JUDGMENT OF THE COURT
OF 30 OCTOBER 1974 [1]

Officier van Justitie v J. W. J. van Haaster (preliminary ruling requested by the Arrondissementsrechtbank Haarlem)

'Cultivation of hyacinths'

Case 190/73

Summary

1. *Agriculture — Common organization of the market — Rationing of production — Quantitative restrictions — Measures having equivalent effect*
   (EEC Treaty, Article 30)

2. *Agriculture — Common organization of the markets — Live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage — National organization — Rationing of production — Quantitative restrictions*
   (Regulation No 234/68 of the Council, Article 10)

1. A national organization of the market having the purpose of rationing production affects — or is at any rate capable of affecting — the freedom of trade in the internal trade of the Community and must accordingly be considered a measure having an effect equivalent to quantitative restrictions.

2. Article 10 of Regulation No 234/68, interpreted within the framework of the totality of the provisions on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, excludes the existence of any national system having the purpose of quantitatively restricting the cultivation of one of the products falling within the common organization of the market.

In Case 190/73

Reference to the Court under Article 177 of the EEC Treaty by the Economic Magistrate of the 'Arrondissementsrechtbank' (District Court) of Haarlem, The Netherlands, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Dutch.

OFFICIER VAN JUSTITIE (the public prosecutor)

and

JOHANNES WILHELMUS JOSEPH VAN HAASTER, Bulbgrower, residing at Hillegom (The Netherlands),

on the interpretation of Article 10 of Regulation No 234/68 of the Council of 27 February 1968, on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage,

THE COURT

composed of: R. Lecourt, President, C. Ó Dálaigh, President of Chamber, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur), H. Kutscher and M. Sørensen, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

In the Netherlands, Article 2 (1) and (2) of the 'Hyacintenteeltverordening 1971' (Regulation of 1971 relating to the cultivation of hyacinths), made on 29 June 1971 by the 'Produktschap voor Siergewassen', an organization of producers of ornamental plants approved by the Ministry of Ariculture by decree of 28 July 1971, prohibited the cultivation of hyacinth bulbs by any horticulturist who is not the holder of a cultivation licence in force for the cultivation year in question.

Under Article 3 of the Regulation of 1971, the cultivation licence is issued annually by the 'Produktschap' for a

specific area of cultivation, to the horticulturist who has lawfully grown hyacinth bulbs during the preceding cultivation year.

The 'Produktschap' may also grant a licence to a horticulturist who does not satisfy this condition but to whom a cultivation licence was transferred by its holder or who is for some other reason entitled to the grant of a licence.

By summons of 15 November 1973, Johannes Wilhelmus Joseph Van Haaster, a bulbgrower residing at Hillegom (The Netherlands) appeared before the Economic Magistrate of the Arrondissementsrechtbank of Haarlem, for having in May 1971 contravened the Regulation of 1971 by growing hyacinth bulbs on several parcels of land without being at the relevant time in possession of a cultivation licence in accordance with the regulations applicable to the said cultivation year or of being otherwise entitled thereto.

Before the Economic Magistrate, the defendant Van Haaster argued in particular that the Regulation of 1971 relating to the cultivation of hyacinths could not be invoked against him on account of its incompatibility with Regulation No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants bulbs, roots and the like, cut flowers and ornamental foliage (OJ L 55, p. 1).

By judgment of 10 December 1973 registered at the Court on 17 December 1973, the Economic Magistrate decided to stay the proceedings and to refer the following preliminary question to the Court under Article 177 of the EEC Treaty:

'Whether a regulation such as the Hyacinth Cultivation Regulation, 1971, in a Member State is consistent with Article 10 of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage'.

Written observations under Article 20 of the Protocol on the Statute of the Court of Justice were submitted on 20 February 1974 by the Government of the Kingdom of the Netherlands, on 22 February 1974 by the defendant in the national proceedings, on the same date by the Commission of the European Communities and on 26 February 1974 by the Public Prosecutor of the Arrondissementsrechtbank of Haarlem.

The Court, on the report of the Judge-Rapporteur, after hearing the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

Mr J. W. J. Van Haaster, the defendant in the national proceedings, having supplied technical details as to the cultivation of hyacinth bulbs and flowers, and arithmetical data as to the economic importance of this culture and having dealt at length with the historical development of the principal aspects of the regulations made in the Netherlands in relation to this market, argues that the 1971 Regulation relating to the cultivation of hyacinths involves restrictions upon the production and the sale of hyacinth bulbs contrary to Article 10 of Regulation No 234/68.

