4. The validity of Regulation No 135/62 of the Commission is not affected by the provisions of Article 2 thereof which lays down that it shall enter into force immediately.

The decision on the costs of the present case is a matter for the Bundesfinanzhof.

Lecourt Donner Strauß

Trabucchi Monaco Mertens de Wilmars Pescatore

Delivered in open court in Luxembourg on 13 December 1967.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 NOVEMBER 1967[1]

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Mr President,
Members of the Court,

In the proceedings referred to us for a preliminary ruling with which we are concerned today, the question is whether the additional amount levied within the framework of the common organization of the markets in poultry meat is lawful. The question has been raised in the following context:

On 19 November 1962 the Neumann undertaking, the plaintiff in the action before the German court, obtained customs clearance for slaughtered chickens coming from Poland and falling under heading 02.02 of the Common Customs Tariff. This was in accordance with Regulation No 22 of the Council on the progressive establishment of a common organization of the market in poultry meat, which was in force at the time and according to which the import of poultry from third countries gave rise to the collection of levies intended to compensate the difference between the feed-grain prices inside and outside the importing Member State and to assure a certain preference for Community producers. The levy was calculated according to the rate applicable from 5 November 1962. Subsequently (by an assessment of 13 December 1962), the customs office claimed payment of an additional amount on the basis of Regulation No 135 of the Commission, published in the Official Journal of the European Communities on 7 November 1962. Article 6 of Regulation No 22 provided for the collection of such an amount should the offer prices free-at-frontier fall below the sluice-gate price, that is to say, the price calculated, taking into account the price of feed-grain cereals on the world market, from a representative co-efficient for processing for third countries and for other production and marketing costs. The additional amount was intended to compensate for the difference between the offer price and the sluice-gate price. Nevertheless the plaintiff refused to pay the amount claimed. It subsequently made a complaint to the principal customs office and, since it was unsuccessful, the plaintiff brought the matter before the Finanzgericht, Nürnberg, and finally, after it had failed in its action there, it brought the matter before the Bundesfinanzhof which is the German supreme court in fiscal matters. In the course of those proceedings it raised a whole series of questions concerning the interpretation and validity of Community law. The Bundesfinanzhof considered that a reply to those questions was necessary to enable it to give judgment and, in accordance in this matter with the submissions of the plaintiff and of the Federal Minister of Finance (intervener), decided to suspend proceedings by an order of 25 April 1967 (after careful consideration of the mandatory nature of Article 177 of the EEC Treaty) and requested the Court to give a ruling on the following questions:

1. (a) Does the Treaty establishing the EEC confer on the institutions of that Community the right to establish systems of levy directly applicable in the Member States, as the Council has done by Regulation No 22 of 4 April 1962 (Official Journal p. 959)?
   (b) If the answer to Question (a) is in the affirmative: do the sums to be collected by way of levy constitute charges (Abgaben) in the sense of customs duties or taxation (Steuern) or, if neither, what are they?
   (c) If the answer to the first proposition referred to in Question (b) above is in the affirmative: in those circumstances, does the Treaty establishing the EEC have the effect of transferring to the Community the power to legislate, as having sovereignty in fiscal matters?
2. If the answer to Question 1 (a) is in the affirmative: must Article 6 (3)

and (4) of Regulation No 22 of the Council be interpreted as meaning that the power to fix an additional levy belongs solely to Member States to the exclusion of the Community institutions?

3. Does Regulation No 135/62 of the Commission (Official Journal p. 2621) infringe Regulation No 22 of the Council and Regulation No 109/62 of the Commission (Official Journal p. 1939), to which it expressly refers, on the ground that, although those two provisions provide for an additional levy should the offer prices fall below the sluice-gate price, Regulation No 135/62 (according to the defendant's allegations) does not take into account—or does not take sufficiently into account—the offer price in fixing the additional levy?
4. Regulation No 135/62 of the Commission provides that it shall enter into force on the day of its publication in the Official Journal: does this affect its validity?

