OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 3 JULY 1974 [1]

Mr President,
Members of the Court,

1. The Association representing the millers of Champagne has pleaded, in a case before the French Conseil d'État, the illegality of the Community system of derived intervention prices introduced for cereals. The French court has referred the question to this Court without adding anything to the arguments of the applicant.

The Millers' Association has not, however, taken an active part in these proceedings for a preliminary ruling, so as to clarify the scope and basis of its criticisms, which do not appear altogether clear. This seems also to have placed the institutions submitting observations in this case, who are defending the legality of the Regulation in question, in the awkward position of not knowing the exact nature of the arguments which they must refute.

Since the task of this Court, in proceedings for the preliminary examination of the validity of Community acts is not to test, in a thorough and definitive manner, the legality of the act in question, but solely to declare whether the doubts on the matter expressed or merely referred to by the national court are well-founded, the brief and inadequate explanation of the criticisms made in this case will also have fatal repercussions on our examination.

Furthermore, it must also be observed that, as we are dealing solely with a question of legality, no importance can be given to considerations of expediency or suitability, which might otherwise be put forward in favour of the establishment of a system which differs from the one criticized, in other words, in this case, in favour of the system of a single intervention price as compared with the system of derived intervention prices, which I shall now go on to discuss.

An action pending before the French Conseil d'État contesting a domestic State decree by reason of the fact that it reproduces the provisions of a Community regulation which are alleged to be illegal, has given rise to the reference of the present preliminary question to this Court on the ground of the close relationship between the domestic implementing rules and the Community rules. The doubts raised by the Commission concerning the interest in bringing the action do not appear well-founded; in fact, a declaration of invalidity of Community rules made by this Court in a preliminary ruling cannot fail to have direct and general repercussions beyond the nullity of the domestic State measure which merely reproduces these rules.

2. In establishing the common organization of the market in cereals through Regulation No 120/67 of 13 June 1967, the Council considered it necessary in order to enable 'surpluses in production areas to be offset against requirements in deficit areas', to fix intervention prices derived from the basis price 'in such a way that the differences between them reflect the disparities which, given a normal harvest, arise under natural conditions of price formation on the market, and that the forces of supply and demand may have free play'. This is the principle of the so-called 'regionalization' of Community prices, for the fixing of which provision was made by Article 4 of the Regulation for common wheat, durum wheat, barley, maize and rye.

1 — Translated from the Italian.

By Regulation No 131/67, enacted on the same date, the Council laid down rules for deriving intervention prices. In this connexion, Article 1 distinguishes five types of area in accordance with the natural conditions of price formation on the market.

This Article provides that for the purpose of fixing derived intervention prices, market prices shall be considered as being established under natural conditions of price formation as follows:

'— in deficit areas whose supplies depend to a certain extent on imports, on the basis of the price at which imported cereals are offered in those areas;

— in production areas whose surpluses contribute to a certain extent to the supply of the areas, on the basis of the abovementioned price and the cost of transport to those areas;

— in ports of shipment, on the basis of the price in the main production area for exports and the cost of transport to the main port of shipment for that area;

— in other production areas whose surpluses are likely to be exported to a certain extent, on the basis of the price ruling in the ports of shipment and the cost of transport to those ports;

— in deficit areas other than those mentioned above, on the basis of prices in the surplus area best placed from the freight point of view, and the cost of transport to the deficit area.'

For the first of the five classes, concerning deficit areas which obtain their supplies in part from third countries, the market price is determined by the 'cif' price plus the levy and the cost of transport. The intervention price established for these areas serves directly or indirectly as the guide for the fixing of intervention prices in the other areas.

This classification is therefore connected directly or indirectly with the geographical situation of the different production areas in relation to the deficit areas considered in the first instance.