The Public Prosecutor for the District of Haarlem states that he adopts the observations submitted by the Government of the Kingdom of the Netherlands in their entirety.

The Government of the Kingdom of the Netherlands takes the view that the question submitted to the Court amounts to an inquiry whether the control of production such as was set up by the Regulation of 1971 relating to the cultivation of hyacinths, amounts to a measure having an effect equivalent to a quantitative restriction, prohibited by Article 10 (1) of Regulation No 234/68.

(a) As regards this, it must be remembered that the notion of a measure having an effect equivalent to a quantitative restriction only refers to regulations relating to trade in agricultural products and does not extend to measures relating to production itself.

The notion of a measure having an equivalent effect to a quantitative restriction in Regulation No 234/68 has the same meaning as in Title I, Chapter 2 of the EEC Treaty, the purpose of which is the free movement of goods; the prohibition set out in Article 10 of Regulation No 234/68 must therefore be interpreted in the light of the preamble to this Regulation, under the terms of which 'the common organization of the market involves the removal at the internal frontiers of the Community of all obstacles to the free movement of the goods in question'.

A control of production such as is involved in the national proceedings is limited to regulating the cultivation of bulbs and does not involve any restriction on trade between Member States in the sense of a measure having an effect equivalent to a quantitative restriction.

(b) As a subsidiary point one could ask the question whether Article 10 of Regulation No 234/68 permits the control of production. In this respect it must be emphasized that, contrary to many other Regulations on the establishment of common organization of agricultural markets, Regulation No 234/68 has only a limited purpose. Pursuant to its first Article, it involves a system of quality standards and of trade with third countries; free movement of funds within the Community is ensured by the prohibition of any customs duty or charge having an equivalent effect, of any quantitative restriction or measure having an equivalent effect, and of recourse to Article 44 of the Treaty, as well as by application of Articles 92 to 94. The Regulation does not establish a price and intervention system with a view to stabilizing the market; nevertheless Article 12 thereof envisages the possibility of the Council taking measures that might be necessary with a view to supplementing the provisions of this Regulation in the light of the experience acquired, a possibility of which no use has been made up to the present time. The reference to the procedure under Article 43 (2) of the Treaty emphasizes the Council's intention to make a Regulation having only a limited objective.

As regards the provisions for carrying Regulation No 234/68 into effect, it must be emphasized that the Community measures provided under Article 2 to promote a better organization of marketing have not as yet been taken; the same applied to unification, under Article 9, of national systems of importation in relation to third countries, and of protective measures.

(c) The Regulation of 1971 relating to the cultivation of hyacinths establishes a control system which is already quite old, having the purpose of ensuring the stability of a market characterized by substantial costs of investment and high productivity. The Regulation No 234/68 of an instrument for stabilizing the market, the Dutch Regulation of 1971 is useful for stabilizing both the Dutch market and the whole Community market, since the Dutch production represents approximately 95 % of the total Community production; it thus corresponds to the purpose and scope of the Community Regulation. In the absence of a Community system for controlling cultivation, the continuation of national measures is perfectly justified.

After having referred to the essential provisions of the Regulation of 1971 relating to the cultivation of hyacinths, *the Commission of the European Communities* considers that the question submitted to the Court is tantamount to an enquiry whether the prohibition of quantitative restrictions or measures having equivalent effect under Article 10

of Regulation No 234/68 must be understood as applying also to national measures for limiting production.

(a) Article 10 of Regulation No 234/68 relies upon the same notions as Articles 30, 31, 32 and 34 of EEC Treaty; yet the quantitative restrictions or measures having an equivalent effect aimed at by those provisions do not in principle include measures for limiting production. Their sense and their place in the Treaty show that they apply to goods and to products but not to activities; they only take effect at the marketing stage and therefore in no way affect the power of Member States to regulate national production. This finding clearly results from Article 37, which limits the application of the principles set out in the preceding Articles solely to State monopolies having a commercial character, concerning the trade in a particular product.

The fact that measures regulating or limiting production have an effect upon the quantity and, if applicable, the quality of products capable of being the subject of trade within the Community, is not in itself sufficient to place them on a par with quantitative restrictions or measures having an equivalent effect, directed at trade. Many measures, despite their restrictive effect upon trade, are not incompatible with Articles 30 to 34: they fall within the framework of the powers or possibilities which the Treaty has implicitly or explicitly left to Member States and a restrictive effect upon trade is inherent in them; this is in particular the case with national regulations relating to the quality of products. Such measures only have an effect equivalent to a quantitative restriction where they are not necessary in order to achieve their proper objective or where they could be replaced by another measure less restrictive on trade.

