Having regard to the Treaty establishing the European Economic Community, especially Articles 39, 40 and 177;
Having regard to Regulation No 120/67/EEC of the Council of 13 June 1967 and Regulation (EEC) No 1028/68 of the Commission of 19 July 1968;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question referred to it by the French Conseil d'État by order of that Court of 26 June 1970, hereby rules:

The use of the words 'every holder' in Article 1 of Regulation No 1028/68 of the Commission of the European Communities excludes from the scope of the supplementary conditions for taking over provided for in Article 5 of the said regulation any condition relating to the definition of the holder or his entitlement to avail himself of the intervention machinery.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 17 December 1970.

A. Van Houtte — Registrar

R. Lecourt — President.

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 9 DECEMBER 1970[1]

Mr President,
Members of the Court,

The case for a preliminary ruling with which we are concerned today relates to the interpretation of Regulation No 1028/68 of the Commission of 19 July 1968 laying down the procedure and conditions for the taking over of cereals by intervention agencies for the 1968/69 marketing year (OJ 1968, L 176 p. 1). This regulation comes within the framework of the common organization of the market in cereals set up by Regulation No 120/67/EEC of the Council of 13 June

1 — Translated from the German.

1967 (OJ 1967, p. 2269; OJ [English Special Edition] 1967, p. 33). Details of the cereal market organization are known to us from other proceedings and do not need to be mentioned now. It needs only to be said in the present connexion that in the interests of domestic production a guarantee of prices in the Community is provided with the help of levies on imports from third countries and with the help of the intervention system. According to this system intervention prices are fixed which are less than the target prices, that is the market prices being sought for the goods (Article 4 of Regulation No 120/67). Article 7 of Regulation No 120/67 moreover obliges 'throughout the marketing year the intervention agencies designated by Member States... to buy in cereals... which are offered to them and have been harvested in the Community' which prevents the market prices from falling below the level of the intervention prices. Under Article 7 (5) of Regulation No 120/67 detailed rules for the application had to be adopted by the Commission. For the 1968/69 marketing year this was done by Regulation No 1028/68. Article 1 thereof provides as follows: 'every holder of homogeneous lots of a minimum of 50 tonnes of common wheat, rye, barley and maize and of 10 tonnes of durum wheat harvested in the Community shall be entitled to offer such cereals to the intervention agency. The intervention agencies may however fix a higher minimum quantity'. The French intervention agency, Office national interprofessionnel des céréales, made use of the lastmentioned possibility and increased the minimum amount tenfold. Further the Director-General of the Office national—and this is particularly important for the present proceedings—laid down in a set of rules issued on 30 August 1968 fixing the general conditions for taking over of cereals offered to the intervention agencies in the 1968/69 marketing year that the intervention obligation applied only in respect of 'organismes agréés pour la collecte' ('bodies authorized to collect'). This relates to the definition of 'collecteur agréé' ('authorized collector') contained in Order 67/812 of 22 September 1967. They are basically cooperatives and dealers which fulfil certain conditions. They are involved at the stage when the harvest is gathered (they alone are entitled to buy direct from the producers) and they are bound not only to pay the purchase price in cash but they also have certain duties in respect of the payment of taxes and levies to the State. The Office national thus seeks to limit the right to offer cereals in France for intervention to them alone.

A number of French dealers, who are concerned mainly with cereal export and to a lesser extent with cereal import, and the trade association Syndicat national du commerce extérieur des céréales see in this an unwarranted limitation on the opportunity for intervention. They therefore made a complaint against the decision of the Director-General of the Office national interprofessionnel des céréales to the French Minister for Agriculture and after the Minister had confirmed the ruling complained of by decision of 30 September 1968 they brought the matter before the Conseil d'État on 29 October 1968. In the court proceedings they claim that the French intervention rule infringes Article 1 of Regulation No 1028/68 of the Commission. (Erroneously they first referred to the previous Regulation No 237/67 of the Commission which had a similar content). Moreover they claim that no such provisions can be made on the basis of Article 5 of Regulation No 1028/68 of the Commission, for this provides only that 'the intervention agencies shall lay down as necessary supplementary procedures and conditions for the taking over of cereals as may be compatible with the provisions of this regulation to take into account the special conditions existing in the Member State to which they belong'. The Conseil d'État is thus faced with problems which relate to the interpretation of Community law. As is provided in Article 177 of the EEC Treaty it has, in accordance with the proposal of its Commissaire du Government, stayed the proceedings by judgment of 10 July 1970 and referred for a preliminary ruling the question:

> 'whether by use of the words "every holder" in Article 1 of the abovementioned regulation of the Commission of the European Communities all con-

ditions for the taking over of cereals relating to the definition of the holder or his entitlement to avail himself of the intervention machinery, having regard to the peculiarities of the cereal market in the Member State of the holder, are or are not excluded from the scope of the supplementary measures provided for in Article 5 of the said regulation'.

The parties to the main action and the Commission of the European Communities have made written and oral observations on this question. Let us now see what the position is.

