REPORT FOR THE HEARING
delivered in Case 55/87 *

I — Facts and procedure

A — *Facts and legislative context*

1. Moksel, the plaintiff in the main proceedings, is a company which imports and exports beef.

2. On Friday 10 February 1984 it lodged with the Bundesanstalt für landwirtschaftliche Marktordnung (Federal Office for the Organization of Agricultural Markets) (hereinafter referred to as 'BALM'), the defendant in the main proceedings, a series of applications for import licences with advance fixing of refunds for consignments of beef.

3. The common organization of the market in beef is governed by Council Regulation No 805/68 of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 187). This regulation authorizes the Commission to adopt, by means of the Management Committee procedure, rules for applying the system of import and export licences in the sector in question.

4. Pursuant thereto, the Commission adopted on 4 September 1980 Regulation No 2377/80 on special detailed rules for the application of the system of import and export licences in the beef and veal sector (Official Journal 1980, L 241, p. 5). Article 8a (2) thereof, inserted by Regulation No 2798/81 of 28 September 1981 (Official Journal 1981, L 275, p. 24), provides:

'For products falling within subheading 02.01 A II of the Common Customs Tariff, the export licence with advance fixing of the refund, as referred to in Article 3 (a), shall be issued on the fifth working day following the day on which the application is lodged, unless special measures are taken during that period.'

5. BALM considered that Saturday was not a working day within the meaning of that provision introducing a general waiting period. In its view, therefore, the fifth working day following the date on which the applications in question were lodged (Friday 10 February) was Friday 17 February and not Thursday 16 February, as would have been the case had Saturday to be counted as a working day.

6. However, 17 February, unlike 16 February, fell within a period when the Commission had suspended advance fixing. On 15 February 1984, the Commission had adopted Regulation No 387/84 temporarily suspending the advance fixing of export refunds for certain beef and veal sector products (Official Journal 1984, L 46, p. 39), under which advance fixing was suspended from 17 to 21 February 1984.

7. Regulation No 387/84 was based on the second subparagraph of Article 5 (4) of Council Regulation No 885/68 of 28 June 1968 laying down general rules for granting

* Language of the Case: German.

export refunds on beef and veal and criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1968 (I), p. 237), as amended by Regulation No 1504/76 of 21 June 1976 (Official Journal 1976, L 168, p. 7). Article 5 provides:

'1. ...

2. The amount of the refund shall be that applicable on the day of exportation.

3. However, it may be decided that the refund shall, upon request, be fixed in advance. In that case, where the applicant so requests when lodging an application for a certificate of advance fixing as provided for in Article 5a, (...) the export refund applicable on the day when he lodges such application shall apply to an export operation carried out during the period of validity of the said certificate.

4. Where examination of the market situation shows that there are difficulties due to the application of the provisons concerning the advance fixing of the refund, or that such difficulties may occur, a decision may be taken in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68 to suspend, for the period strictly necessary, the application of those provisions.

In cases of extreme urgency, the Commission may, after examination of the situation, decide, on the basis of all the information available to it, to suspend advance fixing for a maximum of three working days.

Applications for certificates accompanied by applications for advance fixing lodged during the period of suspension shall be rejected.'

8. By telex dated 15 February 1984 the Commissin informed BALM of the adoption of Regulation No 387/84. In the telex the attention of the Member States was expressly drawn to the fact that, pursuant to the provision introducing a general waiting period, applications for advance fixing lodged before the suspension period and falling to be decided during that period were to be rejected.

9. By a decision dated 14 May 1984, BALM rejected the applications in question. As the reason for its decision, it pointed out that, pursuant to the provision introducing a general waiting priod, licences with advance fixing are to be issued on the fifth working day following the day on which the applications were lodged 'unless special measures are taken during that period'. By Regulation No 387/84, the Commission suspended advance fixing from 17 to 21 February 1984. It was therefore necessary to reject the applications in respect of which licences should have been issued on or after 17 February.

10. Moksel challenged BALM's decision before the Verwaltungsgericht (Administrative Court), Frankfurt am Main.

B — *The questions referred by the national court*

11. By an order of 22 Janury 1987, the Verwaltungsgericht Frankfurt am Main decided to stay the proceedings and to refer the following questions to the Court pursuant to Article 177 of the Treaty:

'(1) Is it correct to reject applications for the advance fixing of refunds

pursuant to Article 5 (3) of Council Regulation (EEC) No 885/68 of 28 June 1968 laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds, as amended by Council Regulation (EEC) No 1504/76 of 21 June 1976, when those applications have been lodged prior to the period of suspension but necessitate a decision during that period?