Regulations by which a State quantitatively limits certain productions cannot therefore normally be termed quantitative restrictions or measures having an equivalent effect within the meaning of Articles 30 to 34. It would be different if the State in question supplemented such regulations by regulations in the commercial field; this is not however the case here.

By their nature, measures limiting production have a similar effect upon the domestic market and upon exports; they bear equally upon exports and upon the flow of goods to the domestic market.

They can only be called measures having an effect equivalent to quantitative restrictions in the hypothetical case — difficult to conceive without the addition of supplementary measures at the commercial level — where they could act as a greater brake upon exports than upon the flow of goods to the domestic market and where they would have a restrictive effect in excess of the effects proper to such measures. This is not the case with the regulation involved in the national proceedings.

In the Commission's view therefore, it would be right to reply as follows to the question submitted:

The terms 'quantitative restriction or measure having an equivalent effect' referred to in Article 10 of Regulation No 234/68 do not apply to measures by which a Member State limits production, unless these measures act as a greater brake upon exports than upon the flow of the goods in question to the market of the Member State concerned and unless this restrictive effect exceeds the effects proper to such measures, as would be the case if the latter pursued an object incompatible with the Treaty.

(b) The national proceedings also raise the question whether the Community organization of the market in live trees and other plants, bulbs, roots and like, cut flowers and ornamental foliage, excludes national measures for limiting production.

It follows from Title II of the EEC Treaty that the regulation-making power

of the Community extends not only to trade in agricultural products but also to agriculture itself, that is to say also to production. The agricultural policy and, in particular, the organizations of the markets were constructed in the context of existing economic situations and regulations. In the framework of a common organization of the markets, provisions relating to national regulations are only adopted where such national regulations interfere with the system of the organization of the markets concerned or seem incompatible with the principles of the common agricultural policy; nevertheless the absence of such express provisions does not imply that the national regulations in the matter of production are in any case and definitely compatible with the organization of the market involved.

In the event, neither Regulation No 234/68 nor an implementing provision prohibits or expressly regulates national measures for limiting production; besides, no measure has been taken under Article 2 of the Regulation 'to promote better organization of production and marketing' in relation to the goods in question. One cannot from Article 2 above, deduce a prohibition of existing national measures for limiting production.

The question whether autonomous measures for limiting production, decreed by Member States, are contrary to the organization of the market because they affect the proper functioning of the price system does not arise in the case of the organization of the markets involved in this case: this is limited to aid measures in respect of certain trade and joint trade initiatives and to a system of quality standards. Bearing in mind the terms used to define organization of the markets and its limited purpose, independent national measures having the object of limiting production are not inconsistent with Regulation No 234/68.

III — Oral procedure

Mr Van Haaster, the defendant in the national proceedings, represented by J. Van der Plas, advocate at The Hague, the Government of the Kingdom of the Netherlands, represented by E. L. C. Schiff, Secretary-General of the Ministry for Foreign Affairs and J. Kuipers, Administrator with the Ministry of Agriculture, and the Commission of the Communities, represented by its Legal Adviser, J. H. J. Bourgeois, acting as agent, made their oral observations and gave their replies to questions asked by the Court at the hearing on 30 April 1974.

At this hearing the new facts, hereinafter summarized, were submitted to the Court:

Mr J. W. J. Van Haaster points out that the measures for organizing the market in force in the Netherlands in respect of the sector of flower bulbs and of flowers grown from bulbs involve not only a system of cultivation licences for hyacinth bulbs but also an intervention body, the surplus fund for flower bulbs. This fund, financed by means of levies due from those involved in the production and sale of flower bulbs, has in particular the power of withdrawing surplus bulbs, or those not in accordance with certain quality standards, from the market. In conjunction, the cultivation licence and the surplus fund ensure that Dutch bulbgrowers enjoy within the Common Market a near monopoly position since some 95 % of the total Community production is of Dutch origin. They are also the means of controlling and limiting production; they allow production prices, and consequently marketing prices, to be artificially maintained at an excessively high level. They therefore tend to have a negative influence upon trade within the Community and are incompatible with the common organization of the market established by Regulation No 234/68. Article 10 of Regulation, for example, prohibits quantitative restrictions or

measures having an equivalent effect in trade within the Community; and on a monopoly market such as that in hyacinth bulbs any measure taken in relation to production and prices necessarily has a direct influence upon trade. The Dutch support measures likewise fall within the ambit of Article 92 (1), and perhaps even of Article 37, of the EEC Treaty.

