In exercising those powers the Commission could, in a situation characterized by efforts to curtail surpluses, legitimately lay down more stringent quality requirements whilst lowering the special intervention price and applying a larger reduction even in respect of a higher quality of common bread-making wheat.

2. The statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. However, the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part.

REPORT FOR THE HEARING
delivered in Case C-27/89 *

I — Legal context of the dispute before the national court

1. *Intervention measures in the cereals sector*

Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals,[1] subsequently amended *inter alia* by Regulations (EEC) Nos 1143/76,[2] 1151/77[3] and 1018/84,[4] set up a price and intervention system for the Community.

Article 3 provides for the yearly fixing by the Community of a common single intervention price for common wheat, barley, maize and grain sorghum and, with regard to common wheat of bread-making quality, a reference price at a higher level than the common single intervention price, in order to encourage production of that cereal.

Article 7 requires the intervention agencies to buy in the cereals offered to them — including common wheat — at the common single intervention price, subject to certain general conditions as to quality and quantity.

As a supplement to this general, permanent system for compulsory purchasing at the intervention price, Article 8(1) of Regulation No 2727/75 provides for the possibility of the adoption of particular intervention measures in respect of cereals which are liable to be sent into intervention in huge quantities in certain regions of the Community.

* Language of the case: French.

1 — OJ 1975, L 281, p. 1.

2 — OJ 1976, L 130, p. 1.

3 — OJ 1977, L 136, p. 1.

4 — OJ 1984, L 107, p. 1.

Council Regulation (EEC) No 1146/76 of 17 May 1976,[5] adopted pursuant to Article 8(3) of Regulation No 2727/75, sets out the conditions subject to which those 'particular' measures may be adopted.

Article 8(2) of Regulation No 2727/75, as amended, also provides that, where necessitated by the situation on the Community market in common wheat of bread-making quality, special intervention measures may be adopted in respect of such wheat with a view to supporting the development of the market therein in relation to the reference price.

Acting under Article 8(4) of Regulation No 2727/75, as amended, the Commission adopted Regulation (EEC) No 1629/77 of 20 July 1977[6] laying down detailed rules of application for special intervention measures to support the development of the market in common wheat of bread-making quality. In Regulation No 1629/77 the Commission defined at the outset the criteria in the light of which the measures were to be decided upon. Thus, Article 2 states that account is to be taken of:

(i) the situation and the prospects regarding the availability of the various cereals on the Community market,

(ii) the import prospects for cereals and the export prospects for common wheat,

(iii) the trend in the price quotations for common wheat of bread-making quality at the most representative centres in the Community.

5 — OJ 1976, L 130, p. 9.

6 — OJ 1977, L 181, p. 26.

The measures must, pursuant to Article 3 of the regulation, specify in particular:

(i) the quality and quantity of the cereals involved,

(ii) the geographical scope of the measure and any duration thereof.

As the third recital in the preamble to the regulation explains, Article 4 introduces a range of special measures graduated to reflect the seriousness of the situation — extending ultimately to the purchase by the intervention agencies of the common wheat of bread-making quality.

On the basis of those provisions the Commission adopted various special intervention measures, according to the market situation, whereby the intervention agencies were required to purchase the common bread-making wheat offered to them by traders, subject to the quantitative limits occasionally set for Member States.[7]

The special measure provided by Commission Regulation (EEC) No 400/86 of 21 February 1986[8] entails the purchase, by the intervention agencies of the Member States, of common wheat of bread-making quality subject to the following quantitative limits:[9]

7 — See Decision No 80/533 (OJ 1980, L 138, p. 11) and Regulations Nos 1403/83 (OJ 1983, L 143, p. 21), 1427/83 (OJ 1983, L 145, p. 24) and 1428/83 (OJ 1983, L 145, p. 26).

8 — OJ 1986, L 45, p. 22.

9 — Second paragraph of Article 1(1) of Regulation No 400/86.

Germany	1 000 000 t
France	200 000 t
United Kingdom	50 000 t
Italy	50 000 t
Denmark	50 000 t
Belgium	50 000 t
Netherlands	50 000 t
Greece	50 000 t
Luxembourg	2 000 t

Article 3 requires the Member States concerned to determine the percentage by which offers made are to be reduced if the total quantity offered exceeds the quantity shown above.

2. *Prices and quality standards for common wheat of bread-making quality*

According to Article 3(2) of Regulation No 2727/75, as amended, the common single intervention price and the reference price for common wheat of bread-making quality are fixed for a standard quality to be determined for each of the cereals in question. The prices and standard qualities are determined with accordance with the procedure laid down in Article 43(2) of the EEC Treaty. [10]

The reference price for common wheat of bread-making quality is established by adding to the common single intervention price for this product an amount reflecting the difference in return between the production of common wheat of such quality and that of common wheat not of breadmaking quality. [11]

The reference price is fixed for common wheat which meets standard quality criteria and medium bread-making quality requirements, [12] in order to avoid encouraging the production of common wheat varieties of insufficient bread-making quality.

