JUDGMENT OF THE COURT
17 DECEMBER 1970[1]

Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Günther Henck[2] (Reference for a preliminary ruling by the Hessischer Verwaltungsgerichtshof)

Case 26/70

Summary

Agriculture — Common organization of the markets — Cereals — Export licences — Refund fixed in advance — Deposit — Amount — Fixing such amount (Regulation No 102/64 of the Commission, Article 7)

The requirement of a higher deposit in cases of advance fixing of the refund is a method necessary to guarantee compliance on the part of exporters with the obligation attached to the issue of the licence and thereby to ensure the accuracy of the forecasts of future market trends.

Determination of the amount of the deposit falls within the discretion of the authority having the power to adopt regulations in the matter. The amount fixed by Regulation No 102/64 is in no way excessive, taking into account the size of price fluctuations.

In Case 26/70

Reference to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof (Higher Administrative Court of the Land of Hesse), Kassel, for a preliminary ruling in the action pending before that court between

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt-am-Main

and

GÜNTHER HENCK, Hamburg,

on the validity of Regulation No 102/64/EEC of the Commission of 28 July 1964

1 — Language of the Case: German.
2 — CMLR.

on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

On 6 January 1966 the Günther Henck undertaking obtained an export licence in respect of 3 000 metric tons of compound feeding-stuffs with the refund fixed in advance (in the form of an authorization to import free of levy a corresponding quantity of cereals).
In accordance with Article 7(1) of Regulation No 102/64/EEC of the Commission of 28 July 1964 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products (OJ 1964, p. 2125), the issue of the licence was conditional on the lodging of a deposit amounting to 5 units of account per metric ton guaranteeing that the obligation to export during the period of validity of the licence would be fulfilled.
As the export transaction was only partially carried out during the period of validity of the said licence, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, by decision of 15 July 1966, declared DM 104.52 of the deposit forfeited.
Since the Einfuhr- und Vorratsstelle failed to come to a decision on the objections of Günther Henck, that undertaking on 21 October 1966 brought an action in the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main.
By judgment of 12 December 1966, the Verwaltungsgericht Frankfurt-am-Main found in favour of Günther Henck.
In the grounds of its decision the court held in particular that Regulation No 102/64 was invalid in that it instituted an obligation to export, made the issue of the export licence conditional upon the lodging of a deposit and provided in principle for forfeiture of the deposit should the obligation to export not be carried out, moreover, the Commission did not have the power to adopt such a regulation as it violated the principle whereby the administration is obliged to implement only measures

proportionate to the objective to be attained (principle of proportionality).

On appeal against that judgment by the Einfuhr- und Vorratsstelle, the Hessischer Verwaltungsgerichtshof, by order of 28 April 1970 received at the Court Registry on 28 May 1970, has asked the Court under Article 177 of the EEC Treaty for a preliminary ruling on the validity of Regulation No 102/64/EEC of the Commission and, in particular, on the question whether Articles 1 and 7 of that regulation are valid in so far as they relate to the system of export licences and deposits.

In its order the *Hessischer Verwaltungsgerichtshof* puts the following questions, the scope of which is decisive for the solution of the dispute:

(1) Must the procedure laid down by Article 26 of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (OJ 1962, p. 933), in implementation of which Regulation No 102/64 was adopted, be considered to be contrary to the EEC Treaty? In particular, is that procedure compatible with Articles 43(2), 155, 173 and 177 and the first paragraph of Article 189 of the EEC Treaty?

(2) Is Regulation No 102/64 deprived of any valid basis of authorization in that it lays down in Article 1 thereof the obligation to export involved by the export licence, in Article 7(1) thereof the necessity to lodge a deposit in order to obtain that licence and in Article 7(2) thereof forfeiture of the deposit should the obligation to export not be fulfilled? Or are the Commission's powers in this connexion to be found in either the EEC Treaty in general or the combined provisions of Article 16(2) and (3) or Articles 19 and 20 of Regulation No 19?

