OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 8 NOVEMBER 1972[1]

Mr President,
Members of the Court,

I — Introduction

1. *The system of carry-over payments for cereals held in stock at the end of the marketing year*

The common organization of the market in the cereals sector, governed by Regulation No 120/67 of the Council, includes, in particular, intervention machinery the purpose of which is to stabilize the market and to guarantee a fair standard of living for the agricultural community by means of measures to maintain prices.

Among other provisions, this regulation provides, by Article 9, that a carry-over payment may be granted for certain cereals in stock at the end of each marketing year. For the 1967/68 marketing year, the conditions for the granting of this payment were laid down by Regulation No 541/68 of the Council and by implementing Regulation No 602/68 of the Commission of 16 May 1968.

The carry-over payment, the rate of which varies according to the nature of the cereals in stock, is granted at the marketing stage or the processing stage, such as milling.

This payment is the indispensable complement of the intervention system in the sector of cereals. In fact, the price guarantee, inherent in the common organization of the market, must take into account, throughout each marketing year, the expenses incurred through the stocking of cereals and, consequently, the increase in production costs resulting from the holding of stocks. The target, intervention and threshold prices are therefore increased monthly until May, the month during which they reach their highest level.

On the other hand, during the last two months of the marketing year, June and July, these increases are no longer justified; at this time of the year there are already newly-harvested cereals on the market for which there is no need to compensate the costs of storage. The difference between the intervention prices for these new cereals and the prices for the previous harvest would therefore encourage holders of stocks of cereals to sell them to the intervention agencies at a time when those products can be sold on the market.

The carry-over payment granted for cereals in stock on 31 July is intended to discourage this temptation. According to the first paragraph of the recital to Regulation No 541/68 it should 'prevent massive quantities of cereals being offered for intervention immediately following the monthly increases of the intervention price ...'.

This compensation, which is only granted for cereals intended for human consumption, harvested in the Community during the previous year, is equal, at most, to the difference between the target price in force during the last month of the marketing year and the price fixed for the first month of the following marketing year.

With regard to common wheat and rye of bread-making quality the carry-over payment, fixed in 1968, reached the maximum rate thus prescribed, namely, 9.50 and 3.90 u.a. per tonne respectively.

Such is the economic background to this system. To qualify for compensation an owner of cereals in stock must, by Article 3 of the implementation Regulation No 602/68:

— first, 'declare, by registered letter, by telex message or by telegram sent not later than 7 June 1968, to the aforementioned competent authority, his intention to apply for a carry-over payment as well as the amounts of each cereal ... held by him on 31 May 1968, with details of the agent and the warehouse where such stock may be inspected;'

1 — Translated from the French.

— secondly, 'present, by registered letter, telex message or telegram sent not later than 5 August 1968, an application for a carry-over payment to the same competent authority, indicating the stocks of cereals referred to above held by him on 31 July 1968.'

'Such a request must, at the very least, include the particulars and the declarations referred to in the Annex hereto.'

This annex lays down the minimum information to be furnished when the application is made, namely:

1. a description of the cereal,
2. the quantity,
3. the place where the stock is kept,
4. a declaration that:
   (a) the cereal is not part of the 1968 harvest,
   (b) the cereal was harvested in the Community,
   (c) the applicant is the owner of the cereal, and
   (d) the cereal is sound, genuine and marketable within the meaning of the Community regulations in force.

Finally, Article 5 of Regulation No 602/68 provides that the competent authority of each Member State must, first, 'carry out the necessary inspection of stocks and their movements within its territory' (paragraph 1) and, secondly, 'adopt all additional measures required to take account of the particular conditions within its territory and in particular the times at which the stocks and their movements are submitted to inspection' (paragraph 2).
In Germany, the Ministry for Agriculture and Forests published in the Bundesanzeiger on 22 May and 19 July 1968 respectively two notices concerning the application of this Community regulation; these notices announced the promulgation of a decree (Rechtsverordnung) which was not published in the Bundesanzeiger until the following 6 August. The second notice and the decree stated in particular that the information accompanying the applications could, in certain cases, be validly submitted by means of forms up to 12 August 1968.
These are the provisions the implementation of which has given rise to the proceedings between Wasa GmbH, which operates a mill at Celle, and the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (Office for the Importation and Storage of Cereals and Fodder), Frankfurt am Main.