Special intervention measures may, however, apply to qualities of common wheat of bread-making quality other than the quality for which the reference price has been fixed. [13] Such measures may be envisaged *inter alia* for common wheat meeting the minimum requirements for bread-making, in which case a reduction is applied. [14]

The Council, acting by a qualified majority on a proposal from the Commission, determines the minimum bread-making requirements for common wheat and defines the medium bread-making quality, whilst the Commission, using the management committee procedure, lays down the method to be used to determine whether common wheat meets those requirements or complies with that definition. [15]

10 — Article 3(6) of Regulation No 2727/75, as amended.

11 — Article 3(4) of Regulation No 2727/75, as amended.

12 — Article 3(2) of Regulation No 2727/75, as amended by Article 1 of Regulation No 1151/77, quoted above.

13 — Article 8(2) of Regulation No 2727/75, as amended by Article 5 of Regulation No 1151/77.

14 — Third recital of the preamble to the amending regulation, Regulation No 1151/77.

15 — Article 4 of Regulation No 2727/75, as amended by Article 3 of Regulation No 1151/77.

Article 1 of Council Regulation (EEC) No 1955/81 of 13 July 1981 laying down technical requirements in respect of common wheat for bread-making [16] provides that common wheat meets the requirements for medium bread-making quality if the dough from such wheat does not stick during the mechanical kneading process and if such wheat has the following chemical and biochemical properties:

(i) protein content of at least 11.5%,

(ii) Zeleny index of at least 25,

(iii) Hagberg falling number of at least 260.

Under Article 2 of Regulation No 1955/81, common wheat satisfies the minimum bread-making requirements if it presents an acceptable degree of amylasic activity and an acceptable protein content and if the dough obtained from this wheat does not stick during the mechanical kneading process.

The Commission defined the characteristics of 'minimum bread-making quality' in Commission Regulation (EEC) No 2062/81 of 15 July 1981. [17] Besides requiring the dough to be non-sticky and machinable, Regulation No 2062/81 provides that, for the purposes of Article 2 of Regulation No 1955/81 (quoted above):

(i) the amylase activity of common wheat for bread-making is to be considered acceptable if the Hagberg falling number is not less than 180 seconds,

(ii) the protein content is to be considered acceptable if it constitutes not less than 10.5% of the dry matter.

Under Article 7(2) of Regulation No 2727/75, as amended, if the quality of the cereal is different from the standard quality for which the intervention price has been fixed, the intervention price must be adjusted in accordance with scales of price increases and reductions. Article 7(5) provides that the minimum quality and quantity required of each cereal if it is to qualify for intervention, together with the scales of price increases and reductions applicable for the purposes of intervention, are to be laid down by the Commission in accordance with the management committee procedure.

Before 1981 the Council fixed the price for common wheat of bread-making quality at the level of the minimum quality suitable for bread-making, in the absence of any definition by the Council of 'medium bread-making quality'. [18]

Council Regulation No 1955/81, cited above, established that definition, and Council Regulations Nos 1950/81 of 13 July 1981 [19] and 1452/82 of 18 May 1982 [20] fixing cereal prices for the 1981/82 and 1982/83 marketing years respectively set the reference price at a level for medium bread-making quality, specifying in an annex the price to be applied for the minimum quality.

16 — OJ 1981, L 198, p. 12.

17 — OJ 1981, L 201, p. 6.

18 — See Regulations Nos 1152/77 (OJ 1977, L 136, p. 3), 1255/78 (OJ 1978, L 156, p. 2), 1548/79 (OJ 1979, L 188, p. 2) and 1872/80 (OJ 1980, L 184, p. 6).

19 — OJ 1981, L 198, p. 3.

20 — OJ 1982, L 164, p. 6.

According to the preamble to those regulations,

'in the case of the application of special intervention measures concerning common wheat which meets the minimum requirements for bread-making, it will be necessary to reduce the reference price on a flat-rate basis'.

Accordingly, the Commission fixed the price for the minimum quality in various regulations, namely Regulations Nos 2158/81 of 29 July 1981,[21] 1837/82 of 7 July 1982[22] and 1644/83 of 17 June 1983.[23]

On the other hand, according to the fourth recital in the preamble to Council Regulation (EEC) No 1019/84 of 31 March 1984 fixing cereal prices for the 1984/85 marketing year,[24]

'as far as common wheat is concerned, the price to be applied in the event of special intervention measures for minimum bread-making quality should not be set by this regulation but determined when such measures are introduced'.

In Regulation No 1019/84 the Council also expressed the view that

'the policy of caution on prices should become a policy of restriction and the gap between Community prices and those of the principal exporting countries should be progressively reduced; ... this objective may be attained by bringing down, for the 1984/85 marketing year, intervention prices and the reference price ...'.

In Commission Regulation (EEC) No 1810/84 of 28 June 1984 on the application of a special intervention measure for common wheat of bread-making quality at the beginning of the 1984/85 marketing year,[25] the Commission stated:

'in accordance with the guidelines laid down in connection with the fixing of prices for 1984/85, the differences between the price for common wheat of the minimum quality, and the single common intervention price should be 7% for the 1984/85 marketing year'.[26]

Under Article 1 of Regulation No 1810/84, the intervention agencies had to purchase certain quantities of common wheat of the minimum bread-making quality defined in Regulation No 2062/81, cited above. According to Article 2, the price to be paid was the reference price for the 1984/85 marketing year, fixed by Council Regulation No 1019/84 [24] at ECU 213.14 per tonne, less ECU 17.62 per tonne.