The Council and the Commission of the European Economic Community and the plaintiff in the action before the national court submitted written observations in accordance with Article 20 of the Statute of the Court of Justice. All those concerned also submitted oral observations during the hearing on 7 November.

In the light of those observations I shall endeavour to answer the questions put.

Reply to the questions put

Preliminary remarks

I shall nevertheless take the liberty of making some brief preliminary remarks. The first concerns—if I may express myself thus— the plaintiff's complaint that the Bundesfinanzhof restricted itself to reproducing the parties' arguments without indicating its own view of the questions raised. This complaint is pertinent but does not influence the admissibility of the reference, given that the relevant procedural provisions nowhere require the court making the reference to give reasons in the form of a statement of its legal opinion on the questions put, no matter how desirable and useful this might be in allowing the Court to give a ruling.

The second remark concerns the plaintiff's allegation that the Bundesfinanzhof did not submit to the Court all the points of Community law which it raised in the course of the proceedings before the national court. We must therefore reflect whether our consideration is limited to the points referred by the national court or whether our consideration of validity which has been requested may extend to points which have only been regarded as important by one of the parties before the national court. In principle I am tempted to reply to this question in favour of a wide interpretation of the powers conferred on the Court under Article 177. Above all, when consideration of the validity of Community acts is concerned, which may have serious effects we should not feel ourselves bound by the points of law raised by the national court; we should on the contrary regard as admissible, if not a thorough consideration of the Court's own motion, at any rate a consideration of the parties' arguments relating to the content of the order referring the matter, which appear sufficiently relevant for legal consideration. Naturally it is only at a later stage that I shall consider whether this is so in the present case.

The third remark concerns the definition of the subject-matter of the proceedings. As the Commission rightly emphasizes, in the proceedings before the national court only levies on imports from third countries were concerned, that is to say, the arrangements provided for in Article 6 of Regulation No 22 and the provisions deriving therefrom. It is thus unnecessary to concern ourselves with other questions. Further-

more, it is true that in essence the Bundesfinanzhof only raises questions of validity and that those concerning the interpretation of Community law are intended to clarify the problem of validity. Consequently all that concerns us is the question whether certain provisions of Regulation No 22 and of Regulation No 135, which is based on the former, are valid from the point of view of Community law and it is only within the context of my endeavours in this connexion that I have to consider the interpretation of Community law. My consideration will follow the terms of this finding and not, on the contrary, the order of questions adopted by the Bundesfinanzhof in its order referring the matter.

I — *The validity of Regulation No 22*

We must therefore consider first of all the validity of Regulation No 22, Article 6 of which forms the basis for Regulation No 135 of the Commission concerning the establishment of an additional amount of levy. There are three points to consider here.

1. Powers of the Council on the basis of Title II of Part Two of the EEC Treaty

First, the plaintiff in the main action disputes the validity of Regulation No 22 by referring to Article 38 (2) of the EEC Treaty according to which 'Save as otherwise provided in Articles 39 to 46, the rules laid down for the establishment of the Common Market shall apply to agricultural products'. It follows that the provisions of Article 18 et seq. concerning the establishment of a Common Customs Tariff also apply to agricultural products. Derogations from general rules must be expressly laid down. This is not the case with regard to the system of levies of Regulation No 22 established by the Council. Particular reference cannot be made to Article 43 of the Treaty because it only contains procedural rules for establishing the common agricultural policy. Similarly Article 40, which defines the scope of the Council's powers, does not allow any of the derogations laid down in Regulation No 22 as the levies cannot be regarded as 'regulation of prices' or 'carry-over arrangements' within the meaning of Article 40 (3).

Those grounds impel me to make the following remarks, which accord with the views of the Commission, of the Council and of the Federal Minister of Finance (to the extent to which his opinion is known to me through the order referring the matter).