If Question 1 is answered in the affirmative:

(2) Is the term "Werktag" in Article 8a (2) of Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector, as amended by Commission Regulation (EEC) No 2798/81, to be construed as meaning the same as "Arbeitstag" as used in Commission Regulation (EEC) No 2378/80 of 4 September 1980 on additional special detailed rules governing the issue of export licences in the beef and veal sector, and as defined by Article 2 (2) of Regulation No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits?

If Question 2 is answered in the affirmative:

(3) (a) Does the statement of reasons in the preamble to Commission Regulation (EEC) No 387/84 of 15 February 1984 temporarily suspending the advance fixing of export refunds for certain beef and veal sector products satisfy the requirements of Article 190 of the Treaty?

If Question 3(a) is answered in the affirmative:

(b) Were the conditions laid down in Article 5 (4) of Regulation No 885/68 as amended by Regulation No 1504/76 satisfied, thus enabling Regulation No 387/84 to be adopted?

If Question 1, 2 or 3 is answered in the negative:

(4) Does Article 5 (3) of Regulation No 885/68, as amended by Regulation No 1504/76, permit an export licence with a refund fixed in advance to be issued in respect of a period in the past — that is to say, retroactively — if it is found that the refusal to issue the licence was unlawful?'

12. To elucidate these questions, the Verwaltungsgericht set out the following considerations in the order making the reference.

13. In its first question, the Verwaltungsgericht wishes to know whether applications for licences with advance fixing which, as in the present case, were submitted before the period during which advance fixing was

suspended but on which a decision is to be taken during that period must be rejected.

14. It notes that under the third subparagraph of Article 5 (4) of Council Regulation No 885/68, only applications for advance fixing lodged during the period of suspension of advance fixing are to be rejected and not those which, as in the present case, were lodged before that period of suspension and require a decision during that period. That provision cannot therefore be invoked to justify the rejection of the applications in question.

15. It goes on to observe that in its judgment of 27 October 1983 in Case 276/82 (*De Beste Boter* v *Produktschap voor Zuivel* [1983] ECR 3331), the Court held that 'applictions for advance fixing submitted before the period of suspension but on which a decision is to be taken during that period must be rejected'.

16. However, the same reply may not necessarily be appropriate in this case. In the abovementioned case the Court's reasoning was based solely on the purpose of the suspension of advance fixing and its effectiveness. The Verwaltungsgericht wishes the court now to examine the problem from the point of view of the validity of the provision introducing a general waiting period.

17. If that provision were to mean that applications for licences with advance fixing must be rejected when the last day of the waiting period falls within a period of suspension of advance fixing, it would be contrary, in the Verwaltungsgericht's view, to the second subparagraph of Article 5 (4) of Council Regulation No 885/68 and therefore invalid.

18. That is to say, the second subparagraph of Article 5 (4) of that regulation empowers the Commission to derogate from the general system of licences with advance fixing only in order to deal with individual cases, whereas the provision in question introduces a general waiting period. Moreover, the second subparagraph of Article 5 (4) laid down a maximum of three working days for the period during which the Commission may suspend advance fixing, whereas the introduction of a general waiting period of five working days, combined with a maximum suspension of three working days, results in the period of suspension of advance fixing being increased to a total of eight working days.

19. If the provision introducing a general waiting period is invalid, the applications submitted on 10 February ought to have led to the issue of licences on the same day, that is to say before the start of the period of suspension. Those applications should in that case have been granted.

20. In the light of these considerations, the Verwaltungsgericht takes the view that it is necessary for the Court to enlarge on the reasoning of its judgment of 27 October 1983 (*De Beste Boter*, cited above). It adds, without giving any further explanations, that this is called for particularly 'in view of the judgment delivered by the Bundesverfassungsgericht (Federal Constitutional Court) on 22 October 1986 . . . in which it held that fundamental rights secured in national legal systems are guaranteed by the Court of Justice'.

21. The Verwaltungsgericht then addresses the hypothesis of a reply to the first question to the effect that the provision introducing a general waiting period is valid and that applications falling to be decided during a period of suspension of advance

fixing must be rejcted. By its second question it therefore seeks to ascertain whether the fifth working day following the day on which the applications were submitted (the day on which a decision had to be given) fell within the period of suspension.