(3) Do the provisions of Regulation No 102/64 relating to the obligation to export inherent in every export licence (Article 1) and the lodging and forfeiture of the deposit lodged for the purpose of obtaining export licences (Article 7) violate a principle whereby the administration is obliged to implement only measures proportionate to the objective to be attained or prohibiting it from recourse to excessive measures? In particular, is this so in the case referred to in Article 7(1) where the deposit is lodged for the purpose of obtaining export licences in respect of which the amount of the refund is not fixed in advance?

(4) May it be said that the provision of Regulation No 102/64 concerning forfeiture of the deposit (Article 7(2)) is invalid by reason of the fact that, even without the legislature's attempting to establish whether or not the failure to carry out the obligation to export is independent of fault, the only case in, which the deposit is not forfeited is under Article 8, when exportation cannot be effected during the period of validity of the licence as a result of circumstances which may be considered to be a case of *force majeure*?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 17 July 1970 by the Government of the Kingdom of the Netherlands, on 5 August by the respondent in the main action, on 6 August by the Council of the European Communities and on the same date by the Commission of the European Communities.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The respondent in the main action and the Commission presented their oral observations at the hearing on 11 November 1970.

The Advocate-General delivered his opinion at the hearing on 2 December 1970.

For the procedure before the Court Fritz Modest, Advocate, of Hamburg, appeared for the respondent in the main action, C. W. van Sanken, Assistant Legal Adviser at the Ministry for Foreign Affairs for the

Government of the Kingdom of The Netherlands, Jean-Pierre Puissochet, Director of the Secretariat-General, for the Council and Claus-Dieter Ehlermann, the Commission's Legal Adviser, for the Commission.

II — Observations submitted to the Court

The written and oral observations submitted to the Court may be summarized as follows:

Günter Henck, the respondent in the main action, advances the following arguments in particular against the validity of the system of deposits:

(a) *On the formal level*

Forfeiture of the deposit constitutes a quasi-penal sanction or a fine imposed on the importer or exporter on failure to carry out the obligation of public law imposed upon him. The institutions of the Community do not have the power to impose fines or sanctions of a penal nature except in cases where they are expressly authorized by the Treaty to do so. However, Article 39 et seq. relating to the organization of the agricultural markets contain no enabling provision of this nature.

The system of deposits is based on the so-called Management Committee voting procedure. That procedure is contrary to the Treaty: it enables the Management Committee to participate in the legislative work of the Commission, makes the obligation to consult the Assembly illusory and gives the Member States the opportunity of obtaining from the Council an 'annulment' of the regulations of the Commission. The regulations of the Commission adopted in implementation of this illegal procedure are therefore invalid.

Regulation No 19 only provided for the lodging of a deposit for the issue of import licences for cereals alone. The Commission was therefore not entitled on its own authority to extend the system of deposits either to export licences for cereals or to import and export licences for cereal products.

(b) *The substance of the system in dispute*

The respondent in the main action maintains that the system of deposits must respect the principle of proportionality, enshrined both in the German Basic Law and in Community law. In this respect the following observations in particular should be made:

The regulations establishing the common organization of the agricultural markets are limited in principle to the formation of market policy be means of prices. The regulation of prices has an automatic sluice-gate effect on quantitative movements in the Community market and avoids any disturbance to it. Consequently, the point of prime importance in the assessment of the market and market trends is the observance and checking, first, of the prices on the internal market and, secondly, of the situation on the world market. On the other hand, a quantitative check, such as arises from the system of import and export licences, the utilization of which must be guaranteed by means of a deposit, is only of secondary importance.

It appears therefore that the system of deposits is ineffectual in attaining the objective sought by the agricultural regulations and is even contrary to the scheme of those regulations. Moreover, it is also ineffectual in view of the fact that it can neither guarantee that the obligation to import or export is actually carried out, nor enable the competent authorities in good time to have a sure view of the state of the market, much less future market trends.

Moreover, the intervention agencies and the Commission are not technically in a position to exploit the information provided by the system criticized.

Finally, the obligation to lodge a deposit places a heavy burden on the liquidity of undertakings, in particular small and medium-sized undertakings, and the amount of the deposit, especially in the case of advance fixing of the levy or refund, is excessive in relation to normal trade profit margins.