It is certainly true that in principle the provisions relating to the establishment of the Common Market and therefore those relating to the common external tariff also apply to agricultural products, as Article 38 clearly shows. Nevertheless, the basis of the plaintiff's arguments may be criticized to the extent to which it requires derogations from general rules to be *expressly* laid down in Articles 39 to 46. As the Commission rightly emphasizes by referring to the decision in Joined Cases 90 and 91/63, less rigorous conditions are sufficient here or in other words, it is sufficient that the derogations from the general rules may be deduced clearly and unequivocally from the provisions in question. This is so, for example, when derogations from the general rules of the Treaty necessarily follow from the nature of the organization of the agricultural market on which the content of the articles in question partially turns. Consequently, we have only to consider whether this holds good for the system of levies in dispute, that is to say, whether it emerges in any fashion from the provisions of Title II concerning agriculture that the establishment of this system was legal.

First of all, it is interesting to find that other passages of the Treaty also contain definite indications in support of the idea that the customs provisions

provided for in Article 18 et seq. could in fact be established by the measures referring to the setting up of the common agricultural policy. The Commission showed this when it referred to footnote 1 concerning heading 07.01 in List F of Annex I to the Treaty: 'The rate is normally fixed at the level of the arithmetical average. This may be adjusted, as necessary, by fixing seasonal rates *within the framework of the agricultural policy* of the Community'. It further clarifies this idea by referring to footnote 2 (b) concerning tariff headings 10.07 and ex 11.01 also in List F of Annex I to the Treaty: 'Until *the treatment to be applied within the framework of the measures provided for in Article 40 (2) has been determined,* Member States may, by way of derogation from Article 23, suspend the collection of duties on these products'.

However I shall not dwell further on this point; I shall instead consider the conclusions which may be drawn from the provisions of Articles 40 and 43 with which we are particularly concerned here.

Whatever may be said of Article 43 it is undoubtedly incorrect to describe it as a purely procedural provision. This clearly contradicts paragraph (2) thereof, whereby the Commission is to submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organizations by one of the forms of common organization provided for in Article 40 (2), and for implementing the measures specified in this Title. Since we are concerned with the content of the common agricultural policy, reference must therefore also be made to Article 43.

Article 40, to which Article 43 refers, is, it is true, much more helpful in solving our problems. It states that in order to attain the objectives set out in Article 39 (that is to say, the objectives of the common agricultural policy) a common organization of agricultural markets is to be established. This organization may also take the form of a European market organization which (see Article 40 (3)) may include all measures required to attain the objectives set out in Article 39, in particular regulation of prices and common machinery for stabilizing imports or exports. In accordance with a proper interpretation of those terms there can be no difficulty, in my opinion, in describing the system of levies as 'common machinery for stabilizing imports': its objective is in effect to offset the differences in price in relation to the world market, that is to say, to keep import prices at a stable level and therefore have the effect of stabilizing the market, which is one of the objectives of the common agricultural policy prescribed in Article 39 (1) (c). Furthermore, it appears equally defensible to consider the levy as a means of regulating prices in accordance with Article 40 (3), whose objective is to guarantee a minimum price to producers. For this purpose the levy must also be immediately and fully—not gradually—effective and must be variable, that is to say, that the authority entrusted with its application must be able to fix its amount in each case in terms of the position of prices on the market in order to assure complete compensation.

Consequently the interpretation of the provisions which have just been considered already allows me to conclude that a system of levies within the framework of Title II concerning agriculture is in principle lawful. This finding is confirmed by other considerations. Thus it is necessary to take as the point of departure the idea that in replacing the national market organizations, provided for in Article 40, the duties of those organizations must be carried out within the framework of the common organization. This means that the common organization of the markets may also prescribe the regulation of prices, hav-

ing regard to the fact that this mode of procedure was always an integral part of the national market organizations, even though this was perhaps not the case in the Federal Republic. Finally, in view of the fact that under Article 43 (3) a common organization of the markets which is substituted for national organizations must ensure conditions for trade within the community similar to those existing in a national market, it must be admitted that *uniform* regulation of imports, that is to say, a uniform system of levies, is indispensable.