The fact that measures to promote a better organization of production and marketing in the field of floriculture envisaged by Article 2 of Regulation No 234/68 have not as yet been taken at Community level does not mean that the Menber States are in this field quite free to act as they see fit.

The Government of the Kingdom of the Netherlands points out that there is no legal link between the surplus fund and the Regulation of 1971 relating to hyacinth cultivation. From the point of view of economics and of the organization of the market, it is right to point out that to control production by the system of cultivation licences and of the surplus fund impedes neither the availability of supplies within the meaning of Article 39 (1) of the EEC Treaty nor a harmonius development of trade within the Community. Besides, the measures in force in the Netherlands encourage a stabilization of the domestic market; for its part Regulation No 234/68, establishing a common organization with limited objectives, providing as the sole Community measure for stabilizing rates, the fixing of minimum prices for exports to third countries. And Dutch intervention prices are in fact at a substantially lower level than these minimum Community prices. The national measures for restricting production are therefore not incompatible with the measures envisaged by Regulation No 234/68; they might even be considered necessary for implementing it.

The Commission is of the opinion that in the present case it is a matter of interpreting Article 10 of Regulation No 234/68 solely in the context of the 1971 Regulation relating to the cultivation of hyacinths; the surplus fund and the support measures which it permits are not affected by the question submitted to the Court.

As regards the cultivation licences it is right to point out — and on this point the Commission would like to define more clearly its written observations — that national measures for restricting production cannot as such and by themselves amount to measures having an effect equivalent to quantitative restrictions. For this to be different would require that, added to the measures restricting production, there should also be measures in the field of marketing, and that the totality of this national set of regulations should have effects more restrictive upon export than upon the flow to the domestic market.

Besides, Regulation No 234/68 does not contain any specific prohibition of national regulations impeding production; even if in these circumstances one wanted to deduce from the existence of a Community competence the effect of a 'bar' upon the powers of national authorities, then this effect can go no further than a standstill obligation, that is to say, a prohibition upon the introduction of national measures going beyond already existing regulations. In the event, one has a common organization of the market with limited objectives, no instrument of which is affected, altered or modified by the existence of the national regulations limiting production. The Advocate-General delivered his opinion on 11 June 1974.

IV — Developments in the procedure

By order dated 4 July 1974, the Court invited the defendant in the national proceedings, the *Government* of the *Kingdom* of the *Netherlands* and the *Commission* to complete their obser-

vations by replying to a certain number of questions. Written replies were lodged on 30 August 1974 by the Dutch Government, on 31 August 1974 by the Commission and on the same date by Mr Van Haaster.

The defendant in the national proceedings and the Commission made oral observations on the same questions at the hearing on 17 September 1974.

The supplementary observations submitted in reply to the questions raised by the Court may be summarized as follows; Mr J. W. J. Van Haaster maintains that a national regulation of the same nature as the 1971 Regulation relating to the cultivation of hyacinths was in force in the Netherlands at the date when Regulation No 234/68 was being worked out; the Dutch Government did not at the time try to obtain from the Community institutions express authority to retain it. The cultivation of narcissus bulbs was freed in the Netherlands as from the 1964/65 marketing year, restrictions on cultivation of tulip bulbs were abolished during the 1966/67 marketing year and those relating to the cultivation of the products of floriculture in general were abolished on 1 January 1967; during the preparatory work for Regulation No 234/68 the control of production of hyacinth bulbs was not the subject of any special examination, since it appeared to form part of more extensive rules intended to be shortly abolished.

As for the existence of national rules limiting production in other sectors governed by common organizations of the market, the examples referred to by the Commission had no bearing on the present case: the sectors referred to are not comparable with that of hyacinth bulbs and moreover it had not been shown that the various national rules are in accordance with the Community organization.

The *Government of the Kingdom of the Netherlands* confirms that a national Regulation similar to the Regulation of 1971 relating to the cultivation of hyacinths existed at the date Regulation No 234/68 was being worked out. This Regulation was the subject of the 'Bloembollenteeltverordening 1962' (Regulation of 1962 relating to the cultivation of flower bulbs): the Commission was informed of its existence well before the submission of its proposal for the establishment of a Community organization of the markets in this sector. This statement is made on the basis of a confidential working document dated 20 May 1963, a letter from the Dutch government to the Commission dated 19 March 1964, the subsequent exchange of correspondence, deliberations of the Council, in particular at its meetings on 25 and 26 January 1965, the statement of the grounds for the proposal, made by the Commission to the Council on 13 January 1966, a Regulation on the gradual establishment of a common organization of the markets in non-edible horticultural products (OJ p 1179), and the discussions within the horticultural products working party.