Article 4(3) of Commission Regulation No 1629/77, cited above, as amended by Regulation (EEC) No 2215/84[27] of 30 July 1984, provides that, in the case of a special intervention measure in the form of the purchase of common wheat of a bread-making quality other than that for which the reference price is fixed, the price to be applied — adjusted, where appropriate, upwards or downwards as provided for in Article 5(3) to (5) — must be fixed in accordance with the management committee procedure.

21 — OJ 1981, L 210, p. 32.
22 — OJ 1982, L 202, p. 28.
23 — OJ 1983, L 160, p. 42.
24 — OJ 1984, L 107, p. 4.
25 — OJ 1984, L 170, p. 33.
26 — Seventh recital of the preamble to Regulation No 1810/84.
27 — OJ 1984, L 203, p. 20.

Since, for the 1985/86 marketing year, the Council had not fixed either the common single intervention price for cereals or the reference price for commmon wheat of bread-making quality, the Commission adopted Regulation (EEC) No 2124/85 of 26 July 1985[28] on precautionary measures in the cereals sector other than durum wheat.

According to the third recital in the preamble to Regulation No 2124/85, the reduction of the common single intervention price should be limited to 1.8%, in the light of the positions adopted in the Council. Article 1 provides that the intervention agencies must, when buying in common wheat, barley, maize and sorghum, apply a price equal to the common single intervention price fixed for the 1984/85 marketing year at ECU 182.73 per tonne by Council Regulation No 1019/84, less ECU 3.29 per tonne. Those prices are adjusted upwards or downwards, as provided by Commission Regulation (EEC) No 1570/7.[29]

Lastly, Article 1 of Regulation No 400/86, cited above, defined the further characteristics of common wheat of bread-making quality which the national intervention agencies were required to purchase under the special intervention measure introduced by that regulation and in accordance with Articles 4(3) and 5 of Regulation No 1629/77, mentioned above:

' (i) a protein content (N x 5.7) in dry matter, of not less than 11%,

(ii) a Hagberg falling number of at least 200, including the preparation (agitation) time of 60 seconds,

(iii) a dough obtained from this wheat which is considered as not sticking during the mechanical kneading process within the meaning of Article 2 of Council Regulation (EEC) No 1955/81.'

According to the eighth recital of Regulation No 400/86 the Commission, in view of the qualitative requirements laid down, adopted for the application of the special intervention measure a price for common wheat of the quality taken into consideration which was 5% higher than the common single intervention price determined in accordance with Article 1 of Commission Regulation No 2124/85.

II — Facts and procedure

The total quantities which French producers offered pursuant to the special intervention measure under Regulation No 400/86 amounted to 1 699 740 tonnes.

The quantitative limit fixed for France being 200 000 tonnes, the Office national interprofessionnel des céréales (hereinafter referred to as 'ONIC') was obliged, under Article 3 of Regulation No 400/86, to fix a percentage reduction of 88.23%, applicable to all offers. Accordingly, every French trader involved had his offer accepted only to the extent of 11.77% of the quantities offered.

28 — OJ 1985, L 198, p. 31.

29 — OJ 1977, L 174, p. 18.

At the same time, the quantities offered in the other Member States induced the intervention agencies in those States to fix a percentage reduction of 2.55% in Germany and 0% elsewhere. The offers made by the traders in those States were therefore accepted in their entirety, or virtually so.

Pursuant to that decision by ONIC, its regional branch, by a decision of 19 March 1986, admitted to the special intervention scheme only 1 560 tonnes of common wheat of bread-making quality out of the 13 250 tonnes offered by the Société coopérative agricole de Rozay-en-Brie, Provins et environs (hereinafter referred to as 'the Cooperative').

The Cooperative's consignment taken over by ONIC had the following qualitative characteristics:

(i) a protein content of 11.70%,

(ii) Zeleny sedimentation index of 30,

(iii) Hagberg falling number of 322.

The Cooperative, supported by the Association générale des producteurs de blé et autres céréales and the Fédération française des coopératives agricoles de céréales, brought proceedings before the tribunal administratif de Versailles to have the individual decision regarding the intervention purchase declared void, arguing that Regulation No 400/86, on the basis of which the contested individual decision was adopted, was illegal on two counts:

(i) as regards the *quantity taken over*, inasmuch as the regulation infringed Article 8(2) of Regulation No 2727/75, the principle of non-discrimination enshrined in Article 7 and Article 40(3) of the EEC Treaty, and the obligation under Article 190 of the Treaty to state the reasons on which measures are based;

(ii) as regards the *price paid*, in view of the *quality* of the consignment taken over, inasmuch as the level of the intervention price and the qualitative requirements applied to common wheat of bread-making quality by Regulation No 400/86 were not in conformity with Article 3 of Regulation No 2727/75 and its implementing regulations.