Without the necessity for a detailed examination of the argument raised in the course of the oral procedure on the subject of GATT, I am in short able to agree with this first finding: it is impossible to base on Article 38 of the Treaty any argument adversely affecting the validity of the system of levies provided for in Regulation No 22; on the contrary this derogation from the provisions of Article 18 et seq., is justified on the basis of Articles 39, 40 and 43 of the Treaty.

2. Did the Council of Ministers have the power to introduce the system of levies directly by means of a regulation?

Secondly, the plaintiff disputes that the Community authorities (in particular the Council) have the right to establish a system of levies by means of regulations. In its opinion, the levies constitute 'charges' (Abgaben) within the meaning of tax law. Fiscal sovereignty was not transferred to the Community. The conclusion would not be different if the levies were considered as charges having an effect equivalent to customs duties, as sovereignty in customs matters has by no means been transferred to the Communities. Likewise it is necessary to exclude the possibility of separating certain spheres of the fiscal and customs sovereignty of the Member States in order to transfer them to the Community. Consequently the Council of Ministers might at most have been able to resort to a directive to establish the disputed system.

I must say from the outset that with regard to the second question I am also unable to agree with the plaintiff's line of argument, and in this matter I follow the opinion of the Council of Ministers, of the Commission and of the Federal Minister of Finance.

The plaintiff's deductions seem erroneous from the very outset, that is to say, when they endeavour to put the levies in categories prescribed by the tax and customs provisions of the Member States. Without going into the details of its argument, I may nonetheless remark that it seems wrong to compare the levies with, for example, the turnover equalization tax; in fact, one is intended to offset a charge at a national level and consequently involves fixed rates, whilst the other is intended to offset a difference in prices and therefore varies according to the market position.

Nevertheless this argument is not decisive; for, even on the supposition that the system of levies represents a fiscal measure conforming to national law and that fiscal sovereignty in principle was left with the Member States during the transitional period, this brings us no nearer to a solution to the problem. In fact this is no imperative reason for considering impossible a *partial* transfer of fiscal sovereignty (or of customs sovereignty) to the Community; in other words, it is perfectly conceivable that the Community should henceforth have *certain* powers in fiscal and customs matters, even though, for the remainder of this sphere, it is unable to issue provisions directly applicable in the Member States. Consequently it is important merely to show the existence of provisions in the Treaty which, reasonably interpreted, can lead to the conclusion that such a power exists.

In my opinion the Commission and the Council have been successful in doing so. In particular, it must be recalled here again that Article 43 of the Treaty, previously quoted, contains not only rules of procedure but rules regarding powers, as I have shown. Taking into account the fact that the establishment of a common agricultural policy requires wide powers exceeding the bounds of normal Community measures, in accordance with Title I of the Treaty, Article 43 provides that 'The Council shall, on a proposal from the Commission and after consulting the Assembly, acting unanimously during the first two stages and by a qualified majority thereafter, make regulations, issue directives or take decisions'; which can only mean that a discretion is conferred. Moreover, the existence of such a power is easy to understand. In fact, if derogations from Article 18 et seq. are in principle authorized with regard to agriculture, the choice of means, particularly between regulations and directives, cannot be an important factor for the Member States concerned, as a directive is also binding in its effects and frequently leaves only a narrow margin with regard to the choice of methods. But in support of the notion that the form of a regulation was properly chosen for the system of levies, it may in particular be argued that this machinery must be such as to function rapidly and smoothly. This is particularly valid with reference to the system of the additional levy which must be adjusted in terms of the price situation. Its effectiveness would in fact be weakened if it could only be established by means of a decision requiring national implementing measures which might involve a considerable loss of time.

It is therefore impossible to criticize the validity of Regulation No 22 on the ground that this method of legal procedure might not be used by the Council in the fiscal sphere.