3. On the basis of the system established by Article 1 of Regulation No 131/67, the Council lays down each year, using the basic intervention price in the greatest deficit area in the Community, namely Duisburg, as its point of reference, the principal marketing centres and the derived intervention prices effective in these centres, in accordance with the provisions of Article 4 (4) (b) of Regulation No 120/67.

The second recital of Regulation No 131/67 specifies however that the level of market prices which, as has been observed, are established by reference to natural conditions of price formation and which serve as the basis for determining the derived intervention prices, is not determined solely by the cost of transport to Duisburg, the marketing centre in the area of greatest deficit in the north-west of the Community; account should also be taken of the geographical situation of the surplus and deficit areas of the Community, the requirements of other consumer areas, imports from third countries and export possibilities.

The fixing of derived intervention prices depends therefore on a series of factors unconnected with pure calculations; this is the reason why it has necessarily a global character. Even though there exist precise limits within which these prices must remain (those, in particular, under Article 4 which provides 'derived intervention prices shall in no case be fixed above the basic intervention price' and under Article 3 which provides that these prices 'shall be fixed in such a way that there is no discrimination between Community producers and in particular that cereals coming from one region cannot be offered in another region for less than the intervention price

applicable therein'), in the application of the other criteria for the periodical fixing of the prices in question, there is certainly a margin of discretion left to the Council.

In the single market in cereals, characterized by the fixing of a common level of prices, the regionalization of the level of guarantee which is constituted by the intervention price must consequently allow for this guarantee to be adapted to meet the regional differences between the various areas in the Community in the sphere of production and trade.

4. In the case pending before the Conseil d'État, the Millers' Association of Champagne contended that Regulation No 1210/70/EEC of the Council of 29 June 1970 fixing, for the 1970/71 marketing year, the derived intervention prices for the principal marketing centres for cereals on the basis of the rules mentioned above, should be considered invalid because it was made in contravention of the second paragraph of Article 40 (3) of the EEC Treaty prohibiting discrimination between producers and consumers within the Community, and also in contravention of the provisions of Regulations Nos 120/67 and 131/67 which prohibit any interference with the disparities in prices produced under natural conditions of price formation and any disturbance in the normal pattern of trade. This Association states first of all that the manner of fixing derived intervention prices has in practice produced economic effects contrary to the principles laid down in Regulations 120 and 131/67 by causing the millers of Champagne serious and unfair damage. Thus, the derived intervention price for the 1967/68 and 1969/70 marketing years was fixed, for example, at FF 47 for the Marne region, whereas, in central France it was FF 45·13. This operates to the detriment of millers in the Marne region, who cannot obtain supplies of wheat for less than FF 47; their position is accordingly weakened by comparison with their competitors in central France, especially in times of good harvest when the intervention price necessarily becomes the market price. Conversely, in central France it is the producer who will find himself in a disadvantageous position when he comes to dispose of his harvest in relation to the producer in the Marne region.

If the doubts expressed regarding the legality of Regulation No 1210/70 relate exclusively to the manner in which the Council applied the rules and criteria laid down by Regulation No 131/67, then we are bound to notice the absence in the judgment making the reference of any indication as to the reason for such doubts. The only reason which we are given, and which is put forward in the submissions before the Conseil d'État by the applicant Association, is essentially concerned rather with the compatibility with the basic Regulation No 120/67 and with the EEC Treaty of the criteria laid down by Article 1 of Regulation No 131/67 for determining market prices.

It must be recalled that the determination of this element is of prime importance in fixing derived intervention prices in accordance with the provisions of Article 4 (1) of Regulation No 120/67.

5. As regards the Association's apparent claim that the results of the application of the rules under consideration are not consistent with the principle that the system of derived intervention prices must respect the natural conditions of price formation, no evidence has been advanced proving the validity of this assertion. The description by the applicant of the economic phenomena occurring in periods of good harvest and periods of poor harvest does not prove anything since, according to the principle established by Article 4 (1) of basic Regulation No 120/67, account must be taken of the natural conditions of price formation on the market '*given a normal harvest*', and not therefore periods when production is greater or less than normal.