The tribunal administratif de Versailles concluded that the legality of the individual decision at issue was necessarily dependent on the validity of Regulation No 400/86; accordingly, it referred to the Court for a preliminary ruling a question on the validity of Regulation No 400/86 and, in so far as was necessary for resolving that question, the validity of Regulations Nos 2727/75 (Article 8(2)), 1146/76 (Article 2) and 1629/77 (Article 3).

The question referred to the Court is worded as follows:

'Do Commission Regulation No 400/86 of 21 February 1986 and Council Regulations Nos 2727/75 of 29 October 1975, 1146/76 of 17 May 1976 and Commission Regulation No 1629/77 of 20 July 1977 infringe the provisions of Article 7, Article 40(3) and Article 190 of the Treaty establishing the European Economic Community?'

The judgment of the tribunal administratif de Versailles was lodged at the Court Registry on 2 February 1989.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted by

the Government of the French Republic, represented by Edwige Belliard, acting as Agent,

the Council of the European Communities, represented by J. Delmoly, acting as Agent,

the interveners in the main proceedings, represented by N. Coutrelis,

the Commission of the European Communities, represented by P. Hetsch, acting as Agent.

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 requested the Council, the Commission and the interveners in the main proceedings to supply further information, which they did within the prescribed periods.

Pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court assigned the case to the Second Chamber by decision of 15 November 1989.

III — Summary of the written observations lodged at the Court

1. *Quantitative limits on intervention purchases differentiated according to Member States*

The Government of the French Republic takes the view that the Commission's adoption of a regulation applying a special measure to common wheat of bread-making quality does not, as such, represent a misuse of the powers of management conferred on it by the basic Council regulations.

The French Government leaves to the wisdom of the Court the question whether the Commission's allocation of quantities under Regulation No 400/86 is objectively justified and adequately supported with reasons.

According to the Council, it appears that neither Article 8(2) of Council Regulation No 2727/75 nor Article 2 of Regulation No 1146/76, to which the latter part of the national court's question refers, demands an allocation of quantities between Member States such as that undertaken by the Commission in Regulation No 400/86.

It seems clear that Article 8(4) of Regulation No 2727/75 leaves the Commission a margin of discretion in deciding on the intervention measure best suited to the circumstances, provided that all persons concerned are guaranteed equality of access and treatment (see Article 4 of Council Regulation No 1146/76).

That being so, the question referred to the Court seems, in essence, to be concerned

with whether the allocation of quantities as adopted by the Commission was objectively justified and adequately reasoned, and more particularly whether Regulation No 400/86 observed the Treaty requirements of non-discrimination and an adequate statement of reasons.

Consequently, the Council sees no need at this stage to consider further the validity of Council Regulations Nos 2727/75 and 1146/76, which the national court raised as an ancillary issue. In any case, the judgment referring the matter to the Court contains no substantive argument casting doubt on the validity of those regulations.

The interveners in the main proceedings take the view that Regulation No 400/86 is invalid in the light of Articles 7, 40(3) and 190 of the EEC Treaty, and also by virtue of Article 8(2) of Regulation No 2727/75, as amended.

1. They claim that the difference between the Member States as regards the abatement percentages gave rise to inequality of treatment between Community producers of common wheat of bread-making quality, whereas the situation of those producers was not only comparable but even — particularly in the case of French and German producers — identical; at the time when the Commission adopted the provision in question the market price for common wheat, expressed as a percentage of the intervention price, fluctuated at around 103% in Germany and 102% in France.

According to Article 8(2) of Regulation No 2727/75 the objective of the special intervention measures is to support the development of the wheat market in relation to the reference price. It is in the light of that objective that the provision in question should be examined in order to establish whether it is justified in terms of the principle of non-discrimination, and it is therefore the level of market prices in every region of the Community which constitutes the 'situation' to which reference should be made for the purpose of that assessment.

It may therefore be concluded that the difference in treatment affecting the French producers was not justified in terms of the aim of supporting prices, which a special intervention measure for common wheat of bread-making quality must seek to attain.

Conversely, the total absence of offers in the United Kingdom and Italy — where the market prices were far higher than the intervention price — bears out that contention.

The Court permits differences in the treatment of comparable situations when that differentiation is justified on objective grounds. However, since the principle of non-discrimination is a fundamental principle of Community law, it is incumbent on the authority which adopts a measure leading to a difference in treatment to substantiate such 'objective justification'.

2. Thus, to be permissible, such measures must have 'a particularly thorough and convincing statement of the reasons on which [they were] based'.[30] Such, however, is not the case with Regulation No 400/86, the third recital of which is not a demonstration but a mere assertion.

30 — See Opinion of Mr Capotorti in Case 158/80 *Rewe* v *Hauptzollamt Kiel*, judgment of 7 July 1981, [1981] ECR 1805, at p. 1834.

First, the claim regarding prices is incorrect, or rather the price differences — which actually exist — are not such as to justify the quotas allocated to the various Member States.

Secondly, the claim regarding the possibilities of finding market outlets is not substantiated by so much as a cursory analysis of the Community market in general and the market of each Member State in particular.