3. Promotion of trade with third countries

The plaintiff disputed before the Bundesfinanzhof the validity of Regulation No 135 and, therefore, of Regulation No 22 on the ground that the system of levies failed to observe the principle of the development of trade with third countries. This argument was not contained in the order referring the matter. As I said at the outset, it appears to me possible, nevertheless, to consider it as it concerns the question of validity and it is difficult to rule that it must be rejected as completely lacking in importance.

A more detailed consideration, however, shows that the plaintiff's objections appear unfounded. Here we may leave open the question of whether the promotion of trade between the Member States and third countries, which appears in the preamble and amongst the objectives by which the Commission is to be guided under Article 29, and which is also mentioned in other terms in Article 110, constitutes an imperative objective in connexion with the establishment of the common agricultural policy.

Even if this is admitted, it is difficult to side with the Commission when it observes that the promotion of trade with third countries is difficult to reconcile with the body of the objectives of the common agricultural policy. When it is impossible completely and simultaneously to attain all those objectives, according to the Court's case-law developed for similar situations in the sphere of coal and steel, all that is essential is to endeavour equitably to reconcile those objectives. This constitutes an authority for giving priority to one or other in terms of the economic situation. It is only when such a reconciliation (which in fact can scarcely be the subject of judicial review) displays a clear misuse of powers (when, for example, one of the objectives in-

voked has obviously been ignored or completely neglected) that one can talk of infringement of the Treaty and entertain the nullity of the measure in question.

It does not appear that this is so in the present case. The Commission has shown that in introducing the system provided for by Regulation No 22 the Council displayed complete moderation by limiting in principle the import charge to a flat-rate amount intended to compensate the difference (assessed every three months) between the price of feed-grain from third countries and that from Member States. With regard to the additional amount determined when the price of poultry on the world market falls below the amount calculated taking into account feeding costs and other processing costs, it must not be forgotten that with regard to the organization of the market in poultry meat (Article 15), other traditional methods of protection against imports (such as customs duties and other quantitative restrictions) have been given up. This no doubt produces an effect favourable to trade with third countries. Furthermore, we must note that, apart from certain figures on the development of imports in the Federal Republic, no evidence has been produced to us that the additional amount hampers external trade to any considerable extent or that the essential interests of national producers in this sphere would be threatened without such protection.

I am thus able to conclude that in this case also there is no reason to question the validity of Regulation No 22 (or of Regulation No 135), on the ground of the requirements of the Community's external trade.

II — *The validity of Regulation No 135 of the Commission*

The plaintiff also puts forward three objections intended to prove the nullity of Regulation No 135 of the Commission establishing an additional amount of levy in respect of slaughtered hens and chickens imported from third countries, in accordance with Article 6 of Regulation No 22 of the Council.

1. Was the Commission competent to fix the additional amount?

It is logical in the first place to question whether it is for the Commission or for the Member States to fix the additional amount. In replying to this question, reference must be made to Article 6 of Regulation No 22 of the Council and to other provisions of this regulation with which a comparison will be made.

Here in fact, contrary to the plaintiff's view, the terms of the first subparagraph of Article 6 (3) '. . . the amount of the levy . . . shall be increased in each Member State by an amount . . .' are only of limited use as they are equivocal. This is not so in the case of Article 6 (4). It states *inter alia*: 'The following shall be determined according to the procedure laid down in Article 17 . . . methods of fixing the additional amounts referred to in paragraph (3) above. Such additional supplementary amounts shall, however, be determined and collected by the importing Member State. The Member State taking this measure shall immediately notify the Commission and the other Member States. The measures to be taken jointly by the Member States shall be determined according to the procedure laid down in Article 17'. Several stages must therefore be distinguished. First, establishing the means of fixing the additional amounts. This is done in application of the procedure defined in Article 17 of Regulation No 22, that is to say, by reference to a Management Committee having the right to deliver an opinion, but ultimately in the form of a measure taken by the Commission, which 'shall be immediately applicable' (Article 17). Then follows the fixing of the additional

amounts by the importing Member State which is required to notify this measure to the Commission. Finally, 'measures to be taken jointly by the Member States' are provided for: they are also to be determined according to the procedure laid down in Article 17, that is to say, by the Commission, and are consequently directly applicable. In these circumstances it cannot be denied that the Community (in particular the Commission) has power to take directly applicable measures and that it may do so (*inter alia*) after the Member States have fixed the additional amounts. It only remains for me then to consider whether this Community power also includes fixing additional amounts.