2. *The facts*

Since it held common wheat and rye of bread-making quality on 31 May 1968 the company declared, by a letter of 6 June, its intention of applying for the carry-over payment. Then on 7 August 1968, after the publication of the German decree of 3 August 1968, it sent its applications for compensation to the competent authority, which were received on 9 August 1968.
The Einfuhr- und Vorratsstelle für Getreide und Futtermittel considered that Wasa had not observed the time-limit prescribed by the second indent of Article 3 of Regulation No 602/68 of the Commission of the European Communities and refused to grant the carry-over payment claimed.
The company first appealed against this decision to the Verwaltungsgericht, Frankfurt am Main (Administrative Tribunal). That court, although it decided that the time-limit imposed by the Community regulation was mandatory, under penalty of being time-barred, nevertheless relieved the company from being time-barred by invoking the fundamental principles of German law the precedence of which it upheld.
The Einfuhr- und Vorratsstelle appealed to the Hessischer Verwaltungsgerichtshof (Administrative Court) which quashed that judgment and held that because it had failed to lodge its applications for compensation not later than 5 August 1968 Wasa could not, in the absence of contrary provisions of a rank superior to Community law, claim the benefit of this compensation.

3. *The questions submitted to the Court*

Wasa appealed to the Bundesverwaltungsgericht (Federal Administrative Tribunal), which decided that the provisions of the second indent of Article 3 of Regulation No 602/68 required interpretation. It therefore suspended the proceedings and submitted to you two questions for preliminary rulings, expressed in the form of alternatives in the following terms:

'Is the time-limit laid down in the first sentence of the second part of Article 3 of Regulation No 602/68 of the Commission of 16 May 1968, whereby an applicant must lodge an application for compensation not later than 5 August 1968, an exclusionary time-limit the non-observance of which always entails the loss of the right to the carry-over payment?

or

Can an application sent three days after the expiry of the time-limit and received a day later still be taken into account if, despite its late submission, it can be established, by reason of the particular circumstances of the case, that a carry-over payment has not been claimed unlawfully and dealing with it causes no difficulties for the Administration?
Does the fact or whether a late application is taken into account depend on whether the delay is due to fault?'

II — Discussion

In the written observations that it presented to the Court and in the oral explanations submitted on its behalf Wasa maintains, principally, that the time-limit laid down by the second indent of Article 3 of Regulation No 602/68 is merely a time-limit of 'good administration' which cannot be imposed 'under penalty of being time-barred'. Its argument is based first of all on the contention that the provision does not expressly prescribe the loss of the right to compensation as a necessary consequence of the failure to observe the time-limit. According to Wasa, this right is subject solely to substantive conditions: the existence of stocks of cereals on 31 July 1968; proof that those cereals are of sound, genuine and merchantable quality, and were harvested in the Community during the year 1967; and proof, finally, that they are the property of the applicant. On the other hand, the company maintains that the time-limit is a purely formal condition, without any effect on the right to compensation.
In addition, the time-limit was much too short to permit a proper check on the quantities in stock on 31 July 1968, especially as a Saturday and Sunday were included in the five days separating that date from 5 August. The company argues that it would be contrary to the principle of good faith to regard it as a time-limit prescribed under penalty of being time-barred. Moreover, in the present case, the management of the mill had merely complied strictly with the notices and instructions issued by its national administration; those notices had announced an implementing decree which was not published until 6 August and the forms that had to be completed for the formulation of the application for the carry-over payment only reached the company's office on 7 August. Therefore, no negligence could be imputed to the company since the application, accompanied by the forms required, was sent on the same day.
Finally, Wasa maintains, in the alternative, that the failure to observe an exclusionary time-limit is permissible provided, on the one hand, that the substantive conditions laid down for the exercise of the right are fulfilled and, on the other hand, that the delay, of minimal importance, with which an application is thus submitted does not impair the objective in view of which the time-limit was laid down.
There is no doubt that this latter argument induced the Bundesverwaltungsgericht to ask you whether, even supposing that the time-limit in question was imposed on penalty of being time-barred, it must be held, in the particular circumstances, that a slight delay is permissible, at least in view of the fact that the national administration had itself admitted that applications contained in a telex message or a

telegram could still be lodged up to 12 August 1968 by means of the forms required by the national regulations.

I shall therefore follow the order of the questions submitted to you by the supreme German administrative court, examining first the problem posed by the interpretation of the second indent of Article 3 of Regulation No 602/68.