The fact that the millers of Champagne no longer succeed in selling to the Paris region the quantities which they have been accustomed to selling, due to the increase in competition from the millers in central France who have benefited (at least in times of good harvest) from a lower intervention price, is, according to the applicant in the main action, inconsistent with the principle in Article 6 of Regulation No 131/67 which declares that 'derived intervention prices ... shall be fixed in such a way that they cannot disturb the normal pattern of trade'. The applicant interprets this provision, which is however expressly prescribed solely for decisions falling within the competence of the Commission, as guaranteeing the maintenance of the traditional pattern of trade existing before the creation of a common agricultural market.

This interpretation is unacceptable. Even if one could read into this provision a general criterion, one is, in any case, forced to note that in a common market covering a number of States it is unlikely that the normal pattern of trade will remain the same as it was in the time of individual national markets before the creation of the common market. This is even more true in respect of countries, like for example France, which were characterized by a large degree of protectionism introduced by means of various public measures and acts of intervention restricting freedom of movement and competition. With the abolition of these obstacles following the establishment of the common agricultural market, the pattern cannot remain unchanged, as it has now become possible for consumers in the traditionally most protectionist producer States to turn to a supplier who is better placed in relation to the consumer area, even if it means dealing with a supplier from abroad and thereby changing their former normal supplier who, for reasons which were not at all natural, was traditionally established in their State. In this way, for example, some French producer areas will now have the opportunity of becoming the normal suppliers of cereals to the Ruhr, thereby ousting Bavaria which is the traditional supplier of cereals to this region.

It is this new situation to which one must refer when searching for the exact meaning of the concept 'normal pattern of trade' referred to in Article 6 of Regulation No 131/67. This pattern of trade can be no other than the one which was created or intended to be created precisely by virtue of the new situation which arose with the establishment of the common agricultural market. In relation to this pattern of trade, the rules on intervention prices must bear a generally neutral character.

As regards the alleged infringement of the prohibition on discrimination laid down by Article 40 (3) of the Treaty, it must be recalled first of all that the purpose of this provision is essentially to protect the interests of agricultural producers and consumers and not the interests of processors of and dealers in agricultural products. But even if one considers the matter in the context of the more general prohibition on discrimination inherent in the Treaty which prohibits Community institutions from discriminating in an arbitrary manner between the different classes of people subject to Community rules, the provisions under discussion do not appear to be incompatible with this principle. The differences between derived intervention prices resulting from the criteria of Regulation No 131/67 are not of an arbitrary nature. It has been seen that these differences are based on objective criteria and requirements, and primarily on the criterion of the location of the various production areas in relation to the deficit areas. As the basic intervention price is calculated on the basis of the deficit areas within the Community it seems logical that the derived intervention prices should be established essentially in accordance with the situation of the various non-deficit areas in relation to

the deficit areas. Taking account of this criterion which is objective and perfectly consistent not only with the logic of the common organization of the market in cereals and the general market system, but also with the requirement of the movement of goods within the Community, the fixing for Eastern France of a derived intervention price higher than in the surplus region of central France is explained by considering, as does the Commission, that German purchasers in the deficit areas relevant to this region of France offer in the surplus region best placed for them from the point of view of distance, namely Eastern France, prices which are higher than those in the Centre, by reason of the fact that the cost of transport from this more distant region will have a greater effect on the price of the goods. In addition, the statistic supplied by the Commission showing that after the application of the system of derived intervention prices sales of French flour to Germany have almost doubled is not devoid of interest.

The differences in question, based on criteria which are not discriminatory and which are consistent with the spirit of the system, are not therefore of an arbitrary nature.

Accordingly, I advise the Court to reply to the request of the French Conseil d'État by declaring that the question raised by it has not brought to light any element capable of affecting the validity of Regulation No 1210/70/EEC of the Council.