3. The purpose of a preliminary ruling by the Court is to decide a question of law, and that ruling is binding on the national court as to the interpretation of the Community provisions and acts in question.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 2 February 1977.

A. Van Houtte — Registrar

H. Kutscher — President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 15 DECEMBER 1976 [1]

Mr President,
Members of the Court,

By order dated 27 April 1976 the Pretura di Cittadella referred questions for a preliminary ruling relating on the one hand to the powers of the national intervention agencies in the context of the common organization of the market for cereals and on the other hand to the prohibition on discrimination in the second paragraph of Article 40 (3), the provisions on aids in Articles 92 to 94 and to Articles 86 and 90 of the EEC Treaty. The questions are as follows:

'1. Does Community legislation on the common market in cereals authorize individual intervention agencies and, in particular, the AIMA, to take a unilateral decision regarding the sale of the agricultural products and, in particular, of the wheat which they hold, by methods other than the system of tenders and invitations to tender provided for under Article 3 of Regulation No 132/67/EEC and by Regulation No 376/70/EEC?
In any event, does such action involve a breach of the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty of Rome?
2. Does Community legislation on the common market in cereals authorize individual intervention agencies and, in particular, the AIMA, to take a unilateral decision regarding the sale of the products, and in particular, of the wheat which they hold, at prices other than those provided for under

1 — Translated from the German.

Article 3 of Regulation No 376/70/EEC?

In any event, does such action involve a breach of the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty of Rome?

3. Does the action of an intervention agency in availing itself of finance from institutions of the State to purchase cereals on conditions other than those provided for by Community agricultural legislation in the sector concerned and in subsequently re-selling them at prices lower than the minima laid down by Regulation No 376/70/EEC constitute State aid to undertakings within the meaning and for the purposes of Articles 92 to 94 of the EEC Treaty and Article 22 of Regulation No 120/67/EEC?

   In any event, does such action involve a breach of the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty of Rome?
4. Does an undertaking endowed with enormous financial resources, which enable it to operate on the market without taking account of the actions and reactions of competitors, constitute an undertaking in a dominant position within the meaning of Articles 86 and 90 of the Treaty and of Regulation No 26/62/EEC, even when such undertaking is an intervention agency within the meaning of Regulation No 120/67/EEC?
5. Again, within the meaning and for the purposes of Article 90 of the Treaty, does the action of an undertaking which infringes a Community rule designed to avoid distortion of competition within the territory of the Community constitute abuse of a dominant position?
6. If the reply to Questions 1 and 2 is in the negative, and to Questions 3, 4 and 5 is in the affirmative, is the intervention agency obliged to compensate for the damage which results from its action in breach of the Community legislation involved in the foregoing questions?
7. What force does the interpretation placed by the Court of Justice on Community law have for the court dealing with the substance of the case? In other words, is the 'ruling' of the Court of Justice binding on the court dealing with the substance of the case in the same way as a court dealing with the substance of a case is bound by a 'point of law' laid down by the Corte di Cassazione?

In the view of the court making the reference a decision on these questions is necessary to enable it to give judgment in an action between an Italian mill owner and another Italian mill. The plaintiff alleges that between the period of November 1975 to January 1976 the AIMA, the Italian intervention agency for the common organization of the cereals market, sold large quantities of Italian common wheat on the market of the province of Padua in disregard of the rules of Community law at a price below the common intervention price. The defendant mill, situated in the province of Padua, benefited, unlike the plaintiff, from this action. It was therefore able to sell meal at a price below the market price causing the plaintiff to lose a customer which it had previously always supplied. Since this in the plaintiff's view constitutes unfair competition and an infringement of Community law it brought an action for damages. Since, however, the actual originator of the damage is the AIMA it was also joined in the action. Further it should be mentioned that the plaintiff's action is supported by certain regional trade associations, namely the milling industry.

Before I deal with the questions which the court making the reference has formulated I would like to mention that the contested sale of common wheat by the AIMA was made in the context of steps to cheapen the sale of bread to consumers in respect of which bread

there is price control in Italy. It was basically resolved by an inter-ministerial committee for economic planning, CIPE, a committee of ministers under the chairmanship of the Prime Minister. The distribution of the quantities of common wheat provided for, in respect of which the said committee had fixed the price, was made by the Minister for Agriculture on the application of the prefects of particularly disadvantaged provinces. The prefects distributed the quantities allotted to the mills in their provinces. The mills were obliged to sell the meal made from the cereal to bakers, who received tokens from the prefects for it, at a prescribed reduced price and the bakers in turn had to use the meal for the baking of cheaper bread consumer mainly by the poorer sectors of population.