It appears in particular from the proposal for the Regulation of 1966 that the Commission had accepted the provisional retention of the national measures such as the control of cultivation pending Community decisions. In its proposal made to the Council on 23 February 1967 for a Regulation for establishing a common organization of the markets in live trees and other plants, bulbs, roots, and the like, cut flowers and ornamental foliage (OJ p 763), the Commission had not completely abandoned the idea of a gradual establishment of this organization; its incomplete and temporary nature was shown to a certain extent in Article 9 of the proposal, adopted almost without amendment in Article 12 of Regulation No 234/68 itself, without the Council having on this occasion expressly stated its position regarding the control of cultivation existing in the Netherlands, of which it was aware.

The opinion of the Economic and Social

Committee on the Commission's proposal (OJ 178 p 22) likewise showed that the existence of certain Dutch provisions on the organization of the market, and in particular on the control of cultivation, could not be overlooked.

It clearly follows from Regulation No 234/68, and in particular Article 12 thereof, that the national measures which are not in conflict with the Community organization of the market can continue pending decisions by the institutions of the Community.

The *Commission* confirms having been, at the time its proposal for the establishment of a common organization of the markets for horticultural products in 1965 was worked out, perfectly informed of the regulations in force in this sector in the Netherlands.

It is true the Dutch Government did not specially draw attention to its existence; on the other hand, in the previous year, during the preparatory phase of procedure under Article 169 of the EEC Treaty aimed at other aspects of these regulations, the Dutch Government had mentioned the existence of a system of control of cultivation and referred to the Regulation relating to the cultivation of flower blubs. The Dutch regulations had been examined and discussed by the Council, within the working party concerned and the special committee on agriculture.

In the statements on the grounds of its proposal to the Council of 13 January 1966 the Commission said that under the scheme for the proposed organization of the markets certain national measures such as the control of cultivation could be temporarily retained. The proposal itself contained provisions expressly enabling Member States to take intervention measures and to fix minimum prices on export in intra-Community trade. The new proposal of the Commission of 23 February 1967 did not re-adopt these provisions; however, the idea of the progressive establishment of a common organization in the markets recurs.

Nor did the Council think it useful to make its point of view known on the subject of the system of control of cultivation in force in the Netherlands in the wording of the Regulation or in a declaration; the Dutch delegation for its part did not make any promise to abolish the system.

The Commission and the Council were thus aware of the Dutch Regulation limiting production when Regulation No 234/68 was being prepared; it is clear that they considered that there was nothing to preclude it from remaining fully in force.

The Commission moreover refers to certain national Regulations which in one way or another limit production in sectors governed by the common organizations of the agricultural markets.

In the cereal sector the Federal Republic of Germany France and Belgium have issued Regulations intended to limit production in the flour milling industry or authorized measures involving quotas or limitation of milling capacity. None of the Community Regulations governing this sector states whether these national systems limiting production are compatible or incompatible with the common organization of the market.

In the eggs and poultry sector in the Netherlands there are rules in force relating to breeding allowing measures limiting production. The Community rules contain no provision relating to the compatibility or incompatibility of these national rules with the common organizations of the market.

In the tobacco sector, at the time that Regulation No 727/70 of the Council of 21 April 1970 on the common organization of the market in raw tobacco (OJ L 94, p 1) was being prepared, the Italian State monopoly had an exclusive right to production, and in the French system there was a State monopoly as regards the manufacture and marketing of tobacco, as well as rules on cultivation limiting the annual

maximum of acreage cultivated. Article 12 of Regulation No 727/70 states that provisions which grant to certain natural or legal persons the exclusive right to cultivate tobacco are incompatible with the Regulation.

In the wine sector, production is limited in France by a limitation on the surface covered by vines; permission must be obtained for planting vines in the Federal Republic of Germany and Luxembourg. Although the Council did not adopt the proposal from the Commission to establish Community rules for vine planting, Regulation No 816/70 of the Council on 28 April 1970 laying down additional provisions for the common organization of the market in wine (OJ L 99, p 1) contains certain provisions to relate supply to demand.

In the hop sector, in the United Kingdom there are rules laying down a basic annual quota for every registered producer. This control of cultivation was not specifically discussed at the time of the negotiations conducted with a view to the accession of the United Kingdom to the Community.