1. *The reasons for the double procedure of a declaration and an application for payment instituted by Regulation No 602/68*

As has been seen, two stages, two declarations or applications and two time-limits, must be distinguished in the system established by the regulation—apart from the substantive conditions that have to be fulfilled in order to qualify for the right to the carry-over payment.

The first stage is at the beginning of the month of June; it relates to the stocks of cereals existing at 31 May. This date marks a turning-point in the marketing year that will end on the following 31 July.

In fact, during the last two months of the marketing year it is known that cereals from the new harvest are going to begin to arrive on the market. These are cereals harvested in the south of the Community territory, particularly in Italy, or even in other production regions, where the harvest, especially that of common wheat, has been early. It is also known that the intervention prices for cereals from the previous harvest, that of 1967, have been increased each month up to 31 May 1968 in order to take into account storage expenses; however, these increases no longer take place in June or July. Nevertheless, the prices of cereals from the old harvest are higher than those of cereals recently harvested. It is therefore highly desirable to know, as soon as possible after 31 May, the state of existing stocks and to control their movements.

Without this precaution, there would be a risk, in view both of the difference in the intervention prices and of the incentive constituted by the carry-over payment, that in some warehouses or stores cereals from both the new and the previous harvest would be mixed.

This therefore is the object of the declaration required from traders and millers by the provision contained in the first indent of Article 3; it was intended to 'photograph' the stocks of cereals existing at 31 May and at the same time to inform the appropriate national authorities of the intention of the holders of these stocks to claim the benefit, if they wished, of the carry-over payment for the cereals that they still held on 31 July.

Hence, the second stage, the second declaration and the second time-limit, as soon as possible after 31 July which marks the end of the marketing year. It is then necessary, stock variations having been occurring for two months, to take bearings, to check the state of those stocks at the end of the marketing year and, for their holders, to claim, in a precise manner this time, the benefit of the carry-over payment on the basis of the quantities of each of the cereals of the old harvest that they hold in their warehouses.

Consequently, is it not immediately apparent that the time-limit imposed for lodging this application for the carry-over payment must necessarily be very short and how any failure to observe it would jeopardize the effectiveness of the system instituted by the Commission?

This is why the provision, the interpretation of which is in doubt, is drafted in such a way that the observance of the time-limit is undeniably one of the conditions of the right to compensation.

This provision states in effect that, in order to benefit from the carry-over payment, the applicant must first, declare his intention to claim the benefit of the payment *not later than* 7 June 1968, that is, the first declaration, and, secondly, submit an application for compensation *not later than* 5 August 1968.

It is true that this wording is not as explicit as that of Article 10(2) of Regulation No 1041/67 of the Commission relating to export refunds which provides that 'The *time-limit* for claiming payment of the refund shall be six months following the day on which the customs export formalities were completed'.

However, the wording used in Regulation No 602/68 is none the less clear. The exercise of the right to the carry-over payment is dependent on the submission, within the time-limit laid down, of the application for compensation and the regulation does not envisage, in any of its provisions, that this time-limit may be extended or that any failure whatsoever to observe it can be tolerated. That is easily explicable; if the Commission had intended not to confer an inflexible character on this time-limit, if it had not wanted to impose it on penalty of being time-barred, it would have been obliged to specify precisely the circumstances in which it would have been possible to extend it. It would thus have undertaken a very detailed regulation, undoubtedly very complex, the operation of which would have raised many difficulties. It may be imagined that, this being the case, it would have been very difficult to preserve the uniformity of application of the Community provisions.

I think therefore that, worded as it is, this provision makes the observance of the time-limit mandatory for holders of cereals, on penalty of being time-barred.

This interpretation, which is strict but to which the analysis of the regulation leads me, is corroborated both by the objectives pursued by the Community institutions in creating and regulating the carry-over payment and by your own previous decisions.

The carry-over payment is, as I have discovered, a regulating or stabilizing element in the cereals market; it is designed to prevent systematic recourse to intervention and to encourage holders of stocks of cereals from a previous harvest to sell them directly on the market before the arrival of the cereals from the new harvest.

Now, as you have declared with regard to the intervention system instituted within the framework of the common organization of the market in cereals, the operation of this system must be subject to rules as uniform as possible:

— judgment of 17 December 1970, Case 34/70, *Syndicat National des Céréales* [1970] ECR 1240;

— to the same effect, judgments of 1 February 1972, Cases 49/71 and 50/71, *Hagen, Wünsche* [1972] ECR 35 and 65.