22. As the reply to this question depends on the meaning to be given to the expression 'working day' as used in the provision introducing a general waiting period, the Verwaltungsgericht asks whether the term 'Werktag' used in that provision excludes Saturdays. If that is the case, the fifth working day following the day on which the applications were lodged (Friday 10 February) was Friday 17 February and thus fell during the period of suspension (from 17 to 21 February). In that case, it was right for the applications to be rejected. If, on the other hand, the term 'Werktag' also includes Saturdays, the fifth working day following the day on which applications were submitted was Thursday 16 February, on which date advance fixing had not yet been suspended. In the latter case, the applications in question were wrongly rejected.

23. The Verwaltungsgericht considers that the term 'Werktag' excludes Saturdays. Both the previous version of the provision in question (Article 2 of Commission Regulation No 2378/80 of 4 September 1980, Official Journal 1980, L 241, p. 19) and analogous provisions relating to the organization of other markets use the term 'Arbeitstag'. It is clear from Article 2 (2) of Council Regulation No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (Official Journal, English Special Edition 1971 (II), p. 354), that this term does not include Saturdays. Furthermore the objective pursued by the introduction of a general waiting period is to enable the Commission to assess the market situation (first recital in the preamble to Commission Regulation No 2378/80 of 4 September 1980). Saturday is a day on which economic activity is reduced and which does not therefore lend itself to market observation.

24. The Verwaltungsgericht then turns to the hypothesis of a reply to the second question to the effect that the applications in question fell to be decided during the period of suspension of advance fixing. In its third question it asks whether Commission Regulation No 387/84 suspending advance fixing for the period from 17 to 21 February 1984 is valid. If the regulation were invalid, it would not have been lawful to suspend advance fixing on the fifth working day following the day on which applications were lodged. In that case there would have been no 'special measures' within the meaning of the provision introducing a general waiting period which could have prevented the issue of licences. They would thus have been wrongly refused.

25. The Verwaltungsgericht questions the validity of Regulation No 387/84 in two respects.

26. First, the regulation contains no adequate statement of reasons because it does not demonstrate, for example by means of statistics, the existence of the price uncertainty and risk of speculation which it mentions. Detailed reasons are required in this case because the regulation imposes restrictions on certain fundamental rights of traders, in particular the right of property guaranteed by Article 14 of the German Basic Law.

27. Secondly, it is doubtful whether in fact a case of 'extreme urgency' existed within the meaning of the second subparagraph of Article 5 (4) of Council Regulation No 885/68, on which Regulation No 387/84 is based. The Verwaltungsgericht acknowledges that it has no facts available to it on which to base its doubts. These emanate solely from statements made to it by Moksel. As it is difficult for a national court to assess the economic situation within the Community as a whole, the Verwaltungsgericht asks the Court to investigate whether, at the material time, a case of extreme urgency did exist in the Community beef market.

28. Finally, should it result from the replies given to the above questions that the decision of BALM was unlawful, the Verwaltungsgericht asks in its fourth question whether export licences with advance fixing of the refund may be issued retroactively. It considers that it ought to be possible to issue licences retroactively provided that the organization of the market in question is not disturbed. No such disturbance is to be feared in the present case because the licences would relate to a period in respect of which the issue of licences is in principle terminated and the retroactive issue would concern only one company.

C — *Procedure before the Court*

29. The order of the Verwaltungsgericht was lodged at the Court Registry on 23 February 1987.

30. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 20 May 1987 by the Commission of the European Communities, represented by its Legal Adviser D. Booss, acting as Agent, and on 25 May 1987 by Moksel, the plaintiff in the main proceedings, represented by Messrs Ehle, Schiller and Reszel, Rechtsanwälte, Cologne.

31. Upon 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. However, it requested Moksel and the Commission to supply certain information and to reply in writing to certain questions. They complied with that request within the time allowed.

32. By a decision of 11 November 1987, the Court decided pursuant to Article 95 (1) and (2) of the Rules of Procedure to assign the case to the First Chamber of the Court.

II — Written observations submitted to the Court

The first question (treatment of applications for licences with advance fixing submitted before a period of suspension of advance fixing but on which a decision is to be taken during that period)

33. According to Moksel, it is clear from the wording of the third subparagraph of Article 5 (4) of Council Regulation No 885/68 that only applications submitted during a period of suspension are to be rejected. This provision should be interpreted narrowly as it is an exception to the principle, introduced for reasons of

certainty of dealings, that traders have a right to the advance fixing of refunds.