I think that the Commission has supplied conclusive proof on this point. It has in particular asked the question what other measures may be taken into consideration in this context, that is to say, after the Member States fix the additional amounts, and it is right when it states that the measures referring to the preparation for fixing the additional amounts by the Member States must not be taken into account because they already appear expressly at the beginning of Article 6 (4) which deals with the methods of fixing the additional amounts. Likewise it seems clear that, in the present context, where the only measures which can be contemplated are those ensuring on the Community level the same protection as that given by the additional amounts fixed by the Member States, there can be no question of a prohibition on imports or quotas. In fact it is difficult to suppose that the Council can have intended such important measures (also provided for by the protective clause in Article 12, but subject to very strict conditions) to be taken by means of the Management Committee procedure of Article 17, without exactly defining the limits to be observed in this case, when Article 6, providing detailed rules for fixing additional amounts, constitutes a less radical measure. Finally account must be taken of the fact that, under the terms of the ninth recital of its preamble, Regulation No 22 only talks of fixing additional amounts when offers are made at abnormal prices. Under those conditions it may be considered that the Commission's theory is convincing: according to this, fixing the additional amounts is also a 'measure to be taken jointly' under Article 6 (4) which must be interpreted in accordance with the theory of the two stages: first of all the Member States are authorized to act and then, on the basis of notification of the measures taken at the national level, the Commission has the opportunity to employ its Community powers.

The Commission wished to prove to us that this interpretation was the only correct one, by referring in addition to examples borrowed from the preparatory studies for the organization of the market in pig meat (Regulation No 20) and to considerations which were decisive in adopting the regulation concerning poultry, particularly with regard to the question of additional amounts. It also refers to Articles 5 and 6 of Regulation No 109 and to its preamble, that is to say, to measures which were indeed adopted by the Commission, but by the Management Committee procedure, in other words, according to the opinion delivered by the representatives of the Member States who also sat on the Council's working parties. Finally it invokes the practice of the Council which has already had occasion to give a ruling on the fixing of additional amounts by the Commission (in that case considered as a measure to be taken jointly) and which proceeded in the same way with regard to Regulation No 46/63, when it was a matter of fixing an additional amount for imports of slaughtered hens and chickens. I shall not consider all those examples in detail, as they are not in themselves decisive from the point of view of interpretation. It is nevertheless illuminating to find thus corroborated

the interpretation arrived at on the basis of Regulation No 22 alone.
According to the Commission's view, which is shared by the Federal Minister for Finance, it must therefore be found that the fixing of an additional amount by the Commission constitutes a measure to be taken jointly, pursuant to Article 6 (4), and that consequently Regulation No 135 cannot be vitiated by nullity for infringement of a rule with regard to competence.