Uniformity of application of Community law is in fact one of the conditions necessary for its practical effectiveness; it would be compromised if a relaxation and a diversification of the conditions relating to the time-limits within which the carry-over payment is granted was admitted.

It would at the same time conflict with the principle of equality of treatment for traders, which you have stressed on many occasions as the very essence of the Treaty of Rome.

However, still more, to accept that the time-limit down by the second indent of Article 3 of Regulation No 602/68 is merely of an indicative nature, that failure to observe it would therefore have no effect on the right to compensation, would mean, as the Commission has shown, leaving a margin of discretion of the national authorities that could affect the very existence of the right to compensation. Such a power cannot be presumed; it could only be derived from an express authorization or delegation contained in the Community regulation.

This again is what you held in your judgment of 17 December 1970 cited above with regard to the interpretation of the Community concept of a 'holder' of cereals when you said that 'it would be impossible to hold, in the absence of an intention clearly expressed by the authors of the regulation, that in the final stage of the common organization of the market in cereals each State can attribute to the general nature of the term "any holder" a meaning of its own.'

2. *The powers of the competent national authorities*

I now come to the second aspect of the problem.

In the absence of any provision in Regulation No 602/68 envisaging, in particular circumstances, the possibility of an extension of the time-limit laid down in the second indent of Article 3, may it not be

thought, as the applicant in the main action has tried to show, that by entrusting the implementation of this regulation to the national authorities the Commission intended to permit them to relax the strictness of this time-limit or, in certain cases, to make exceptions?

Although regulations adopted by the Community institutions are, by virtue of Article 189 of the Treaty, always binding in their entirety and directly applicable in all Member States and take precedence over the internal law of those States, it is well established that their implementation is left to the national authorities, especially when they are regulations adopted within the framework of the common organization of the agricultural markets.

Consequently, this implementation must be carried out, in principle, in accordance with the formalities and procedures of national law.

However, since this implementation must be uniform, national provisions can only be invoked in so far as is strictly necessary for the *execution* of the Community regulations.

In other words, the authorities concerned, in the absence of express delegation, do not have any discretion that would permit them to adopt measures with a scope exceeding the Community provisions or jeopardizing equality of treatment for traders.

This is one of the principles laid down in your previous decisions and in particular in your judgment of 11 February 1971, Case 39/70, *Fleischkontor* (Rec 1971, pp. 58 and 59) in the following terms:

'The application of national provisions based on criteria such as the degree of trust to be attributed to the importer, criteria which leave too wide a latitude to the national authorities and which might create differences of treatment among importers in different Member States and compromise the uniform application of Community legislation, must be ruled out'.

These judicial guidelines must be borne in mind when examining upon what conditions, and also within what limits, the national authorities are empowered to participate in the implementation of Regulation No 602/68 of the Commission.

It appears first from the first sentence of Article 3 of this regulation that the carry-over payment is granted by the competent authority in the Member State in the territory of which the stocks are situated, and by Article 5(4) this competent authority is in each State the 'intervention agency' in the field of cereals or any other body designated by the Member State.

Secondly, paragraphs (1) and (2) of Article 5 provide that the competent national authority 'shall carry out the necessary inspection of stocks and their movements within its territory' and that it 'shall adopt all *additional* measures required to take account of the particular conditions within its territory and in particular the time-limits within which the stocks and their movements are subject to inspection'.

How are these provisions to be interpreted?

It is perfectly natural—and moreover in accordance with the organization of the common market—that the grant of the carry-over payment should be entrusted to the competent national authorities, designated according to internal provisions, and that in order to make this payment they should be empowered to verify whether the various conditions imposed by the regulation on holders of cereals in stock are in fact fulfilled.

It is of course also natural that these same authorities should be entrusted with the task of checking the stocks and their movements during the period from 31 May to 31 July, a check which is essential for the reasons that I have mentioned.

Finally, it is in accordance with practical necessity that these authorities may adopt certain '*additional*' measures intended to take account of the particular conditions within their territories.

However, whether they are checking the conditions for entitlement to compensation, as laid down with precision by Community legislation, or making the necessary provisions for the purposes of inspecting the stocks or even adopting certain additional measures, the national authorities certainly have no power to modify or alter Regulation No 602/68. They only have power of

strict implementation and just as they could not, for example, enlarge the field of application of the Community provisions to cover cereals other than those defined in the regulation or grant a carry-over payment for newly-harvested cereals, so they have no power to modify the condition regarding the time-limit within which the application for compensation must be sent, albeit a formal condition but nevertheless laid down on penalty of being time-barred by the Commission and for which no power of derogation was provided.