It follows from the foregoing that a substantial charge is imposed without any necessity on importers and exporters. However, any measure constituting a charge, whether or not it is in itself tolerable, violates the principle of proportionality when it is superfluous, when there is disproportion between the charge and the result which it may or must endeavour to achieve, when that objective cannot be attained by the method employed or when, in order to attain it, there are other methods which may be more conveniently applied. The system of deposits also violates the principle of proportionality in that in respect of exemption from forfeiture of the deposit it refuses, otherwise than in cases of *force majeure*, to take into consideration situations in which the licence to import or export has not been utilized for justifiable commercial reasons, in particular when utilization would have been contrary to the objectives of the common organization of the markets or to commercial logic (for example, in the event of amendment of the applicable legislation between the date of the application for the licence and that of its issue).

The Government of the Kingdom of The Netherlands maintains that Article 16(3) of Regulation No 19 delegates to the Commission in a general manner the power to adopt detailed rules for the application of the whole of Article 16, including in consequence the rules relating to export licences. These detailed rules were laid down in accordance with the procedure prescribed by Article 26 of Regulation No 19; they are in conformity with the objective fixed by the Council itself in Article 16(2). The policy of the agricultural markets calls for a prospective view of the market and thus of precise data on future imports and exports. It is in the logic of the system that the sum required as a guarantee for the carrying out of the obligation to import or export reduces the cases in which that obligation is not fulfilled. The Commission therefore had to extend the rules laid down by the Council in respect of import licences to export licences.

The system of deposits in no way violates the principle of proportionality; moreover, one cannot see by what less radical methods it could be replaced.

The Council of the European Communities restricts its observations to the problem of the compatibility with the EEC Treaty of the so-called Management Committee procedure and, in asserting such compatibility, advances essentially the following arguments:

(a) The Commission and the Council are empowered to adopt measures implementing a Council measure based directly on the Treaty.

The last indent of Article 155 of the EEC Treaty expressly attributes powers of implementation according to a machinery very closely approaching the so-called technique of the delegation of powers or competences. The Commission does not therefore have a direct, immediate and general power to adopt provisions implementing the rules drawn up by the Council, which must, case by case, expressly delegate such power to it. On the other hand, once such power is delegated to the Commission, it is free to exercise it under the conditions laid down by the measure attributing the power to it and the Council may amend decisions adopted in this way only in so far as it itself provided for that possibility in the measure delegating powers.

By expressly providing for the possibility of conferring powers of implementation on the Commission, Article 155 implicitly, but necessarily, confirms that the Council holds and may retain the same powers.

These principles involve a twofold limitation: on the one hand, the powers which the Council is entitled to confer on the other hand, it is only to the Commission that powers in connexion with the implementation of rules of the Council may be attributed.

(b) With regard to the procedure for the adoption of rules of implementation, a distinction must be made according to whether they are adopted by the Commission or by the Council.

In the first case, as Article 155 contains no provision on this point, the Council is free, subject to the observance of the institutional balance of powers created by

the Treaty, to subject the exercise of the powers conferred on the Commission to specific, detailed rules, such as consultation of a subsidiary body composed of experts or representatives of the Member States.
The detailed rules of the Management Committee procedure do not have the effect of putting the powers conferred on the Commission in issue: they introduce, it is true, the deliberations of a committee but in the exercise of the powers conferred on it the Commission remains the master of its own decision; it is never obliged to follow the opinion of the Committee, the only consequences of a difference between the Committee's opinion and the decision of the Commission being the obligation for it to communicate the wording of the measure to the Council, the option to defer application of the measure for a limited period and the possibility for the Council to adopt different measures. The complaint that the Council has illegally had conferred on itself a 'right of annulment' is irrelevant in the present case, as Regulation No 102/64, the validity of which is contested, was adopted by the Commission and complies with the opinion of the Management Committee. Moreover, any measures adopted by the Council, when it substitutes fresh provisions for those previously adopted by the Commission, cannot in any way be compared with the intervention of a decision of annulment or even of appeal.
In reality, the machinery in dispute must be seen as a conditional delegation of powers; the Council, which might have conferred no power on the Commission, may also confer powers on it subject to certain detailed rules or under certain conditions permitting it in certain specific and well-defined cases to take up and exercise its power to determine itself the measures implementing its own rules.
In a case where the Council itself adopts measures adopting its own rules — a case not relevant in this instance — it is justified and compatible with the Treaty that it may do so according to detailed rules different from those required for basic measures by Article 43(2) of the Treaty.

