the said article, which clearly presupposes that the information has already been obtained. It is also confirmed by the content of Regulation No 92/63/EEC by which the Council, on a proposal from the Commission, extended until 31 December 1964 the period fixed by Regulation No 24 for the preparation of the viticultural land register.
- 7 In fact by a letter of 29 March 1963 addressed to the Commission, the defendant had requested this extension stating that if the applicant's interpretation of Regulation No 24 were accepted in this case, it would be 'a practical impossibility to complete all the necessary work by June 1963', since 'complex and onerous surveys' were required. This argument confirms the interpretation that the regulation intends to oblige the Member States to set up within the period in question a register capable of fulfilling its purpose.
- 8 Against this interpretation, the defendant points out that Regulation No 143 of the

Commission (OJ, Special Edition 1959–1962, p. 293), relating solely to the ‘initial provisions’ for preparing the viticultural land register, was only adopted on 23 November 1962, that is, approximately seven months before 30 June 1963, the date of the expiry of the period fixed by Article 1 of Regulation No 24, whilst Regulation No 26/64/EEC of the Commission (OJ, Special Edition 1963–1964, p. 112), which settled many of the details relating to the actual form of the register, was only adopted on 28 February 1964, that is, after the expiry of the above-mentioned period. In those circumstances, according to the defendant, the interpretation put forward by the applicant amounts to ‘making the actual extent of the period [in question] dependent on the relative dispatch with which the Commission adopted the implementing regulations.’

- 9 The said delays in adopting the implementing regulations do not provide grounds for putting forward an interpretation of Regulation No 24 differing from that which emerges from its wording, its sense and its purpose. Moreover, although such delays do not give grounds for the complaint that the defendant has exceeded the period laid down and extended to 31 December 1964, they may not on the other hand be invoked to excuse the fact that on the expiry of the period prescribed by the reasoned opinion it had still to fulfil its obligations under Regulation No 24.
- 10 From those considerations as a whole it follows that the Member States were bound under the above-mentioned regulations to set up a register capable of functioning in accordance with the criteria laid down by Regulation No 24. Nevertheless, it is not disputed that the defendant had not prepared such a register by the expiry of the period fixed by the reasoned opinion. Decree No 1707 of the President of the Italian Republic of 29 December 1965, published in the *Gazzetta Ufficiale* of 23 May 1966, does not fulfil the requirements of Regulation No 24 since it merely creates the legal and financial conditions making possible the subsequent establishment of a register as laid down in that regulation.
- 11 The defendant has admitted that the body of implementing provisions required by that decree has not yet been taken. It must therefore be declared that by its failure to prepare the viticultural land register the defendant has failed to fulfil its obligations under Article 1 of Regulation No 24.

### Costs

- 12 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. The defendant has failed in its submissions and must therefore bear the costs of the proceedings.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;  
Upon hearing the parties;  
Upon hearing the opinion of the Advocate-General;  
Having regard to the Treaty establishing the European Economic Community, especially Article 169;  
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;  
Having regard to Regulation No 24 of the Council on the progressive establishment of a common organization of the market in wine (OJ, Special Edition 1959–1962, p. 123), especially Article 1;  
Having regard to Regulation No 92/63/EEC of the Council amending Article 1 of Regulation No 24 as regards the date for preparing a viticultural land register (OJ, Special Edition 1963–1964, p. 44);  
Having regard to Regulation No 143 of the Commission laying down initial provisions for the preparation of the viticultural land register (OJ, Special Edition 1959–1962, p. 293);  
Having regard to Regulation No 26/64/EEC of the Commission laying down additional provisions for the preparation of the viticultural land register, for its management and for keeping it up to date (OJ, Special Edition 1963–1964, p. 112);  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69,

## THE COURT

hereby:

- 1. Declares that, by not preparing the viticultural land register provided for in Regulation No 24 of the Council, the Italian Republic has failed to fulfil its obligations under that provision;**
- 2. Orders the defendant to pay the costs.**

Lecourt

Monaco

Donner

Trabucchi

Strauß

Delivered in open court in Luxembourg on 4 March 1970.

A. Van Houtte  
Registrar

R. Lecourt  
President