To see the matter in the right perspective it seems appropriate at the outset to make an observation of principle. It is—as the Commission rightly stresses—indisputable that in the years 1962/67 a gradual replacement of the national organization of the cereal market took place and the aforementioned Regulation No 120/67 created a common organization of the market for cereals in a definite form. This market order represents a comprehensive form of organization within the meaning of Article 40 (2) (c) of the EEC Treaty. There can be no doubt about this because precise Community rules in numerous regulations govern all essential questions such as price structure, protection *vis-à-vis* third countries and the market order. It is accordingly certainly not possible to-day (as the Office national has repeatedly claimed in its observations) that six different national market organizations exist side by side. Even the fact that the Community rules have not yet exhaustively regulated all questions does not justify this claim. It is well known—as the Commission itself admits—that harmonization is still required in matters of tax and penal law which are at present regulated on a purely national basis. In the same way the Commission recognizes that the market organization is not intended to function at the level of the producers, that is of numerous, often small, traders who are scarcely capable of complying with the formalities, but is directed to the level of the wholesale trade. There is therefore no objection to leaving production and marketing including the financing of the harvest to be handled by the national sphere, as was done in France—after the abolition of the earlier forms of monopoly —in the shape of the liberalized system of 'collecteurs agréés' on the basis of Order 67/812 of 22 September 1967. As I said however, all this does not allow us to disregard the basic fact that an extensive community market organization exists and that the phase of coordinated national market organizations has long been passed.

Further with regard to the principles of law which concern us here, the Commission's reference to the case-law on the tariff sovereignty of the Community as set out in judgment in Case 40/69 [1970] E.C.R. 69 is very pertinent. Going far beyond the facts which were then in question it justifies the observation that so far as there has been a transfer of sovereign rights to the Community in the agricultural sphere and to the extent that Community rules apply there is no longer any place for national legislation which could affect or prejudice the Community rules. The principle may be inferred from this observation that, wherever Member States have been given tasks of implementation, the determination of the powers of the national authorities should, on principle, be given a restrictive interpretation. Moreover on no account should the basic requirement be overlooked of guaranteeing as uniform an application as possible of the market rules in the Community (to which moreover—as far as 'the conditions of offer to intervention agencies and the taking over by them' are concerned reference is specifically made in the preamble to Regulation No 1028/68).

It is only against the background of these principles that an interpretation of the provisions of Regulation No 1028/68, which concern the main action, can be undertaken.

In this connexion the abovequoted Article 1 (1) of Regulation No 1028/68 is of prime importance, that is the provision according to which every holder ('tout détenteur') of certain quantities of prescribed cereals harvested in the Community shall be entitled to offer them to the intervention agency. The wording of this provision, the use of the very broad term 'holder' in conjunction with the word 'every' leaves no doubt that a comprehensive rule is intended, that is that everyone should be included

who holds domestically grown cereals no matter in what capacity and under what title. Included are dealers who have purchased for export and naturally producers themselves. If it is asked in addition whether such a wide interpretation is reasonable for an intervention system, which has been chosen with regard to the interests of the producer and his market prices, then, as the Commission says, no objections are apparent. As already stated, the intervention price represents the lower limit to which the market price may fall. The very existence of the intervention agencies as potential purchasers thus guarantees that the level of market prices is above the intervention price. This effect will be certainly all the more evident the more purchasers, with no matter what object, including export, appear on the market alongside the intervention agencies. If export dealers, who for commercial and technical reasons of transport (such as river transport with its special features) are compelled to hold greater stocks with corresponding risk, were excluded from the intervention system and the guarantee associated with it, they would certainly be somewhat hesitant about purchasing or when so doing would seek to take the risk into account and adjust their price accordingly. Both, as the Commission rightly stresses, would exercise pressure on the market prices and so have a damping effect. Considered from this point of view, it must appear reasonable and necessary in the interest of the market mechanism and the movement of prices to bring all kinds of dealers within the intervention system. The argument, on the other hand, that this would open the way to speculation, has little or no merit. This cannot be said to be so for a start because the purchase as a rule takes place at the higher market price, while intervention agencies guarantee only the lower intervention price. There can thus in truth only be a question of limiting losses, which may arise owing to the monthly increase of the target prices and their fall at the beginning of a new marketing year as a result of unwise dealings. Further no objection can be raised to the far-reaching intervention system as contained in Article 1 of Regulation No 1028/68 on the ground that it affords no possibility of satisfactorily checking the origin, which is certainly ensured by the French system of 'collecteurs agréés', and their close connexion with the Office National. The view indeed cannot seriously be defended that reliable proof of origin cannot be given by dealers who do not belong to the group of 'collecteurs agréés'. France is the very place where difficulties should not arise, since—according to the observations of the Commission—movements of goods of the nature which concerns us now are very precisely noted for statistical purposes. Difficulties however have apparently not arisen in those countries with higher import requirements, in spite of the wider scope for the intervention authorities, where checking the origin could give rise to problems because of the greater quantities of foreign cereals on the market. Moreover in this connexion reference may be made to the fact that a similar problem arises in respect of the carry-over payment to be made under Article 9 of Regulation No 120/67 but that even on making this payment to dealers and consumers no difficulties have arisen in checking the origin of the stocks of cereals harvested in the Community in hand at the end of a cereal marketing year.