In those circumstances, the Court is unable either to review the Commission regulation or to establish whether the difference in treatment between the Community traders was objectively justified.

3. The common organization of the market does not allow the Commission to allocate fixed quantities to the Member States when it adopts a special intervention measure for common wheat of bread-making quality.

Article 8(2) of Regulation No 2727/75, as amended, refers to the situation of the market for common wheat of bread-making quality in the Community as a whole. As for the implementing regulation, Council Regulation No 1146/76, it does not include any provision authorizing national quotas.

Articles 3 and 4(3) of Commission Regulation No 1629/77, enshrining the specific provisions which served as a basis for Regulation No 400/86, cannot be interpreted in a manner inconsistent with the Council regulations to which it gives effect; they do not permit any geographical break-down of special intervention measures.

Measures guided by national or regional market considerations may be adopted only on the basis of Article 8(1) of Regulation No 2727/75 and Article 1 of Regulation No 1146/76, regarding preventive intervention, the aim of which is different from the aim of the special measures for wheat of bread-making quality. By adopting Regulation No 400/86 laying down for every Member State quotas which are justified by 'differing price levels and disposal possibilities in the various Member States',[31] the Commission positively abused the procedure inasmuch as it should, in those circumstances, have resorted to preventive intervention under Article 8(1) of Regulation No 2727/75, as amended.

Commission Regulation No 1629/77 does not expressly authorize the fixing of quotas for each Member State when a special intervention measure covering the whole Community is adopted. Article 3 thereof merely envisages the possibility of limiting the geographical scope of the measure.

Should the Court nevertheless take the view that Commission Regulation No 1629/77 authorized a measure of the kind at issue in this case, the parties to the main proceedings request the Court to declare the second indent of Article 3 of that regulation to be invalid, on the ground that it allows a geographical differentiation not envisaged by Article 8(2) of Regulation No 2727/75 and Article 2 of Regulation No 1146/76.

The Commission makes the preliminary observation that the special measure at issue was not implemented by way of invitations to tender, with the result that Article 2 of

31 — Third recital of the preamble to Regulation No 400/86.

Council Regulation No 1146/76, to which the national court referred in the grounds of its judgment, is not applicable here.

The statement of reasons for Regulation No 400/86, in particular as regards the reasons given for the fixing of quantitative purchasing limits which differ between the Member States, meets the requirements laid down by the Court. The preamble to the regulation, together with the general provisions of Article 8(2) of Regulation No 2727/75 and Articles 2 and 3 of Regulation No 1629/77, enable those concerned to know, clearly and unequivocally, the justification for the measure adopted and permit the Court to exercise its powers of review.

With regard to the allegation of discrimination between producers of common wheat in the Community, the Commission emphasizes that the particular and special measures under Article 8 of Regulation No 2727/75, as amended, cover methods of intervention on the market which differ both in nature and function, and this explains the differences of wording. The two types of measure satisfy opposing requirements differently and should therefore not be confused.

The silence of Article 8(2) of Regulation No 2727/75, as amended, as to the geographical scope of the special measures therefore gives the Commission, whose task it is to decide on the nature and application of the special measures, the option of using a flexible form of intervention which varies according to how much any given market needs support, whenever the situation on the Community market for common bread-making wheat so requires.

Specifically, Article 3 of Regulation No 1629/77 authorizes the Commission to adopt special measures wherever price movements show that such intervention is particularly necessary. In appropriate circumstances, the Commission may decide to adopt special measures which are differentiated according to the market conditions in the respective Member States, in order to limit the special intervention measure to what is strictly necessary and to prevent it from causing upheavals on other markets. It does not, however, prevent traders from offering their cereals to intervention agencies in whichever Member State they choose.

Consideration must be given to the situation on the Community market in bread-making wheat at the time of the Commission's adoption of the special measure, so as to compare it with trends during the previous months. It is also appropriate to draw attention to the trends in prices for common wheat of bread-making quality and the availability of outlets on the French and German markets.

For the purpose of appraising the state of the Community market at any given moment with a view to the adoption of a special intervention measure, the trends in the relationship between the prices charged in the market and the intervention price are crucial to any decision. The relationship between those prices is the outcome of choices made by traders in the market and reflects the balance between supply and demand during the period under consideration, and hence between the various factors set out in Article 2 of Commission Regulation No 1629/77. The Commission adds, however, that a comparison of the various special measures adopted since 1977, in connection with that price relationship, must take account of a number of factors.

First, it should be recalled that the cereals market suffered the repercussions of the surpluses progressively built up after the record harvests of 1982 and 1984. In the case of common wheat, the build-up of market surpluses prompted the Commission, from the beginning of the 1983/84 marketing year, to limit the volumes which could be sold into intervention by virtue of the special measures, whereas in practice intervention had previously been an option available without limits of that kind, other than those governing the duration of the measure. The special measure in question therefore had to be set in the context of progressive efforts to control production.

The second factor to be taken into consideration concerns the stage of the marketing year at which the measure is adopted.

Thus the special measure in question was the only one to be adopted in the middle of the marketing year. As such, it dealt with a situation which differed from the situation prevailing at the beginning or the end of the marketing year, when all the other measures were adopted.