34. Moreover, Moksel takes the view that if the provision introducing a general waiting period were to be interpreted as meaning that applications for advance fixing submitted before the period of suspension but falling to be decided during that period must be rejected, that provision would be unlawful for the reasons set out by the Verwaltungsgericht.

35. Moksel therefore proposes that the reply to be given to the first question should be that the third subparagraph of Article 5 (4) of Council Regulation No 885/68 must be interpreted as meaning that applications for licences with advance fixing which were duly lodged prior to the suspension of advance fixing may not be rejected.

36. The Commission asks the Court to reaffirm its decision of 27 October 1983 in the aforementioned *De Beste Boter* case, in which it held that applications for advance fixing lodged before the period of suspension but falling to be decided within that period must be rejected in order to maintain the effectiveness of the suspension.

37. In the Commission's view, the doubts expressed by the Verwaltungsgericht as to the validity of the provision introducing a general waiting period cannot justify a departure from that decision, as those doubts are without foundation.

38. In the first place, the Commission states that it did not act *ultra vires* in introducing a general waiting period prior to the issue of licences. Contrary to the Verwaltungsgericht's opinion, the provision introducing a general waiting period is based not on Article 5 of Council Regulation No 885/68, which establishes the system of advance fixing, but on Article 15 of Council Regulation No 805/68, which authorizes the Commission to adopt, in accordance with the Management Committee procedure, detailed rules for applying the licence system. Since Article 15 itself deals with all the essential aspects of the matter, the Commission was entitled to adopt the provision introducing a general waiting period, which is only a secondary procedural matter (see judgment of 17 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide* v *Köster* [1970] ECR 1161).

39. Secondly, the Commission points out that the provision introducing a general waiting period cannot be invalid on account of its alleged incompatibility with the second subparagraph of Article 5 (4) of Council Regulation No 885/68. In fact, as is clear from the Commission's first observation, the provision introducing a general waiting period is not based on that provision.

40. Thirdly, the Commission argues that the provision introducing a general waiting period would only be in breach of a fundamental right if it impinged on a vested right or the legitimate expectations of traders. In this respect, the Commission points out that the Court stated in its judgment of 27 October 1983 in the abovementioned *De Beste Boter* case that 'an application for advance fixing confers entitlement only if no appropriate measure is adopted during that period in relation to outstanding applications'. There is therefore no vested right to the issue of certificates. Moreover, the Commission considers that traders cannot rely in this case on legitimate expectations because advance fixing had already

been suspended in this sector in May 1982 (Commission Regulation No 1174/82 of 17 May 1982, Official Journal 1982, L 137, p. 12, and Commission Regulation No 1181/82 of 18 May 1982, Official Journal 1982, L 138, p. 13).

41. Consequently, the Commission proposes that the reply to be given to the first question should be that the provision introducing a general waiting period is valid and that applications for advance fixing lodged before the period of suspension but on which a decision is to be taken during that period must therefore be rejected.

The second question (interpretation of the term 'Werktag')

42. According to Moksel the term 'Werktag' as used in the provision introducing a general waiting period includes Saturdays.

43. In this respect, Moksel refers first to Council Regulation No 1182/71 of 3 June 1971, mentioned above, which excludes Saturdays from the definition of 'Arbeitstag'. By using the term 'Werktag' instead of 'Arbeitstag', the provision introducing a general waiting period sought to include Saturdays in this period.

44. Moreover, Moksel maintains that the previous practice of BALM was to interpret the term 'Werktag' so as to include Saturdays.

45. Finally, Moksel argues that although a comparison of the different language versions of the provision introducing a general waiting period does raise doubts as to whether Saturdays are included in the concept of 'Werktag', the least restrictive interpretation should prevail (judgment of 12 November 1969 in Case 29/69 *Stauder* v *Ulm* [1969] ECR 419). On the basis of this criterion, Saturdays should be included in the concept of 'Werktag'. On this interpretation, licences applied for on Friday 10 February 1984 ought to have been issued on Thursday 16 February 1984, that is to say on a date when advance fixing had not yet been suspended and there were thus no 'special measures' capable of precluding the issue of licences.

46. In Moksel's view, the reply to be given to the second question should be that the term 'Werktag' used in the provision introducing a general waiting period includes Saturdays.

47. The Commission points out that according to the judgment of 12 November 1969 in *Stauder* v *Ulm*, mentioned above, a provision must not be considered in isolation and with regard to one of its versions but must be interpreted 'on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all (the) languages'.