(c) The fact that the provisions relating to the Management Committee procedure do not expressly mention the forms of measures provided for by Article 189 of the Treaty in no way signifies that that article is infringed. It follows from this solely that the institutions have the opportunity of adopting, from among all the legal forms provided for by Article 189, that which appears to them the most appropriate.

(d) The fact that, on the one hand, only the Council and the Commission have a power of decision in the application of the Management Committee procedure, and that, on the other hand, measures adopted by these two institutions are obliged to take one of the forms of executory measure provided for by Article 189 of the Treaty enables it to be stated that the legal guarantees offered by the Treaty, in particular by Articles 173 and 177, to those concerned by acts of the administration are safeguarded when this procedure is applied.
The Commission of the European Communities submits substantially the following observations:

(a) *The legality of the intervention by the Management Committee*

The power to make laws for the Community obviously cannot be conferred on bodies other than the Council and the Commission; the collaboration of a committee in the legislative work of the Commission is, however, perfectly legal.
The last indent of Article 155 of the EEC Treaty enables the Council to entrust the Commission with the implementation of the rules laid down by it and to evaluate to what extent and under what conditions it intends to confer powers of implementation on the Commission. The Council does not exceed the limits of that power of evaluation by subjecting the attribution of powers to the Commission to the obligation to obtain the opinion of a committee composed of representatives of the Member States before adopting measures of implementation.
The negative opinion of the Management Committee does not deprive the Commission of its powers; it merely obliges it to

communicate the measure adopted to the Council and enables the Council to take a different decision. There is nothing against the Council's reserving such a right and, when it does so, this in no way has an adverse effect on review by the Court of Justice.

The powers conferred on the Commission within the framework of the Management Committee procedure are powers of implementation; they may thus be exercised according to rules other than those laid down by the third subparagraph of Article 43(2) of the Treaty solely for measures intended to lay down the principles of the common agricultural policy and, in particular, the guidelines of a common organization of the market. The principles governing the institutional balance between Council and Commission are respected in this case. As to the Council's option, on a qualified majority, to take a decision different from that of the Commission, it must be remarked that the Council's powers of amendment in the framework of the Management Committee procedure and those provided for by the first paragraph of Article 149 of the EEC Treaty are not comparable.

(b) *The principle of proportionality*

The Community institutions are bound by Community law alone and in their regard the protection conferred by the fundamental rights of national constitutions flows only from Community law, written or unwritten. Further, even according to German constitutional law, the system of deposits is only capable of infringing the provisions concerning free development of the person, freedom of action and economic freedom if, at the same time, it runs counter to the principle of proportionality.

This principle is, however, in no way put in issue by the system in dispute, as that system is indispensable to the proper functioning of the common organization of the market in cereals.

The common organization of the market in cereals involves essentially the regulation of prices, the object of which is to stabilize the price of cereals in the Community at a level higher than that on the world markets. Such regulation protects the Community market from falls in prices provoked either by internal over-production or by imports. It can only function if the regulatory mechanism is used in a rational manner; it is therefore essential that data be available indicating not only the imports and exports already effected but also enabling a valid assessment of *future* market trends to be made. This *prospective* comprehensive view of the market is essential not only for the possible application of protective measures in the face of a threat of serious disturbances of the market but also for the fixing of export refunds and denaturing premiums, for the exercise by intervention agencies of their right to intervene on the market at any time, particularly by way of purchases, for fixing the flat-rate amount comprised in the intra-Community levy, for the choice of measures intended to avoid deflections of trade and, generally, for checking the functioning of the systems set up by Regulation No 19 and its implementing regulations and for their possible amendment.