Being introduced in the middle of the marketing year, the special measure under Regulation No 400/86 had to take account of its own impact on the market in order to avoid causing further distortion which might affect its balance. For that reason the measure was based on the changes in the relationship between the market price and the intervention price on the various markets during the final months of 1985 and in January 1986, and also on changes in export patterns over the same period.

During the months preceding the adoption of the contested measure, the market prices for common wheat of bread-making quality had generally remained quite steady since October 1985, lying above the intervention price in most Member States.

None the less, it is the disparities between the Member States underlying that trend which explain the solution used in Regulation No 400/86.

Although the market prices in the three main countries producing common wheat of bread-making quality — in order of importance, France, the United Kingdom and the Federal Republic of Germany — experienced the same upward movement, they stood at different levels, sometimes quite far apart.

Examination of the market prices showed that the need for price support amongst the three main producing countries was felt most acutely in France and Germany and, of those two, more on the German market than the French. The greater steadiness of the French by comparison with the German market, in terms of the prices charged for wheat of bread-making quality, was largely explained by favourable trends in French exports of common wheat during the period from October 1985 to January 1986.

It was clear from all the economic data available at the end of January 1986, including the prospects of stock disposals anticipated by the national authorities, that the situation regarding common wheat of bread-making quality on the French market was not comparable to the situation on the German market; besides enjoying a price advantage of more than 1%, French

producers of common wheat had available to them a natural export outlet incomparably greater than the marketing opportunities for the same type of common wheat produced in Germany. Accordingly, since there were objective differences between their respective needs for market price support, the Commission was quite entitled to set different quantitative limits — proportionate to the dissimilar support needs apparent from the market — on offers which could be accepted respectively in France and in Germany.

2. *The purchase price and technical characteristics of common bread-making wheat as laid down by Regulation No 400/86*

The interveners in the main proceedings claim that Regulation No 400/86 is invalid in the light of Article 3 of Regulation No 2727/75, as amended, regarding the fixing of the common single intervention price and the reference price, and also in the light of the implementing regulations.

Only two qualities of wheat for bread-making are envisaged, namely the medium quality defined by the Council and the minimum quality, for which the specifications are set out in Commission Regulation No 2062/81, mentioned above, for which the Commission, in the exercise of its management powers, may also adopt special intervention measures, in which it must determine the price levels.

It might, admittedly, be thought that the wording of Article 8(2) of Regulation No 2727/75 was broad enough to enable the Commission to adopt special intervention measures relating to a quality other than either the medium quality or the minimum quality. If that is so, however, then the price fixed for common bread-making wheat purchased under the special intervention measures must match the quality in question; yet the price adopted by Regulation No 400/86, namely ECU 188.41 per tonne (the common single intervention price of ECU 179.44, raised by 5%), is equivalent to a reduction of ECU 20.89 per tonne against the 'reference price' for 1985/86, which the Council did not fix but which the Commission should, in the interveners' view, have fixed at ECU 209.30 per tonne by applying to the reference price for 1984/85, ECU 213.13 per tonne, the same reduction of 1.8% as Commission Regulation No 2124/85 had applied, as a precautionary measure, to the intervention price for 1985/86.

The reduction applied by Regulation No 400/86 to common bread-making wheat is also greater than the reduction of ECU 17.62 per tonne which had been applied in 1984/85 by Commission Regulation No 1810/84 [25] as an intervention measure relating to the minimum quality. However, since the quality of common wheat for bread-making envisaged by Regulation No 400/86 was higher than the minimum quality, the result was that in 1985/86 the Commission, in order to support the market for common bread-making wheat, finally reduced the price from the level of the 1984/85 marketing year by a margin greater than the 1.8% announced in Commission Regulation No 2124/85 and based, if not on an express decision of the Council, then at least on 'positions adopted' within the Council.

By adopting the management measure introduced by Regulation No 400/86, the Commission not only infringed its own regulation, Regulation No 2124/85, valid during the marketing year for as long as the Council adopted no provisions of its own, but also exceeded its price-fixing powers,

25 — OJ 1984, L 170, p. 33.

which, in the absence of a Council decision in respect of the 1985/86 marketing year, were limited to the right to adopt any precautionary measures which did not forestall the decisions of the Council on prices for the 1985/86 marketing year.

Moreover, in Regulation No 400/86 the Commission fixed the special intervention price by reference to the intervention price, that is to say, a price relating to wheat of animal feed quality, increased by a given percentage.

However, it is the reference price which is the linchpin of the system of support for the market in common bread-making wheat. The Commission should therefore automatically have fixed the purchase price by deducting from the reference price a margin reflecting the difference in quality as against medium bread-making quality, and it should have done so irrespective of the amount of that margin.

By acting as it did the Commission had therefore departed from the system intended by the Council, which had remained unchanged in 1985/86 because it was not comprised within the annual marketing measures but formed part of the permanent provisions.

In practice, the measure adopted by the Commission is not a mere intervention measure consistent with the machinery for the common organization of the market; it is nothing less than a pricing measure, governing common wheat of bread-making quality without reference to any of the permanent factors in the common organization of the market approved by the Council, namely medium bread-making quality, minimum bread-making quality and the reference price.

