OPINION OF MR ADVOCATE GENERAL DA CRUZ VILAÇA
delivered on 25 June 1986 *

Mr President,
Members of the Court,

The Court is requested by the tribunal de police, Chaumont, to give a preliminary ruling pursuant to Article 177 of the EEC Treaty on the interpretation of Article 3 (1) of Regulation No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables.

1. I shall start by outlining the essential facts of the case which gave rise to the request for a preliminary ruling.

Pierre Maniglier, a trader in Chaumont, purchased direct from a producer in the south of France, in the area of production, several cases of fruit — peaches, apricots and pears — and transported them in his lorry to the premises of which he is the manager, which are located outside that area of production. Whilst unloading, he was served with a summons by the competent national supervisory authorities on the ground that the products did not bear the requisite markings or labels and were therefore being marketed in contravention of the applicable provisions concerning common quality standards.

2. In the question submitted to the Court of Justice, the tribunal de police, Chaumont, refers to Decree No 80-20 of 7 January 1980, which, in its view, 'transposes into domestic law certain parts of Regulation (EEC) No 1035/72 of the Council, as amended'.

But, as the Court of Justice has consistently held, [1] by virtue of the direct applicability of EEC regulations, any national measure implementing provisions of a regulation is not only unnecessary but is indeed to be condemned.

That does not, however, appear to be the purpose of Decree No 80-20, the letter of which suggests that it is concerned with the fulfilment of a requirement of domestic law.

3. Accordingly, I shall endeavour, having regard to previous decisions of the Court, [2] to determine the exact scope of the question submitted by the French court, on the basis of the facts of the case.

Regulation (EEC) No 1035/72 of the Council of 18 May 1972, as amended by Council Regulation No 1382/84 of 7 May 1984, provides for the common organization of the market in fruit and vegetables.

One of the features of the common organization of the market consists in the introduction and uniform application of 'quality standards' for fruit and vegetables marketed within the Community or exported to non-member countries.

1 — See, for example, judgment of 7 February 1973 in Case 39/72 (*Commission* v *Italy* [1973] ECR 101) and judgment of 10 October 1973 in Case 34/73 (*Variola* v *Amministrazione Italiane delle Finanze* [1973] ECR 981).

2 — See, for example, judgment of 29 November 1978 in Case 83/78 (*Pigs Marketing Board* v *Redmond* [1978] ECR 2347).

* Translated from the Portuguese.

In those circumstances, compliance with those common standards is essential for the application of intervention measures in the markets for which common organizations exist, with a view to eliminating produce of unsatisfactory quality from the market and avoiding any excessive fall in prices.

However, it is equally clear that consumer protection and the satisfaction of consumer requirements constitute one of the essential objectives of the common organization of the market and of the common rules thereof. Accordingly, Article 2 (1) of Regulation No 1035/72 provides that, where 'quality standards' exist, they are to be established for 'products to be delivered fresh to the consumer'.

It is therefore against that background that the wording of Article 3 (1) of Regulation No 1035/72, and likewise the scope of the exceptions to it provided for in paragraphs (2) and (3) of that article, should be construed.

Article 3 (1) of the regulation provides as follows: 'When quality standards have been established, products to which they apply may not be displayed or offered for sale, sold, delivered or marketed in any other manner within the Community unless they conform to the standards'.

It was with that provision in mind that the tribunal de police, Chaumont, asked the Court whether the transportation by a trader himself of fruit purchased direct from the producers in a specific region to his own commercial premises located outside that region was to be regarded as a delivery or act of marketing.

4. It is apparent from the preamble to Regulation No 1035/72 that 'standardization cannot be fully effective unless applied at all stages of marketing'.

By all appearances, however, the rules in question governing the establishment of quality standards and the manner in which compliance with them is to be ensured are concerned essentially with the stage at which produce is offered for sale to the public (in particular on markets other than local markets) and exclude certain initial or preparatory operations during which the question whether the objectives of the Community rules are endangered does not yet arise.

And that, it seems to me, coincides precisely with the scope of the exceptions to the general rule laid down in Article 3 (1) of Regulation No 1035/72, which are provided for in paragraphs (2) and (3) of the same article.

They are exceptions which relate above all to the operations carried out at the initial stage of marketing or processing.

In particular, Article 3 (2) (a) provides that 'products sold, delivered or consigned by the grower from his holding for market preparation and packing or storage' are not required to conform to the quality standards within a Member State.

5. The types of fruit transported by Mr Maniglier, with which the present proceedings are concerned, are subject to

common quality standards [3] and transactions involving them are therefore, in principle, covered by the obligation to comply with those standards in the general terms of Article 3 (1) of Regulation No 1035/72. The same would also apply to the sale by the producer to Mr Maniglier — if there were no exception in the regulation to cover it.

Mr Maniglier maintains that, having purchased the fruit direct from the producers and having personally transported it to his premises located outside the production area, he was about to carry out the requisite 'measurement, labelling and standardization operations' before offering it to the public and, therefore, before any subsequent act of marketing.

If that is the case, it seems that all the operations in question — sale by the producer to the trader, transportation and unloading of the goods at the buyer's premises — are clearly capable of falling within the exception provided for in Article 3 (2) (a) of Regulation No 1035/72.

It is of course for the national court to consider the evidence produced by Mr Maniglier regarding the purpose for which the goods purchased were intended and the operations which they were to undergo.

6. In view of the foregoing considerations, I suggest that the Court should reply as follows to the question submitted by the tribunal de police, Chaumont:

'The purchase of fruit by a trader direct from the producer in a particular area and the transportation of such fruit to the trader's premises located outside that area are not to be regarded as acts of delivery or marketing requiring compliance with the obligations laid down in Article 3 (1) of Regulation No 1035/72 of the Council, if the operations in question fall within the scope of any of the situations envisaged in Article 3 (2) of that regulation.'

3 — In the case of peaches and apricots: Regulation No 23 (OJ, English Special Edition 1959-1962, p. 97), Article 2 (3) and Annex II/4, of which section VI requires quality marking of packages of fruit.
In the case of pears: Regulation No 1641/71 of 27 July 1971 (OJ, English Special Edition 1971 (II), p. 616), which likewise requires — in section VI of the Annex — quality marking of the packages.