The Advocate-General delivered a second opinion on 2 October 1974.

Grounds

1 By judgment dated 10 December 1973, lodged at the Registry on 17 December 1973, the Economic Magistrate of the Arrondissementsrechtbank of Haarlem has referred to the Court, under Article 177 of the EEC Treaty, a question for a preliminary ruling, on the interpretation of Regulation No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (OJ L 55, p. 1), in the light of certain provisions of the Dutch regulation relating to hyancinth cultivation, made on 29 June 1971 by the 'Produktschap voor Siergewassen' and approved by the Minister of Agriculture by decree of 28 July 1971.

2 By the effect of this national regulation, the cultivation of hyancinth bulbs is forbidden to anyone other than the holder of a cultivation licence which is granted annually, by the 'Produktschap' for a specific area.

3 It appears from the Court file that the question referred for a preliminary ruling was submitted, in the course of criminal proceedings against a grower, for having engaged in the cultivation of hyancinth bulbs without holding such a licence.

4 More specifically it seeks an answer to the question whether a system restricting production, such as that established by the Dutch regulation for

the trade in question, is compatible with Article 10 of Regulation No 234/68, which prohibits *inter alia* 'any quantitative restriction or measure having equivalent effect' in the internal trade of the Community.

5 The national system in question and the provision under Community law of which the interpretation is requested relate to different stages of the economic process, that is to say to production and to marketing respectiveley.

6 Accordingly it is necessary to put Article 10, which in the first place relates to marketing, back into the global system of the organization of the market set up by Regulation No 234/68.

7 In the absence of express provisions as to the compatibility of a national regulation restricting production with the organization of the market set up by Regulation No 234/68, it is necessary to seek the solution to the question referred in the light of the objects and the purposes of the Regulation within the framework of the principles laid down by the Treaty itself.

8 In the sector of live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, Regulation No 234/68 has set up an organization of the market characterized in the words of Article 1 thereof, by 'common quality standards and a trading system'.

9 As regards trade, Article 10 has the purpose of eliminating any quantitative restrictions or measures having equivalent effect in the internal trade of the Community by in particular prohibiting customs duties or measures having equivalent effect and quantitative restrictions or measures having equivalent effect.

10 Moreover, Article 11 declares that in principle the provisions of Articles 92 and 93 of the Treaty shall apply to trade in the products in question, with a view to eliminating interference with competition by the grant of state aid.

11 Apart from rules concerning the marketing of the products the organization of the market also involves diverse provisions applicable to the production stage.

12 Major importance is in this respect given to common quality standards, the application of which, in the words of the preamble, 'should have the effect of eliminating from the market products of unsatisfactory quality and of promoting commercial relations on the basis of genuine competition'.

13 Seen in this light, Articles 1, 2 and 3 provide a totality of Community measures on the introduction of common quality standards, having the purpose of encouraging trade initiatives with a view to improving the quality of the products and of perfecting the organization of production.

14 Even if the quality standards were intended to deal merely with the marketing of the products, they would nevertheless have a restrictive effect on the production stage.

15 It thus follows from the general tenor of the Regulation that, as regards the internal trade of the Community, the organization of the market for the products in question is based upon freedom of commercial transactions under conditions of genuine competition, thanks to stabilization of the quality of the products.

16 Such a system excludes any national system of regulations which could impede directly or indirectly, actually or potentially, trade within the Community.

17 A national organization having the purpose of rationing production affects — or is at any rate capable of affecting — the system of trade thus defined, and must accordingly be considered a measure having an effect equivalent to quantitative restrictions within the meaning of the Regulation.

18 Accordingly the question referred ought to be answered to the effect that Article 10 of Regulation No 234/68, interpreted within the framework of the totality of the provisions on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, excludes the existence of any national system having the purpose of quantitatively restricting the cultivation of one of the products falling within the common organization of the market.

Costs

19/20 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Economic Magistrate of the Arrondissementsrechtbank of Haarlem by a judgment dated 10 December 1973, hereby rules:

Article 10 of Regulation No 234/68, interpreted in the framework of the totality of the provisions relating to the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, excludes any national system having the purpose of quantitatively restricting the cultivation of one of the products falling within the common organization of the market.

Lecourt Ó Dálaigh Monaco

Mertens de Wilmars Pescatore Kutscher Sørensen

Delivered in open court in Luxembourg on 30 October 1974.

A. Van Houtte
Registrar

R. Lecourt
President