48. As regards its intention in using the term 'Werktag', the Commission affirms that it was to exclude Saturdays from the five working days constituting the general waiting period. It is clear from the preamble to Regulation No 2798/81, which contains the provision relating to the general waiting period, that the Commission sought to reproduce the previous version of that provision, namely Article 2 (1) of Commission Regulation No 2378/80 of 4 September 1980. That provision used the term 'Arbeitstag' which, pursuant to Council Regulation No 1182/71, excludes Saturdays.

49. As to the objective pursued, it is to impose in all Member States the same waiting period for applications for advance fixing. In this connection, the Commission notes that the language versions other than the German version all seem to use a term corresponding to the word 'Arbeitstag' used in Council Regulation No 1182/71. In the interest of the uniformity of Community law it is therefore necessary to give to the term 'Werktag' the meaning of the word 'Arbeitstag', thus excluding Saturdays.

50. The reply to be given to the second question should therefore be that the term 'Werktag' used in the provision introducing a general waiting period excludes Saturdays.

The third question (validity of Commission Regulation No 387/84 ordering suspension of advance fixing)

Question (3)(a) (Adequacy of the statement of reasons)

51. Moksel considers that no sufficient reasons are stated for Commission Regulation No 387/84 inasmuch as its preamble does not explain in a verifiable manner in what respect there was a case of extreme urgency within the meaning of the second subparagraph of Article 5 (4) of Council Regulation No 885/68, on which Regulation No 387/84 is based.

52. It is to this effect that Moksel suggests a reply should be given to the first part of the third question.

53. The Commission maintains that the obligation to state reasons is satisfied when the preamble to a regulation clearly indicates the reasoning which guided the framers of the instrument. In this case that requirement is satisfied as the contested regulation states that, regard being had to the price uncertainty on the beef market at that time, the reduction in refunds could lead to speculative advance fixing.

54. The Commission therefore considers that the reply to be given to the first part of the third question should be that the statement of the reasons for the regulation is adequate.

Question (3)(b) (Existence of a case of extreme urgency)

55. Moksel disputes that there was a case of extreme urgency within the meaning of the second subparagraph of Article 5 (4) of Council Regulation No 885/68, on which Commission Regulation No 387/84 is based. The level of prices, the number of export licences with advance fixing applied for and the number of tonnes of beef covered by those applications were not sufficient to justify the conclusion that a situation of extreme urgency existed. The Commission was not therefore able to act alone but ought to have had recourse to the Management Committee procedure as provided for in the first subparagraph of Article 5 (4) of Regulation No 885/68.

56. In any event, if a case of extreme urgency did in fact exist, it was the Commission itself which brought it about by failing to act promptly enough in accordance with the Management Committee procedure. Moksel considers that the Commission cannot justify its action by relying on its own wrongful conduct. Indeed, the majority of the

members of the Management Committee for Beef and Veal criticized the Commission's attitude at the Committee's 495th session.

57. The reply to the second part of the third question should therefore be that Commission Regulation No 387/84 is invalid because the conditions required by the second subparagraph of Article 5 (4) of Council Regulation No 885/68, on which it is based, were not met at the time of its adoption.

58. In the Commission's view, there is a case of extreme urgency within the meaning of the second subparagraph of Article 5 (4) of Council Regulation No 885/68 when a measure adopted in accordance with the Management Committee procedure would not take effect in time to correct market difficulties.

59. A case of extreme urgency did exist in this case. On Friday 10 February and Monday 13 February 1984 the number of applications for export licences and the total tonnage covered were about 20 times greater than usual, which proves that most of those applications were speculative in nature. In order to be able to reject these applications, the Commission was obliged, regard being had to the waiting period of five days, to suspend advance fixing with effect from 17 February at the latest.

60. Pursuant to Article 16 of Commission Regulation No 2377/80, as amended by Regulation No 2798/81, the Commission became aware of the applications which had been lodged on 10 and 13 February on Monday 13 February at 16.00 hours.

61. Had the Commission called a meeting of the Management Committee on the same day, that is to say Monday 13 February, the Committee would not have been able to meet, under its Rules of Procedure, until after the expiry of a period of two days, that is to say on 16 February. The regulation suspending advance fixing could then have been adopted only on that date. In that case, it would have been published in the Official Journal on 17 February at the earliest. If the regulation had suspended advance fixing as from the date of publication, which would have been necessary in order to enable applications lodged on 10 and 13 February to be rejected, it would have been open to criticism for being retroactive.