Further I should like to mention that Regulations Nos 120/67 and 132/67 of the Council, repeatedly cited below, were replaced with effect from 1 November 1975, that is, in respect of the period November 1975 to January 1976 which is also relevant to the present case, by Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (OJ L 281, 1975, p. 1) and Regulation No 2738/75 of the Council of 29 October 1975 laying down general rules for intervention on the market in cereals. These have not meant any change in the provisions which I shall later quote, in some cases *verbatim*. Only Article 19 of Regulation No 120/67, to be mentioned later, has been changed. I shall return to this in dealing with this provision.

1. Considering the problems referred to us the first two questions should be taken together. Accordingly it must first be considered whether the Community provisions on the cereals market exclude national intervention agencies from unilaterally resolving to dispose of the wheat in their possession without following the procedure laid down in Regulation No 132/67 of the Council (OJ English Special Edition 1967, p. 73) — now Regulation No 2738/75 (OJ L 281, 1975 p. 49) — and Regulation No 376/70 of the Commission (OJ English Special Edition 1970 (I), p. 126) and at a price other than that prescribed by Regulation No 376/70. It is further necessary to examine whether such action, when limited to the mills of one province and thus excluding processing undertakings of neighbouring areas, contravenes the prohibition on discrimination contained in the second paragraph of Article 40 (3) of the EEC Treaty.

Let me first of all remind you of what is laid down in the said provisions. Article 3 of Regulation No 132/67 (now Regulation No 2738/75) provides 'Cereals held by the intervention agency shall be disposed of by invitation to tender'. Article 2 of Regulation No 376/70 provides that an invitation to tender, that is, a call for offers to be submitted, shall be made public. Article 3 of Regulation No 132/67 (now Regulation No 2738/75) provides that 'The terms of the invitation to tender shall ensure equality of access and treatment to all persons concerned irrespective of the place of their establishment within the Community'. Article 4 of Regulation No 132/67 (now Regulation No 2738/75) provides that the Council may establish a selling procedure other than that laid down in Article 3, if special circumstances require. With regard to prices, Article 3 of Regulation No 132/67 (now Regulation No 2738/75) provides that disposal shall be on the basis of price conditions which are determined before the beginning of the marketing year, and are such as will not cause a deterioration of the market. Article 3 of Regulation No 376/70 provides — I shall confine myself to this now — that if the offered cereals are stored at a marketing centre, their selling price must be not less than the local market price and may not, in any circumstances, be lower than the intervention price valid at that centre plus 1·50 u.a. per tonne. Finally I would

like to mention that Regulation No 935/70 (OJ English Special Edition 1970 (I), p. 264) adds a fourth paragraph to Article 3 of Regulation No 376/70 to the effect that in exceptional cases and at the request of a Member State the intervention agency of that Member State may be authorized to restrict the invitation to tender to use for specified purposes.

According to the statements of the plaintiff in the main action and the observations of the court making the reference the impression may be obtained that the contested sales relate to intervention cereals. If this is in fact so the answer to the questions raised should cause no difficulties.

Article 7 of Regulation No 120/67 of the Council on the common organization of the market in cereals (OJ English Special Edition 1967, p. 33 — now Regulation No 2727/75 of the Council — OJ L 281, 1975 p. 1) deals expressly with the subsequent fate of the cereals taken into intervention. Paragraph 3 provides that under conditions to be laid down in accordance with paragraphs 4 and 5, the intervention agencies shall offer the cereals bought in for sale, for export to third countries or for supply to the internal market. Paragraph 4 provides that the Council shall adopt general rules governing intervention. Paragraph 5 provides that detailed rules for the application of this Article shall be adopted in accordance with the well-known Management Committee procedure, including the procedures and conditions for disposal of produce by the intervention agencies. It is precisely these provisions which I have mentioned and whose content I have described. Accordingly it is clear that the intervention agencies must provide for invitations to tender to be made public and afford interested parties equal access; further they are obliged to respect the relevant provisions on prices, that is the prices fixed by them should not adversely affect the normal price formation. If this is not done then there may certainly be said to be an infringement of Community law.