In fact, the Commission entirely ignored the existence of a reference price to be fixed for wheat of a medium bread-making quality, whereas it is that price and that quality which form the very basis of the intervention system for bread-making wheat.

The Commission thereby exceeded its powers regarding precautionary measures, which must be limited to what is strictly necessary to fill in the legal lacunae due to the Council's failure to act. The Commission's conduct was thus nothing less than a misuse of its powers, since it used its management powers regarding special intervention arrangements for a different purpose, namely actually amending the price system and the intervention system under the common organization of the market, thereby usurping the role of the Council which has exclusive powers in the matter.

As was the case with the allocation of separate quantities to the Member States, Regulation No 400/86 sets out no coherent reasons on this point either. The last 'recital' in its preamble is merely an assertion, and one which is rebutted by the calculation shown above.

IV — Replies of the parties to the questions put by the Court

1. In reply to a question raised by the Court on the submission by the interveners in the main proceedings that the provisions on the price and technical characteristics of common bread-making wheat under the contested Regulation No 400/86 are illegal, the Council contends that the discretion enjoyed by the Commission by virtue of its delegated powers should be broadly construed.

The proceedings before the national court concern the technical exercise by the Commission of its management powers with regard to a special intervention measure. It is therefore the Commission's task to explain its position on the matter. In any case, the Council is not in a position, from the technical point of view, to give expert assistance in the analysis of the market during the marketing year in question.

The Commission observes that the Council empowered it to adopt special intervention measures in order to support the market in common wheat of bread-making quality, by conferring on it the right, in accordance with the observed needs of the market,

(i) to determine at which level of bread-making quality — other than the medium quality — support would be most effective or most suitable in the light of market trends, and to this end the Council entrusted to it the definition of the chemical and biochemical characteristics of wheat of minimum bread-making quality, and

(ii) as a corollary, in the event of purchase by intervention agencies, to lay down the conditions of purchase and in particular the price corresponding to the quality for which the special measure is provided.

The Commission rejects the interveners' arguments that the contested regulation is not an instrument of intervention consistent with Regulation No 2727/75, as amended. The last subparagraph of Article 8(2) and Article 8(4) empower it to adopt, in the course of the marketing year, a special intervention measure involving the intervention purchase of common wheat

(i) of bread-making quality other than medium quality, in particular that of a minimum quality meeting the generic requirements laid down in Article 2 of Regulation No 1955/81, mentioned above;

(ii) at the price which matches the quality specified, pursuant to the second subparagraph of Article 4(3) of Commission Regulation No 1629/77.

Regulation No 2727/75, as supplemented by the regulations fixing prices for the marketing year in question, therefore did not entitle traders to claim a support measure at a given price. The Commission decided to apply a special intervention measure only where the market needed support, in accordance with certain rules and, in the event of purchase, at a price determined by reference to the quality in question and to trends observed on the market.

The contested regulation, Regulation No 400/86, was adopted under the powers conferred on the Commission by the Council and constitutes an appropriate response for the management of the market in common bread-making wheat during the 1985/86 marketing year. The comparison which the interveners, as proof of the contrary, make with the price fixed as part of the special intervention measure introduced by Commission Regulation No 1810/84, is quite unconvincing.

The Commission regards as irrelevant the interveners' reference to the failure to observe the reduction of 1.8% envisaged by Regulation No 2124/85, because that reduction relates only to the intervention price. As such, it cannot be compared with trends in the purchase price for common

wheat of bread-making quality other than the medium quality, established in the context of a special intervention measure adopted during the marketing year, which is fixed on the basis of the market trends of common wheat.

Indeed, both the bread-making quality defined in Regulation No 400/86 and the experience acquired in the 1984/85 marketing year following the adoption of Regulation No 1810/84 fully justify the price level adopted in Regulation No 400/86.

As long ago as 1983, when making proposals for the reorganization of the common agricultural policy, the Commission had stressed that in order 'to achieve a proper price relationship between different qualities of wheat, and thus obtain economies in expenditure on intervention and exports, there should be a reduction in the gap between the intervention price for minimum quality bread-making wheat and feed wheat' from 10 to 5%. [32]

To that end the Commission had chosen to carry out the reduction, which had been announced and was therefore known to traders, in two phases implemented by Regulation Nos 1810/84 and 400/86; the former sets a margin of 7% between the price of common wheat of minimum quality and the single common intervention price, while the latter fixes a difference of 5% between the price for common wheat of the quality taken into consideration and the intervention price fixed by Commission Regulation No 2124/85.

32 — Common agricultural policy — Proposals of the Commission — Communication from the Commission to the Council, reference COM(83) 500 final of 28 July 1983, p. 24, paragraph 4.27.

The reduction of that margin is readily explained. The application of special intervention measures had shown that the application to common bread-making wheat of too high a support price had afforded an incentive which led to overproduction at a time when the stability of demand suggested that market outlets would be limited, and had caused huge quantities to be sent into intervention.