I therefore think that the expression 'additional measures' only covers the power, for Member States, to adapt the implementation of the regulation to the local peculiarities of their cereals sector or to their own administrative procedures.

Consequently, without agreeing with the very narrow interpretation of the Commission, which maintains that the action of the national authorities should be confined solely to determining the details of procedure for inspecting the stocks and their movements, I cannot accept the liberal interpretation of the applicant in the main action which considers that Article 5 of the regulation contains a *substantive* delegation authorizing Member States, in particular, to decide on certain extensions of the time-limit laid down for the submission of the application for compensation.

What in fact did the German administration do in the present case?

Did it, deliberately or not, extend this time-limit or did it confine itself to ensuring that the regulation was implemented in accordance with its own formalities and procedures?

By a first notice of 22 May 1968, published in the Bundesanzeiger of 25 May, the Minister for Agriculture informed the public of the publication of Regulations Nos 541/68 and 602/68 concerning the carry-over payment for common wheat and rye of bread-making quality; then, having reminded claimants of the obligation to submit a first declaration not later than 7 June 1968, he stated that this declaration, mentioned in the first indent of Article 3 of Regulation No 602/68, had to be addressed in duplicate to the competent national authority, to be passed on to the Einfuhr- und Vorratsstelle für Getreide und Futtermittel. Finally, this first notice was accompanied by annexed documents which were model forms and specified the information that had to be furnished by holders of stocks.

This notice also stated that declarations sent not by registered letter but by telex message or by telegram had to contain the information that appeared in these annexes, but that this same information would have to be sent subsequently to the competent authority in accordance with the model annexed, that is, on a form, not later than 15 June 1968.

The second notice was dated 19 July; it was published in the Bundesanzeiger on 25 July, that is to say, six days *before* the end of the cereals marketing year.

After referring to the Community regulations applicable, it defined the authority competent to decide on the granting of the carry-over payment, namely the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, and pointed out that the application for the carry-over payment had to be sent not later than 5 August 1968 by one of the methods mentioned in Article 3 of the regulation—registered letter, telex message or telegram—to the appropriate local administrative office which would pass it on to the Einfuhr- und Vorratsstelle.

Just as in the first notice, it was stated that if the applications were sent by telex message or by telegram the necessary statements or information had to be sent subsequently to the competent authority in triplicate according to the model in the annexes not later than 12 August 1968.

The documents annexed to this notice were in fact standard forms intended for the competent authority.

Finally, this notice announced the imminent promulgation of a decree (Rechtsverordnung) and stated that the forms would be obtainable from the Einfuhr- und Vorratsstelle.

Now it is established that the decree announced was signed on 3 August 1968 but was not published until 6 August, that is, one day after the time-limit laid down by the Commission of the European Communities for lodging applications for the

carry-over payment. Wasa states, moreover, that the application forms were not made available to it until the following day, 7 August.

What can be deduced from these acts of the national administration?

It is certainly not for me to express an opinion on the administrative procedure applied in this field by the German authorities. In particular, it does not seem possible to me that you should consider whether or not the intervention of a decree was necessary, from the point of view of the law of the Federal Republic, for the proper application of the Commission's regulation, which, as has been established, had direct effect in the territory of that State.

However, in order to answer the second question posed by the Bundesverwaltungsgericht, may not conclusions be drawn from the official notices of the Ministry for Agriculture and Forestry and the subsequent decree?

It must be borne in mind then that the notice of 19 July in fact reiterated the date of 5 August 1968, laid down by the Commission in Regulation No 602/68, for the information of holders of cereals in stock concerned. I do not say confirmed, for in my opinion it was not necessary to confirm this date, which was lawfully fixed by the Community institution which alone had the power to do so.

It must also be observed that the substantial error revealed in the German version of Regulation No 602/68, namely that the application for compensation had to *reach* the competent authority not later than 5 August 1968, instead of 'had to be *sent* not later than 5 August', is in my opinion of no importance since the official notice of 19 July re-established the precise provision of the regulation in this respect. Moreover, this error could only have shortened the period in question.