The system of deposits is a necessary instrument for such a prospective comprehensive view. In the absence of a deposit, which in the event of non-utilization of the licence is forfeited, the licence is not capable of providing sure data as to the future imports or exports. In fact, there are several reasons for a trader to apply for more licences than he needs. The obligation to import or export involves no disadvantage for the licensee other than forfeiture of the deposit; thus it in no way has a particularly adverse effect on the rights of the individual.

It is not possible to obtain a valid comprehensive view of the market by obliging the licensee to report non-utilization of his licence and by penalizing any failure to fulfil that obligation by the imposition of a fine; in fact, in order to acquire a prospective comprehensive view of the market it is necessary that at the time when the licence is issued there should be sufficient certainty that the quantity mentioned in the licence will be imported or exported during the period of its validity. Notice of non-

utilization would merely lead to piecemeal correction of the initially false image of the future state of the market.

A reduction in the duration of the validity of licences is not an adequate solution: it runs counter to the objectives of the common organization of the market in cereals and is incompatible with the principle whereby trade must be taxed as lightly as possible.

The cases in which the licences remain unused are the exception and do not prevent the system of deposits from attaining its objective.

The opinion that the Member States and the Commission have not really attempted, on the basis of the licences, to obtain an exact idea of future imports and exports is incorrect. In any event, the argument based on the practice of administrative authorities is only valid in law when that practice shows that it is objectively impossible to use the instrument created by the system of deposits; this has not even been maintained.

The very object of the licence with the levy or refund fixed in advance necessitates the lodging of a supplemantary deposit. To give to the holder of a licence either the choice between the levy (or refund) fixed in advance or the levy (or refund) applicable to the day in question, or the opportunity of changing a licence with levy or refund fixed in advance for one without advance fixing does not allow of a prospective view of the market.

The complaint that the system of deposits transforms the economy of the market into a planned or directed economy is not justified. The common organization of the market in cereals cannot dispense with all intervention on the market; it is characterized, however, by the concern to make such interventions conform as much as possible to the rules of the market and to allow the widest scope for competition.

The amount of the deposit is in no way excessive, having regard to the objective of the system of deposits, by reason of the fact that forfeiture of the deposit is not the rule, that it involves only a small percentage of the target price of the least expensive cereals and that it is very much less than the normal margin of profit for this type of transaction.

Limitation solely to *force majeure* of the cases in which the deposit is not forfeited does not offend either the principle of proportionality or that of legality.

In fact, it follows from the case-law of the Court that the existence of a case of *force majeure* must be recognized when the application of strictly objective criteria indicates that the failure to effect importation or exportation is not due to negligence and that, in such examination, the principle of proportionality must be respected; furthermore, the fact that a trader has to bear an excessive loss may constitute a case of *force majeure* capable of releasing him from the obligation to effect the intended transaction.

Thus the Commission considers that, with regard to the principle of proportionality, it should be held that:

— first, the functioning of the common organization of the market in cereals requires a prospective comprehensive view of the market and therefore demands sufficiently certain knowledge of future imports and exports; only a licence subject to the risk of forfeiture of the deposit is capable of giving such knowledge. The system complained of not only conforms to the objective sought but is necessary to its attainment, thus it does not run counter to the principle of proportionality of the method to the objective sought.

— secondly, that, in order to attain its objective, the system of deposits must include a strict definition of the conditions which, if satisfied, justify the release of the deposit. Limitation to cases of *force majeure*, in the interpretation given to this concept by the Court, runs counter neither to the principle of proportionality nor to any other legal principle.

(c) *The legal basis of the system of deposits on exportation*

The powers necessary to adopt the system of deposits, which forms part of the implementing provisions, were conferred on the Commission by the Council in

accordance with the fourth indent of Article 155 of the EEC Treaty, which appears from Article 16 of Regulation No 19. The fact that this provision only expressly provides for deposits in the case of an import licence in no way enables it to be concluded that such system has been overlooked in the case of an export licence; the proper functioning of the market in cereals requires that sure data be available in respect of both exports and imports.

(d) *The power of the Commission to adopt the system of deposits*

The deposit is neither an administrative penalty or fine nor a periodic penalty payment; it is a particular type of guarantee the system for which the Commission is empowered to determine.