In view of all that has been said, in particular with regard to the requirement in Article 3 of Regulation No 132/67 (now Regulation No 2738/75) that the terms of the invitation to tender shall ensure equality of access and treatment to all parties concerned, it is not necessary to have recourse to Article 40 of the EEC Treaty which provides that the common organization shall be limited to the pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community. If nevertheless it is considered appropriate, then I can only agree with the Commission on this point. It cannot be doubted — I will limit myself to this observation — that Article 40 binds not only the Community legislature but applies also to the Member States in so far as with their intervention agencies they undertake functions within the terms of the common organization of the market.

These observations do not suffice, however. First, the Italian Government in justification of its action has maintained that the AIMA did not act as an intervention agency in the present case but as an institution of the State providing assistance in alleviating local want and therefore it was not bound by the intervention rules on the sale of wheat which was not obtained under the Community rules. Further the Italian Government takes the view that Community law does not provide comprehensive rules. It is tailored to meet situations of surplus and contains no provisions on the protection of the consumer in cases of shortages. There is in particular no provision for the case where a disturbance is limited to a Member State or part of it and relates mainly to products which are particularly important to a Member State. In these circumstances Member States must be

regarded as empowered to adopt national measures.

On this point, it is true, it must be said that the fact that the cereals sold by the AIMA were not intervention cereals, that is not cereals that were taken over by intervention agencies in the context of the organization of the cereals market at the expense of the Community in order to stabilize the market, leads to the further observation that such cereals sales cannot be subject to the said provisions of Regulations Nos 132/67 (now 2738/75) and 376/70. This does not however mean that national agencies acting on the instructions of the Government are completely free in their action.

The Commission has rightly cited Case 60/75 *(Russo* v *AIMA* [1976] ECR 45) in case the other situation should in fact be the true one. This shows that State intervention to control inflation in respect of certain foodstuffs is compatible with the common organization of the market only in so far as it does not jeopardize the objectives or operation of that organization. Such jeopardy was assumed where the action of the national agency was likely to cause a fall in prices below the level of the target price or even the intervention price. If I see it correctly this effect was inherent in the relevant actions of the AIMA in the present case. This emerges in any event from the particulars provided by the Commission of the target and intervention prices applying at the time and a comparison with the prices fixed by the AIMA. There would accordingly in any event be an infringement of the pricing rules laid down in the context of the common organization of the market.

Moreover it also seems to me clear that the Member States are bound by the prohibition on discrimination in Article 40 in such circumstances, namely the direct disposal of cereals outside intervention. This likewise follows from the judgment in Case 60/75 with its reference to the fact that State measures must not jeopardize the objectives and operation of a common organization of the market. It may accordingly be assumed that a Member State on adopting measures which effect the common organization of the market must have regard to all principles governing this sphere, that is including the prohibition on discrimination. Reference may also be made to the judgment in Case 51/74 *(Van der Hulst's Zonen* v *Produktschap voor Siergewassen* [1975] ECR 79). In this case the principle of Article 40 was declared applicable by analogy to a national intervention system intended to complement the common organization of the market.

Moreover the view of the Italian Government that the Community rules are incomplete and consequently the Member States have the power to adopt purely local measures is scarcely tenable.

First of all it is erroneous in regarding the protective clauses of the common organization of the cereals market, in particular Article 19 of Regulation No 120/67, as tailored to meet situations of surplus. In fact Article 19 refers to the case of the cif price being appreciably higher than the threshold price, that is, it contemplates a situation in which the world market prices are above the Community prices and therefore the resulting attraction of the world market could cause difficulties of supply for the Community. The new version of Article 19 in Regulation No 2727/75 has in no way changed this basic principle even though the basis preferred for measures is the equilibrium between the world market price and Community prices.

The opinion is also untenable that Community law provides nothing for cases of local shortages where intervention in the working in the common organization of the market becomes necessary. I refer in this respect to the fact that Regulation No 935/70