62. However, acting alone in accordance with the second subparagraph of Article 5 (4) of Council Regulation No 885/68, the Commission was able to adopt Regulation No 387/84 as early as 15 February. The Commission considers that this regulation, published in the Official Journal on 16 February, properly suspended advance fixing as from 17 February without being retroactive and therefore open to criticism.

63. In the Commission's view, the reply to the second part of the third question should be that Commission Regulation No 387/84 was validly adopted on the basis of the second subparagraph of Article 5 (4) of Council Regulation No 885/68.

The fourth question (possibility of retroactively issuing licences with advance fixing)

64. Moksel takes the view that the retroactive issue of licences with advance fixing must be possible because that is the most appropriate way in which to protect a trader against the consequences of an unjustified

refusal by the authority to issue him the licences applied for.

65. The following arguments speak in favour of that possibility.

66. First, no provision of Community law prohibits retroactive issue.

67. Furthermore, in the present case the retroactive issue concerns only one trader and the system of licences with advance fixing in the organization of the market in question is therefore not disturbed.

68. Finally, in its judgment of 16 December 1982 in Case 71/82 *BALM* v *Brüggen* [1982] ECR 4647, the Court held that the period of validity of an export licence with advance fixing may be extended retroactively. The actual issue of such a licence with retroactive effect should therefore also be possible.

69. In Moksel's view, the reply to the fourth question should therefore be that an export licence with advance fixing whose issue was wrongly refused may be issued retroactively.

70. The Commission considers that in view of the replies to be given to the first three questions there is no need to reply to the fourth question.

III — Replies to questions put by the Court

A — *Question put to the Commission*

The Commission was asked to inform the Court, as regards each day from 15 January 1984 to 14 February 1984 inclusive, of:

the price of beef applicable in the Community,

the price of beef on the world market,

the number of applications for export licences with advance fixing of export refunds lodged on that day,

the total tonnage covered by the applications for export licences with advance fixing of export refunds lodged on that day.

From the reply given by the Commission it appears that:

the price of beef applicable in the Community was stable during the period in question,

the price of beef on the world market increased by 4.1% between 21 December 1983 and 24 January 1984,

the total tonnage covered by applications for licences with advance fixing lodged during the period from 10 to 13 February 1984 was appreciably higher (17 177 tonnes, including 15 880 tonnes on 10 February 1984) than the tonnage covered by applications lodged during the previous half-weeks (between 1 000 and 2 500 tonnes on average).

The Commission explained that it was not able to state the number of applications lodged during the period in question because this statistic is not amongst those which Member States communicate to it.

B — *Questions put to Moksel*

First question

As Moksel referred on several pages of its submission (in particular pages 8, 9 and 11) to an expert's opinion, it was asked to state whether it was referring to an already existing expert's opinion, in which case it was asked to forward it to the Court, or whether it was thereby requesting the Court to order that an expert opinion be obtained in the context of this reference for a preliminary ruling. In the latter case, Moksel was invited to state what would, in its view, be the exact purpose of such an opinion.

Moksel replied that it was not alluding to an existing expert opinion. It considers that such an opinion should be requested, either by the Court itself or by the Verwaltungsgericht after the Court has referred the matter back to it, in order to clarify the facts.

On no account may the Commission's statements be regarded as correct merely because it so affirms. The disputed points of fact should be established by means of an expert opinion which, in Moksel's view, should deal with the following questions:

is it correct that in Denmark, Greece, Ireland and Luxembourg the price of beef and veal was stable in January and February 1984?

is it correct that in the Federal Republic of Germany and the United Kingdom the beef and veal market, although weak, showed no marked downward trend?

is is correct that in Belgium, France and Italy certain falls in prices were recorded but that these falls had no appreciable effects?

Second question

Moksel was asked to provide the Court with evidence that the adoption of Commission Regulation No 387/84 was criticized by the majority of members present during the 495th meeting of the Management Committee in the beef sector.

In reply to this request, Moksel supplied the minutes of the Management Committee's meeting. It draws the Court's attention to a passage in the minutes from which it appears that the majority of national delegations considered that the Commission had exceeded its powers. The delegations were unanimous in considering that such a way of proceeding should not be repeated and that traders should in future be granted a period of time within which to adapt themselves to the altered market conditions.

Moksel was also requested to provide evidence of its assertions that BALM itself had in the past interpreted the term 'Werktag' as including Saturdays.

Moksel replied that it had no written evidence in this respect.

R. Joliet
Judge-Rapporteur