Lastly, the Commission had found that the special intervention measure adopted in Regulation No 1810/84 had had no effect on the market. That precedent had not only convinced the Commission that its decision to reduce further the price difference discussed above was right but had also prompted it, when it adopted Regulation No 400/86, to amend the minimum standard for bread-making quality by raising the requirements.

2. With regard to the criteria used for quantifying the margin of difference in return between the production of common wheat of bread-making quality and that of common wheat not of bread-making quality, the Council observes that the margin is necessarily expressed as a fixed value on account of the numerous varieties of wheat involved.

The criteria used are the differences in yield and quality between the highest and lowest figures for common wheat used as animal feed and the differences in yield and quality between the highest and lowest figures for common bread-making wheat. The circumstances in which the wheat is produced and the general economic conditions are further factors taken into account. From 1981 to 1985 the margin adopted was 16.60%.

3. At the Court's request the Council supplied the single common intervention price and the reference price for common wheat fixed for each of the marketing years from 1980/81 to 1984/85.

As is clear from the preamble to the annual price-fixing regulations of the Council, both the intervention price and the reference price for common wheat of bread-making quality are fixed 'in such a way as to promote a balance between the different sections of production on the basis of actual market requirements'.[33]

As far as the reference price is specifically concerned, the difference in return between the production of common wheat of medium bread-making quality and the production of common wheat of non-bread-making quality is taken into consideration in such a way as to encourage the production of wheat of good bread-making quality.

4. In reply to the Court's question on the provision empowering the Commission to set out the minimum standards required of common wheat for bread-making in Commission Regulation No 2062/81, the Commission states that those minimum requirements were determined in general terms by Article 2 of Council Regulation No 1955/81. Until that regulation was adopted, the Council itself had fixed the requirements — the Commission stipulating the biochemical characteristics,[34] where appropriate. In accordance with Article 4(2) of Regulation No 2727/75, the Commission laid down in Regulation No 2062/81 the procedure to be followed when checking whether common wheat meets those minimum requirements defined by the Council.

33 — See second recital of the preamble to Regulation No 1950/81, mentioned above.

34 — See Council Regulation No 1256/78 (OJ 1978, L 156, p. 4) and Commission Regulation No 1387/78 (OJ 1978, L 167, p. 36).

5. Turning to the criteria for the calculation of the various prices for special intervention purchases, fixed by the Commission in accordance with the management committee procedure in respect of qualities of common wheat for bread-making other than the quality to which the reference price relates, the Commission emphasizes that the purchase price fixed in Regulation No 400/86 accorded with the guidelines set out both in the 1983 proposals for the reorganization of the common agricultural policy and in its proposals to the Council on prices for the 1983/84 marketing year.

The Commission further observes that the purchase price for the minimum quality was always calculated by reference to the level of the common single intervention price, even though it was formally expressed as a deduction from the reference price for the standard quality. That method of calculation was consistent with the Commission's assessment, in the light of market prices, of the price difference arising from the qualitative difference between common wheat which is suitable for bread-making and common wheat which is not.

6. With regard to the price which, in their view, Article 2 of Regulation No 400/86 should properly have fixed, the interveners in the main proceedings state that, pursuant to Regulation No 2124/85 and on the basis of the prices fixed during the 1984/85 marketing year, special intervention for wheat of the minimum quality for bread-making in 1985/86 should have taken effect at the level of the reference price for 1984/85, reduced by 1.8% and adjusted by a reduction of ECU 17.62 per tonne, representing the difference between the medium bread-making quality (reference price) and the minimum bread-making quality. Intervention purchases of wheat of minimum bread-making quality should therefore have been at the following price (ECU per tonne):

1984/85 reference price		213.13
Less 1.8% (Regulation No 2124/85)	—	3.83
1985/86 reference price	=	209.30
Less deduction for minimum quality	—	17.62
special intervention price for minimum quality, 1985/86	=	191.68

However, the wheat which was the subject of special intervention during the 1985/86 marketing year was of a higher quality, since Regulation No 400/86 required a protein content of 11% and a Hagberg falling number of 200. The price paid for it should therefore have been higher than the price for the minimum quantity.

The interveners maintain that it is difficult to calculate exactly the price corresponding to that quality but that, if account is taken of the factors usually considered in the trade, it was possible to use the protein content as a basis (the price being adjusted by 2% for every 0.5% by which the protein content deviates from the quality required).

On that basis the price to be adopted for the 1985/86 marketing year should have been as calculated above for the minimum quality, increased by 2%, namely:

191.68 + 2% = ECU 195.51 per t.

The Commission itself should have used the protein content as a criterion for calculating the price of common wheat, since, in Commission Regulation No 2135/86 [35] of 8 July 1986 amending Regulation No 1570/77 on price increases and reductions applicable to intervention, it fixed a reduction of 1% for every 0.5% by which the protein content fell short of the standard quality.

On that basis, the special intervention price which should have been fixed under Article 2 of Regulation No 400/86 was the price for the minimum quality, increased by 1%, namely:

191.68 + 1% = ECU 193.60 per t.

T. F. O'Higgins
Judge-Rapporteur

35 — OJ 1986, L 187, p. 26.