adds a provision to Regulation No 376/70 to the effect that in exceptional cases the intervention agency of a Member State may be authorized to restrict the invitation to tender to use for specified purposes. It is also relevant that Article 4 of Regulation No 132/67 (now Regulation No 2738/75) provides that the Council may establish another procedure for the sale of cereals through the intervention agencies, if special circumstances require. The Commission has cogently shown in the proceedings how these provisions have worked in practice and indeed in favour of Italy. Thus Regulation No 1984/73 of the Council (OJ L 201, 1973) authorized the Italian Republic to sell by mutual agreement a certain quantity of common wheat and it was also provided that Italy should ensure 'that wheat sold under this Regulation is used exclusively for the manufacture of foodstuffs to be supplied to the population of the areas of Southern Italy, in particular the towns of Naples, Palermo, Ragusa and Caltanissetta'. Regulation No 2043/73 (OJ L 207, 1973) extended this power to an additional quantity of common wheat which could likewise be sold on the conditions referred to in Regulation No 1984/73. Further, mention should be made of Regulation No 2104/73 of the Council (OJ L 214, 1973) — now since 1 November 1973 Regulation No 2737/75 of the Council (OJ L 281, 1975 p. 47) — according to which the German, French and Belgian intervention agencies had to hold certain quantities of common wheat at the disposal of the Italian intervention agency. The Italian Republic could also sell these quantities by mutual agreement but again it had to ensure that the wheat was used exclusively for the manufacture of foodstuffs to be supplied to the populations concerned. Finally the Council Decision of 18 May 1976 on the sale and use of common wheat held by the Italian intervention agency (OJ L 136, 1976) is also relevant. This provided that the Italian intervention agency should place a certain quantity of common wheat at the disposal of the Italian Government. Article 1 (3) of this Decision expressly provides: 'the Italian Government shall hand over the quantity laid down in paragraph 1 to the milling industry to be processed for the making of bread known as "pane comune" at a reduced price which will enable the least-favoured consumers to purchase that bread'.

All this makes it clear that the common organization of the cereals market must be regarded in fact as a comprehensive set of rules and, contrary to what the Italian Government alleges, it also applies where the adoption of special measures in relation to exceptional circumstances of a purely local nature are concerned.

The Court's judgment in Case 31/74 *(Galli* [1975] ECR 47) must therefore continue to apply unchanged. Essentially this is that the common organization of the cereals market has, for the sake of establishing a single market, established a system covering a number of provisions of substantive law and provisions conferring powers and thus lays down a framework of organization enabling all eventualities to be dealt with. Accordingly where to counter inflation Member States propose measures in a sector subject to a common organization of the market, they must adopt the appropriate ones in the context of the Community to ensure that measures are adopted or approved by the competent Community authorities in accordance with the requirements of the single market created by Regulation No 120/67 (now Regulation No 2727/75).

2. In view of these findings in respect of the first two questions it may rightly be doubted whether it is necessary to consider questions 3 to 5 relating to the provisions on aid and Article 90 in conjunction with Article 86. For the purposes of my opinion, however, I shall not draw this conclusion. Nevertheless, I will deal with the questions but briefly not least of all because on closer

consideration a conclusive assessment is not possible owing to insufficient knowledge of the factual situation.

(a) First it is necessary to consider whether the action of an intervention agency in availing itself of finance from institutions of the State and subsequently re-selling at prices lower than those allowed by Community law is to be regarded as aid within the meaning of Article 92 of the EEC Treaty and Article 22 of Regulation No 120/67 (now Regulation No 2727/75).

As is known, Article 92 which by Article 22 of Regulation No 120/67 (now Regulation No 2727/75) applies to trade in the products covered by this Regulation, declares 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. According to Article 92 (2) (a), which has been cited in the proceedings in the present connexion, the following, *inter alia,* is compatible with the common market: 'aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned'.

In the present case it was possible to gain the impression during the course of the proceedings that the AIMA on the instructions of the Italian Government bought common wheat at the intervention price with State funds and sold at a considerable lower price with the object of making the price of bread cheaper. It may thus be assumed that the Italian State has made a financial contribution and that accordingly the criterion 'aid granted ... through State resources' is fulfilled.

Since the objective of the action was cheaper bread for the benefit of lower income groups in the population it may also be said to be aid having a social character, granted to individual consumers and thus to be regarded as compatible with the Treaty. Against this however it may be said that the methods used, by not directly subsidizing the consumers, could also entail giving an advantage to the milling concerns involved. This may be said to be so since only certain mills were involved in the action to lower the price and they were guaranteed the sale of meal, albeit at a lower price, while other mills which were likewise concerned in the economic sector in question had temporarily to forego certain sales. It might also be true – the court making the reference would if necessary have to investigate this – that, as was maintained in the oral proceedings, greater profits were possible on the sale of cheaper meal, for example in respect of expensive by-products, than on the sale of meal obtained from cereals for which the normal market prices applied.