2. Is the fixing of a general additional amount lawful?

Secondly the plaintiff cites against the validity of Regulation No 135 the fact that Article 1 of this regulation provides for a general additional amount (that is to say, a certain amount per unit of weight of imported poultry meat). It takes the view that on the contrary each import contract must be considered individually. If such a contract, as in the plaintiff's case, fixes a price below the sluice-gate price, the collection of an additional amount is not justified as, under Article 2 of Regulation No 109, the additional amount is only to be determined if the offer price falls below the sluice-gate price.
As the Commission rightly emphasizes, in order to reply to the question thus raised, reference must be made to Article 6 of Regulation No 22 which constitutes the legal basis of Regulation No 135. Indeed it is more difficult to give a reply because of the fact that Regulation No 22 does not state expressly whether an individual or general additional amount is to be levied. Nor does a grammatical interpretation give any result as Article 6 is not uniformly drawn up. Thus in paragraph (3) the German version uses the terms 'Angebotspreis' (offer price), 'Einschleusungspreis' (sluice-gate price) and 'Zusatzbetrag' (additional amount), that is to say, it uses the singular, whilst in the other official languages the word 'prices' (in the plural) is employed at the beginning of paragraph (3). In paragraph (4), all four languages refer to 'additional amounts' in the plural, but also to 'this measure'.
Reference must therefore be made to other considerations for a correct interpretation of the meaning of this provision. In my opinion the Commission has shown in a pertinent manner how this must be done.
In its opinion the essential factor is that Article 6 (4) requires 'measures to be taken jointly' which are to be determined by the Commission. From a purely logical point of view this in fact precludes fixing individual additional amounts, in view of the fact that they are in no way joint. The sole joint element would be at the most the rules in accordance with which they must be determined. These are not the rules referred to by the phrase 'measures to be taken jointly' contained in the last sentence of paragraph (4), since they appear earlier in Article 6 or are provided for by the first part of paragraph (4), which expressly deals with 'methods of fixing' the additional amounts referred to in paragraph (3).
The accuracy of this finding that the Commission is authorized to fix general additional amounts (even if they may in certain cases involve inappropriate charges) is further confirmed by other considerations. In practice it is only in fact an agency in a position to find the prices actually prevailing which can fix an individual additional amount; in fact this cannot be either the Council or the Commission. The Management Committee procedure (as defined by Article 17 of Regulation No 22) was certainly not provided for in order to make such a calculation. It must also be admitted that a system of individual additional amounts involves considerable administrative difficulties because according to this system the actual import price must be checked exactly. Finally it might be additionally alleged,

although it is not indeed conclusive, that Regulation No 109 also clearly indicates the fixing of general additional amounts. This substantially corroborates the interpretation arrived at directly on the basis of Regulation No 22; in addition it is found that all the other market organizations have the system of general levies in common and there is also the fact that the Federal Minister of Finance shares the opinion of the Commission.

Consequently, Regulation No 135 is not invalid on the ground that it fixes a general additional amount.

3. Was it possible for Regulation No 135 to enter into force on the day of its publication in the Official Journal?

Article 2 of Regulation No 135 provided that it should enter into force on the day of its publication in the Official Journal of the European Communities. In the view of the plaintiff in the proceedings before the national court, this contradicts the principle of legal certainty and the principle that measures taken by public authorities must be foreseeable, all the more so as the Official Journal is only sent to those concerned five days after it appears. On the contrary the plaintiff considers that it was necessary to grant a transitional period which it estimates at between 14 and 60 days, taking account of goods bought or in transit. At least a transitional period was necessary from the fact that Regulation No 135 introduced a general additional amount, that is to say, a new system, in place of the variable levy set up by the Federal Government.

In my opinion this is the most delicate point of the proceedings. The problem retains its importance if it is recalled that Regulation No 135 was published in the Official Journal of 7 November 1962, whilst the import contract in dispute dates from 13 November 1962; this allows us to concentrate our consideration on the question whether Regulation No 135 could enter into force at least six days after its publication and leave out of account the delicate question of the delays in despatching the Official Journal. In fact one cannot fail to observe that the swift modifications made to the provisions on external trade considerably impede the economic circles concerned in their estimations and may harm their business. This is why it is necessary to consider carefully how from this point of view the validity of Regulation No 135 is to be appraised.

In fact, the EEC Treaty itself is of no assistance to us in this case, having regard to the fact that Article 191 merely states that regulations shall enter into force on the twentieth day following their publication if they do not specify a date. This article is thus sufficient authority for the practice frequently adopted by the Commission (and likewise by the Council) according to which regulations enter into force on the day of their publication in the Official Journal.