The system of deposits for licences with the refund fixed in advance is more particularly based on the first sentence of Article 20(2) of Regulation No 19, to which the first sentence of Article 11(3) and Article 19(2) of that regulation and the second sentence of Article 14(2) of Regulation No 55 of the Council of 30 June 1962 on the system of processed cereal products all refer.

Grounds of judgment

1 By order of 28 April 1970 received at the Court on 28 May 1970, the Hessischer Verwaltungsgerichtshof, by virtue of Article 177 of the EEC Treaty, has asked the Court to give a ruling on 'the validity of Regulation No 102/64/EEC of the Commission of 28 July 1964 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products (OJ 1964, p. 2125) and, in particular, on the question whether Articles 1 and 7 of that regulation are valid in so far as they relate to export licences and deposits lodged for the purpose of obtaining export licences'.

2 In its judgment given today in Case 25/70 the Court has rules that examination of the question put by the Hessischer Verwaltungsgerichtshof has not revealed any factor capable of affecting the validity of the provisions referred to.

3 However, in this case the Court is also asked in one of the questions subordinate to the principal question to rule whether the provisions of Article 7 (1) of Regulation No 102/64 are valid in a case 'in which the deposit is lodged for the purpose of obtaining export licences in respect of which the amount of the refund has been fixed in advance'.

4 Under the terms of the second indent of Article 7 (1) of Regulation No 102/64 the deposit is to be 5 units of account per 1000 kg in cases where the amount of the refund has been fixed in advance. According to the defendant in the main action, this amount, which represents a multiple of the deposit laid down in cases where the refund is not fixed in advance, constitutes an excessive burden, unrelated to the real objective of the system of deposits.

5 It cannot be denied that as a principle it is necessary to fix the amount of the deposit required in the case of 'advance fixing' of the refund at a higher level than in the case of a transaction giving rise to the application of the refund applicable on the day of exportation. As the system of advance fixing was created in the interests of trade, it was necessary to provide at the same time, in the scheme of the regulation, for adequate guarantees to eliminate the possibility that machinery of the common organization of the markets might be upset by speculation made possible by the introduction of this option.

6 To that end, the deposit was fixed in such a manner as to take into account price trends and consequently the variation in refunds during the period of validity of the export licence. The amount of the deposit must be sufficient to take away from exporters any interest, as the prices on the external markets vary, in changing their export plans as they are apparent from the licences applied for and issued. It appears therefore that the requirement of a higher deposit in cases of advance fixing of the refund is a method necessary to guarantee compliance on the part of exporters with the obligation attached to the issue of the licence and thereby to ensure the accuracy of the forecasts of future market trends.

7 Taking into account the size of price fluctuations which can occur on the markets in question, this amount in no way appears excessive. Furthermore, determination of the amount of the deposit falls within the discretion of the authority having the power to adopt regulations in the matter.

Costs

8 The costs incurred by the Government of the Kingdom of The Netherlands, and the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Hessischer Verwaltungsgerichtshof, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the oral observations of the defendant in the main action and the Council and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 2, 39, 40, 43, 149, 155, 173, 177 and 189;
Having regard to Regulation No 19 of the Council of 4 April 1962 and Regulation No 102/64/EEC of the Commission of 28 July 1964;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;
Having regard to the judgment of the Court of today's date in Case 25/70,

THE COURT

in answer to the questions referred to it by the Hessischer Verwaltungsgerichtshof by order of that court of 28 April 1970, hereby rules:

Examination of the question put has revealed no factor capable of affecting the validity of:

(1) Regulation No 102/64/EEC of the Commission of 28 July 1964 on import and export licences for cereals and processed cereal products, adopted under Article 16 (3) of Regulation No 19 in accordance with the Management Committee procedure established by Article 26 of that regulation;

(2) Articles 1 and 7 of Regulation 102/64/EEC of the Commission, in so far as they concern export licences and deposits lodged for the purpose of obtaining such licences.

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 DUTHEILLET DE LAMOTHE

(See Case 11/70, p. 1140)