In these circumstances, that is assuming that certain mills are favoured, it is likewise quite apparent that there may be said to be a distortion of competition or at least, what is sufficient, a threatened distortion of competition. In this respect at least, having regard for example to the higher transport costs or the loss of regular customers, the Italian Government's observation that due to the shortage existing at the time there were no problems of sale for any mills whether they were involved in the cheap sales operation or not, is not a valid objection.

On the other hand it does not appear possible to adopt any conclusion with regard to the further factor, namely that of the effect on trade between States, which (if we are to speak of aid within the meaning of the Treaty) must either be feared – or, as others think – must actually occur, if specific undertakings are favoured. It is true that such a danger is relatively minor in the case of aid

limited to a single locality and occurring at times of an international shortage of cereals. However it cannot be completely ruled out. The court making the reference must therefore clarify this matter as well, for example by obtaining the relevant statistics of foreign trade from which it may perhaps be seen that the cereal imports or meal imports into Italy have declined or that the flow of trade has changed in such a way that meal which was previously sold on the Italian market has been exported to other countries.

These observations in so far as the interpretation of Article 92 is concerned suffice in the present case. It does not seem necessary to me to deal with the similar question of violation of the prohibition on discrimination since according to the Treaty unlawful aids at least are by their very nature discriminatory. In the same way it does not appear necessary to me to deal in addition with the provisions of Article 93 — the necessity of giving notice in due time to the Commission and the consequences of not doing so. There was no express mention of this by the court making the reference and this was no doubt rightly omitted on the ground that for the purpose of considering claims for damages, with which the main action is concerned, only the infringement of substantive provisions of the Treaty are relevant and not whether procedural provisions have been observed.

(b) The two other questions which I should like also to deal with only in summary fashion relate to Articles 86 and 90 of the EEC Treaty. They ask whether an intervention agency with substantial financial resources constitutes an undertaking having a dominant position within the meaning of these Articles and whether it is an abuse of a dominant position where on the sale of cereals the agency infringes Community law designed to prevent distortions of competition.

The court making the reference is apparently concerned in this connexion in particular with the application of Article 86 (2) (c) which provides that an abuse may consist in 'applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at competitive disadvantage'. If this is borne in mind along with what I said previously on the application of the prohibition on discrimination in relation to the acts of the intervention agencies whether in selling intervention cereals or acting outside their functions, it is very hard to see what further value questions 4 and 5 are intended to have. Permit me however at least to make the following observations.

It seems to me very doubtful whether an intervention agency, which on the instructions of the State sells cereals at prescribed prices and with a particular social objective, can be regarded at all as a public undertaking to which the provisions on competition in the Treaty can be applied. Such an organization does not take part in economic life and economic competition as an undertaking does. It is more like an administrative organ of the State acting in a sovereign capacity; basically the State itself acts through the agency involved in order to achieve certain objectives and the question is therefore quite simply one of the responsibility of the State, in assessing which reference to the provisions on competition in the Treaty appears artificial.

If however it is considered defensible to regard the intervention agency as a public undertaking within the meaning of Article 90, then at the same time it must be concluded that it is an undertaking 'entrusted with the operation of services of general economic interest' within the meaning of Article 90 (2). This according to writers on the subject may be assumed if only the interests of part of a section of the population are concerned, for example the supply of

basic foodstuffs or necessities. In such a case, however, the provisions of the Treaty do not unreservedly apply; their application is subject to their not obstructing the performance, in law or in fact, of the particular tasks assigned to the undertakings. But what the position is with regard to this and how the development of trade, also referred to in Article 90 (2), may be affected in the present case with reference to observance of the prohibition on discrimination, cannot be clarified in the proceedings before this Court because of inadequate information concerning the facts, quite apart from the fact that such clarification is unnecessary because the provision of Article 90 (2), as was found in Case 10/71 *(Ministère Publique de Luxembourg* v *Mrs Madeline Hein* [1971] ECR 723), is not directly applicable for the purpose of founding individual rights.

3. The sixth question to which I shall now turn, is concerned with whether the intervention agency is obliged to compensate for the damage which results from its action where it is found to infringe the provisions of Community law referred to in the previous questions. This obviously relates to a claim founded on a breach of official duty for it must be assumed either that the intervention agency has acted as an administrative organ of the State on the instructions of the Government or within the terms of its actual tasks under the organization of the market which must likewise be classified as a sovereign activity with the object of achieving the aims of the Treaty.