Accordingly it may be maintained in respect of Article 1 of Regulation No 1028/68 that according to its wording and meaning it must be taken that the intention of the draftsman of the regulation was to make access to intervention general and thus to make it available to all who had a certain quantity of domestically grown cereals on hand.

If this is so there is the further question, which is obviously more important for the French intervention authorities, whether Article 5 of Regulation No 1028/68 of the Commission permits national intervention agencies to issue rules which depart from this. On this I remind you of the wording of the provision which is as follows:

'The intervention agencies shall lay down as necessary supplementary procedures and conditions for the taking over of cereals as may be compatible with the provisions of this regulation to take into account the

special conditions existing in the Member State to which they belong.'

The allegation that the set of rules of the Office national called in question before the Conseil d'État could be justified on the basis of this provision cannot be supported —let me say straight away—by saying that the Office national had notified the rules, with the provisions limiting recourse to intervention, to the Commission of the European Communities at the time and had received no objections. The Commission's attitude is of no consequence for it is nowhere laid down in the regulations for the cereal market that there must be express approval. Further in favour of the Commission it must be considered that having regard to its numerous tasks it can investigate questions such as concern us now only on a complaint by those affected and that it was obviously not informed of the objections of the plaintiffs in the main action when the rules were notified.

What is determinative is the objective legal position, that is the wording of Article 5 and the whole system of Regulation No 1028/68 into which it is inserted. Moreover its interpretation must be considered against the background of the observations of principle made at the beginning. Seen in this light the fact must first be remembered that in the preamble to Regulation No 1028/68 it is stated: 'The conditions of offer to intervention agencies must be as uniform as possible in the Community'. Anyone seeking to derive from Regulation No 1028/68 the power to issue rules varying this provision must produce particularly clear evidence to justify so doing. Such variations are expressly envisaged in certain provisions of the regulation such as in Article 1 (1) in relation to the fixing of the minimum quantities or in the third indent of Article 2 (2) in relation to the fixing of the 'specific weight' for winter barley. With regard to the term 'holder' there is on the other hand no express reference in Article 1 to national law and to the possibility of restrictive limitation, that is the fixing of special conditions specifying which holder (that is to say the person who has the goods at his disposal) is to be recognized for the purposes of the market regulations. The assumption that Article 5 could permit such variations comes up against the difficulty that there is no mention in it of variations but of supplementary, that is *additional* provisions, which must be *compatible* with the regulation and can deal only with the procedure and conditions for the taking over of cereals. The preamble to the regulation makes clear what circumstances were in mind here, by the reference to climatic conditions and trade usage. These may scarcely be used to justify a limitation of the term 'holder' having regard to the particular national system of marketing. Article 3 (2) shows what conditions for taking over must be understood to mean, namely the conditions for the physical taking over of the goods in question (that is time, place and manner of transfer). A whole series of admissible items in the rules laid down by the Office national and also the rules of other national authorities may be so classified (as the Commission has shown on page 13 of its pleading and the plaintiffs on page 12 of their written observations). On the other hand it can scarcely be said that all the items mentioned, even those considered admissible by the Commission, come within the category of formalities, that is *procedural requirements* within the meaning of Article 5 and the expression 'conditions for the taking over' must in consequence have a wider meaning, that is one that includes the term 'holder' ('detenteur'). It is easy to show that this is not the case in view of the conditions in the rules which relate to the quality of the goods, the place and costs of transfer and which can scarcely be termed procedural requirements. A final objection to the view of the Office national is that the restriction of the term 'holder' prescribed by it would lead those directly interested in intervention, namely the producers, being barred direct access to the intervention agencies. Since this can obviously not be reconciled with the intent of the market regulation, it must be concluded that intervention agencies are not allowed to lay down rules relating to the term 'holder' deviating from that in Article 1 of Regulation No 1028/68.

Accordingly a reasonable interpretation of Regulation No 1028/68 is that the availability of intervention, as far as the class of

those entitled is concerned, is conclusively defined in Article 1. Only such an interpretation guarantees the necessary uniformity for the Community. Article 5 on the other hand permits no limitations, but simply allows conditions primarily of a procedural nature to be fixed. This interpretation is all the more acceptable in that it in no way jeopardizes the French system of 'collecteurs agréés'. This special system created for the marketing of products and differing both as to function and object from the intervention system of the common organization of the markets can continue to exist and fulfil its role even if the availability of intervention is not restricted to 'collecteurs agréés'.

Accordingly the question put by the Conseil d'État should be answered as follows: The term 'every holder' used in Article 1 of Regulation No 1028/68 is a determining factor in the intervention system. Article 5 of the regulation permits only the laying down of procedural requirements and conditions for taking over and not a restriction on the availability of intervention with regard to the class of those entitled.