Similarly it appears inconclusive to refer to general legal principles as the plaintiff suggests: in fact I must agree with the Commission that it is impossible to show that the legal systems of the Member States recognize a principle whereby legal provisions cannot enter into force on the day of their publication. On the contrary, there are in all Member States provisions which enter into force on the day of their publication. This is often the case particularly with regard to taxes and customs duties or, more generally, external trade. Similarly in other market organizations of the Community (for example, in the organization of the market in cereals), modifications to very important data enter into force at very short notice. This was raised in Case 16/65 without objections being raised by the Court on the point. Moreover, consideration of the peculiarities inherent in the organization of the

market in poultry meat results in a similar conclusion. We know from the Commission that in the agricultural sector the interests of the national producers are protected exclusively (apart from the protective clause in Article 12 of Regulation No 22) by means of levies intended to maintain prices at a stable level and that provision was not made for interventions of the type allowed for other market organizations.

Such a regulation can only be effective in practice if the levies are modified quickly in terms of the price situation, since the intervention of the Management Committee already involves a certain delay. If the modifications only came into force after an interval of fourteen to sixty days, as the plaintiff wishes, it would often happen that they were no longer adapted to the market situation and the national market in poultry meat would be disturbed; in fact imports at low prices may take place until the additional amount comes into force and they may cause appreciable problems within the Community price system. Moreover, the extent to which a modification of the levies at short notice would take importers by surprise must not be over-estimated. The Commission rightly observes that under Article 6 of the basic Regulation No 22, which provides for fixing additional amounts under certain conditions, it must always be expected that the decisive elements will undergo modifications of such a kind; it also observes that, since the traders have a precise knowledge of the state of the market and the trends in prices, they can adapt themselves to those modifications.

It remains then to consider finally whether exceptions to the principle of modification of the levies at short notice might be appropriate in individual cases.

First the contracts for sale already concluded must be considered. The Commission rightly considers that such an exception is unjustified. Besides the fact that it was expressly rejected in the course of the deliberations which preceded the drafting of Regulation No 123, which entered into force on 1 July 1967 in place of Regulation No 22, there are two types of difficulty: the first difficulty, which indeed is not in itself conclusive, is to check the exact date on which the contract of purchase was concluded. The second, and here the difficulty is greater, is that one must reckon with the existence of long-term contracts of purchase concerning large quantities: they might threaten the national market in poultry meat if the system of additional amounts were not applicable to them. Nor is it possible to remedy this risk by a system of levies fixed in advance (as is the case in the market in cereals) in view of the fact that the market in poultry meat does not have periodic quotations allowing account to be taken of the future evolution of prices. This is also true of goods in transit which are only accorded special treatment under the protective clause provided for in Article 12.

Finally, despite what the plaintiff thinks, a special transitional period cannot be required, on the ground that in November 1962 a general additional amount was introduced for the first time; this came into force in place of the variable levy established by the Government of the Federal Republic of Germany from 7 September 1962. The determining factor here is the idea that it is impossible to talk of legitimate confidence in the maintenance of the existing legal situation. As I have shown, it is clear from Regulation No 22 and from Regulation No 109 that the Commission could perfectly well establish a general additional amount (as a measure to be taken jointly) and that the importers had to take into account such a legal situation. Moreover, they ought not to have supposed that a Community measure could not be adopted two months after the

introduction of a national measure, since the interval referred to in Article 6 of Regulation No 109 clearly cannot be regarded as a bar.

Consequently, with regard to the third question raised I must also find that it does not allow the validity of Regulation No 135 to be questioned.

III — *Summary*

In view of the foregoing the reply to the questions put to us can be summarized in the following sentence:

It is impossible to deduce from the arguments submitted to the Court any conclusion adversely affecting the validity of Regulation No 22 on the progressive establishment of a common organization of the market in poultry meat or the validity of Regulation No 135 establishing the additional amount of the levy in respect of slaughtered hens and chickens imported from third countries.

In accordance with the established case-law of the Court, it is unnecessary to give a ruling on the costs of the reference procedure.