The central issue in this connexion is the question whether the Community provisions which are alleged to be disregarded are directly applicable and confer rights on individuals. If this is so, and it is to be assumed so with regard to the provisions relating to the sale of intervention cereals, the provisions on the formation of prices in the common market and the prohibition on discrimination, it follows according to Community law, which has precedence over national law, that conflicting national law is displaced and its application excluded even if it is adopted subsequently. In principle this also means, since only in this way can Community law be fully applied, that should national law nevertheless be applied such application must be set aside or monetary compensation paid if this is not possible. This is true at least where it is a question of rules which are to be regarded as rules protecting those who have suffered damage; the provisions of Community law in question here are to be regarded as such.

On the other hand it was rightly claimed that Community law contains only provisions on the liability of Community institutions. There is no provision on the liability of the State or State institutions. Further it has to be admitted that the national laws on compensation show wide discrepancies in certain respects and that this cannot be simply disregarded by citing the requirements of Community law, in particular its uniform application.

From the point of view of Community law it must therefore be observed in this connexion that the Member States are required to do everything necessary to protect fully the rights of the individual. Although the principle is valid that where there is an infringement of Community law there is an obligation to make compensation, for its detailed application one can only turn, in the present state of integration, to the provisions of national law. The Court expressed this in Case 60/75 *(Russo* v *AIMA)* as follows: 'If an individual producer has suffered damage as a result of the intervention of the Member State in violation of Community law it will be for the State, as regards the injured party, to take the consequences upon itself in the context of the provisions of national law relating to the liability of the State'. In the present case, too, it seems to me that there can be no question of going further than this.

4. The final question relates to the binding effect of a preliminary ruling given by the Court on the interpretation of Community law. All parties to the proceedings have basically taken the same view on this and there appears in fact only one possible answer.

The very fact that Article 177 of the EEC Treaty uses the expression 'shall have jurisdiction' shows that preliminary rulings of the Court of Justice are binding on the court making the reference; opinions of the Court of Justice on the other hand are mentioned, for example in Article 228. If there were any other interpretation moreover the objective of Article 177, which is to ensure a uniform interpretation of Community law, could not be achieved and the obligation of supreme courts to refer a case for a preliminary ruling, which relates to the same jurisdiction of the Court of Justice, would be incomprehensible. Moreover the Court has already given expression to this in the judgment in Case 29/68 *(Milch-, Fett- und Eier-Kontor GmbH* v *Hauptzollamt Saarbrücken* [1969] ECR 165) in the following terms: 'An interpretation given by the Court of Justice binds the national court in question'. This means that where the Court has found that Community law is directly applicable, having regard to its precedence, the court making the reference must disregard conflicting national law without a further national act being necessary, such as a law or the ruling of a constitutional court.

An additional observation is required in view of the reference to the effects of a judgment of a national court of cassation. The court making the reference is of course bound only in the sense that it cannot when giving its decision proceed on the basis of any other interpretation of Community law than that given by the Court of Justice. On the other hand it is not to be excluded, and this was also explained in the judgment in Case 29/68, what the court making the reference may make a further reference to the Court of Justice if further enlightenment is required. Moreover it is of course conceivable that its judgment on the relevance to its decision of the questions may alter and that for this reason it may give a decision disposing of the case without taking account of the preliminary ruling directed to it.

This would also appear to cover all that need be said with regard to the seventh question.

5. Keeping to what is essential for the decision in the main action the questions of the Pretura di Cittadella may be answered accordingly as follows:

(a) It is incompatible with the common organization of the market in cereals for a Member State to sell common wheat by the intermediary of a State intervention agency at a price lower than the target price or the intervention price and, in so far as intervention cereals are concerned, in disregard of the provisions applying to the sale of intervention cereals. In any case on such sale of cereals the principle of equal treatment of purchasers must be respected.

(b) The provisions on the common organization of the market in cereals from which the said principles arise and the principle of equal treatment are directly applicable and give rise to personal rights in favour of individuals. Where they are infringed and in consequence damage is caused to

persons whose interest the said provisions are intended to protect, the State is required to make compensation under the provisions of national law.

(c) Preliminary rulings of the Court of Justice under Article 177 of the EEC Treaty are binding on the court making the reference in the sense that the latter must base its decision on the interpretation of Community law given by the Court where this is relevant.