Finally, it must be observed (and this seems to me decisive) that in this notice the Ministry of Agriculture, as had already been the case with its previous notice, made a distinction according to the methods used for the transmission of the application to the competent authority.

As has been established, the notice included in an annex model forms containing the necessary statements and information to be supplied to that authority.

If the application was sent by registered letter the letter itself had to contain right away all the information thus required.

If, on the other hand, the application was sent by telex message or telegram, applicants could then send the information, in accordance with the model forms, up to 12 August 1968.

Must it be deduced from these provisions that the German administration intended to extend the time-limit imposed by the second indent of Article 3 of Regulation No 602/68? Nothing of the kind. For reasons of its own the German administration decided that applications for carry-over payments had to be prepared in accordance with certain forms, the models of which it annexed to its notice. Although this requirement may seem to be of an exclusive formalism, since the minimum information to be furnished by holders of cereals had already been directly specified in the annex to Regulation No 602/68 of the Commission, without any doubt it was within the purely executive power of the German authorities to require a certain form for the presentation of applications. However, being aware at the same time of the shortness of the time-limit imposed and, no doubt, of the difficulties that some traders or millers would have in complying punctually with this formal requirement, the Minister for Agriculture conceded that only applications sent by registered letter had to conform to the model form prescribed and that, on the other hand, those who preferred to resort to a telex message or a telegram would have the option of only filling in the forms subsequently and would have an extra week to send them to the administration.

In doing so, the Minister for Agriculture did not misunderstand the Community regulation which gave applicants a choice between several methods of sending their applications, provided that whatever method was used the final date of 5 August 1968 was observed; he did not extend the time-limit thus laid down, since the week of grace granted by the notice of 19 July did not apply to the application itself but

to the submission of internal administrative forms.

In these circumstances, the fact that the decree announced in this notice was not published until 6 August 1968 could not have exempted applicants for carry-over payments from complying punctually with the provisions of the Commission of the European Communities, duly reiterated by their national administration.

Any delay in sending applications entailed the loss of the right to a carry-over payment, whether or not such a delay was important and whether or not it was attributable to the negligence of the applicant.

In my opinion, only *force majeure* could exempt the applicant from losing his right.

This concept has already been used in Community regulations. Regulation No 1373/70 of the Commission, relating to the system for import and export licences and advance-fixing certificates for agricultural products, is an example. Article 18 of that regulation empowers Member States, in the event of *force majeure*, to extend the period within which the import or export must be carried out. In such a case, the Member States have a certain power of decision, delegated from the Commission.

I should be inclined to concede that, even in the absence of an express provision in Regulation No 602/68, the concept of *force majeure*, regarded as part of the general principles of law, could justify a failure to observe the time-limit. You gave a flexible definition to this concept in your judgment of 17 December 1970, *Internationale Handelsgesellschaft* [1970] ECR 1125, when you held that it was not limited to absolute impossibility but must be understood in the sense of abnormal circumstances, extraneous to the economic agent, the consequences of which could only have been avoided at the cost of excessive sacrifices, despite the exercise of all due diligence.

However, those conditions would still have to be fulfilled. Although you do not have to decide whether the facts mentioned by the applicant in the main action are sufficient to enable it to invoke the concept of *force majeure*, I do not think that the temporary absence of the manager of the enterprise or the expectation of a national decree, announced but published late, can be regarded as facts constituting a case of *force majeure*.

In any case, you only have to decide on the interpretation of the second indent of Article 3 of Regulation No 602/68, the strictness of which is explained and justified by the imperative necessity to ensure a strictly uniform application of the system of carry-over payments.

As to the question whether, by leaving a degree of uncertainty regarding the formal conditions upon which applications for carry-over payments had to be submitted to the competent national authority, the German administration may possibly have caused damage to some of its nationals and thereby incurred liability, this is not within your jurisdiction. This questions depends solely on national law and it would be for the German courts alone to settle it, if necessary.

I submit that you should hold that the time-limit mentioned in the first sentence of the second indent of Regulation No 602/68 of the Commission of 16 May 1968 whereby 'the applicant must ... present, by registered letter, telex message or telegram sent not later than 5 August 1968, a request for a carry-over payment to the ... competent authority ...' is an absolute limitation period the non-observance of which entails the loss of the right to the carry-over payment, whether or not the delay in sending the application is due to fault on the part of the applicant, and even if the application fulfils the substantive conditions laid down by the regulation.