Committee that, as a general rule, its advance authorization is essential. However, no such rule having been promulgated, it could not reject a request that it should accept responsibility merely because the request was made after transportation.

In Case 47/75

FEDERAL REPUBLIC OF GERMANY, represented by its Agents, Martin Seidel and Klaus Winkel, with an address for service in Luxembourg at the Chancellery of the Embassy of the Federal Republic of Germany, 20-22 avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Gilsdorf acting as Agent, with an address for service in Luxembourg at the Office of its Legal Adviser, Mario Cervino, Bâtiment CFL, place de la Gare,

defendant,

Application for annulment of a Decision of the Commission concerning acceptance of responsibility for transportation costs incurred as a result of a change of warehouse,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and arguments put forward by the parties in the course of the written procedure may be summarized as follows.

I — Facts and procedure

The Guarantee Section of the European Agricultural Guidance and Guarantee Fund (the 'EAGGF') is responsible for financing intervention intended to stabilize agricultural markets within the framework of the common organization of agricultural markets. (Articles 1 and 3 of Regulation No 729/70 of the Council, OJ L 94, English Special Edition 1970 (I), p. 218).

As regards cereals, the general rules for implementation were promulgated in Regulation (EEC) No 787/69 of the Council OJ L 105, English Special Edition 1966-1972, p. 14).

Any losses arising from intervention must be charged to the EAGGF and the purpose of the regulation is expressed as follows in the fourth recital of the preamble: '... a standard method should be established for taking over such losses, taking into account ... the fact that a certain number of costs are not harmonized.'

Article 4 (1) contains a list of costs which are to be debited to the EAGGF. Subparagraphs (e) and (g) of the article (hereinafter referred to as 'subparagraph (e)' and 'subparagraph (g)') respectively state that the account of 'the EAGGF' shall be debited with:

'(e) the total amount of the costs incurred through storage, calculated on the basis of a standard amount per unit of weight/period of shortage determined in accordance with Article 5 (2);'

'(g) the total amount of the costs incurred through transportation made necessary after the taking over of goods by the intervention agency, and carried out under conditions concerning, in particular, the need for transportation, to be determined according to the procedure provided for in Article 26 of Regulation No 120/67/EEC or Article 26 of Regulation No 359/67/EEC;' that is to say, under the Management Committee procedure; 'This amount shall include the costs of placing in, and removing from, storage arising from such transportation, calculated as provided for under (c)'.

When the regulation was adopted, the Commission announced, in respect of the costs arising under subparagraph (g), its intention to lay down general rules 'determining in advance the cases in which transportation could be effected. This should not rule out the possibility of authorizing transport in cases not provided for under the general rules'.

No general rules laying down the cases covered by subparagraph (g) have, to date, been promulgated.

In the Federal Republic of Germany, cereals bought in by the State intervention agency are not stored in State warehouses but in private warehouses on the basis of private contracts determinable on six months' notice.

In addition to normal transfer operations for the purpose of releasing the

warehouse for storage of the new harvest, there are transfer operations which are made necessary by the determination of a lease by the warehouse owner, usually with a view to putting the capacity of the warehouse to profitable use.

During the second half of 1970, 4 030 tonnes of cereals were moved to fresh storage in the Federal Republic of Germany as a result of determinations of warehouse leases. The Federal Republic of Germany made an application to the Commission, after transportation had taken place, for it to accept responsibility for the cost of transfer to fresh storage, whereupon the Commission, in the belief that transportation of these cereals, effected in the Land of Nordrhein-Westfalen, was due to a determination of lease declared, after having received the opinion of the Management Committee, that the transportation of 4 030 tonnes of cereals stored in the Land of Nordrhein-Westfalen was 'necessary' within the meaning of EEC Regulation No 787/69 (Decision of 14 May 1971, Annex 2 to the application initiating the proceedings).

During the period 1971 to 1974, 49 685 tonnes of cereals had to be moved from one store to another as the result of determination of warehouse leases.

After each change of warehouse, the Government of the Federal Republic of Germany submitted an application to the Commission for it to accept responsibility for the costs of transfer of the stocks.

During the meeting of the Management Committee for cereals on 22 April 1971, when the draft of the Commission's decision of 14 May was discussed, the representative of the Commission had given the representative of the Federal Republic of Germany agreement in principle to the costs incurred by the German intervention agency on account of warehouse changes being classified in batches and notified to the Commission every three months. If, during any three months, very few transfers of stocks took place, the three-monthly notification would not be submitted but one covering six months would be submitted instead.

After the Government of the Federal Republic of Germany had pressed for action on its applications, the Commission submitted, on 5 September 1972, a draft decision to the Management Committee for cereals which, under the procedure laid down, were due for acceptance. The draft provided for the applications submitted up to that date by the Government of the Federal Republic of Germany to be agreed to. No decision was taken, however.

By telex of 10 July 1974 the Government of the Federal Republic of Germany renewed all the applications submitted up to that date and asked the Commission to take a decision. Thereupon, on 16 July 1974, the Commission submitted a fresh draft decision to the Management Committee for cereals. This draft, too, provided for the applications to be approved but it was removed from the agenda of the meeting on 1 August 1974 to enable a bilateral discussion to take place beforehand between the officers of the Commission and those of Germany. During this discussion the officers of the Commission informed those of the Federal Government that the latter's applications were to be rejected on the ground that applications for the acceptance of responsibility for the expenses ought to have been lodged on each occasion before the change of warehouse.

On 23 September 1974 the Government of the Federal Republic of Germany lodged an application for authorization to make a change of warehouse affecting 2 175 tonnes of cereals.

The Commission once again placed the German applications on the agenda of

the Management Committee for cereals. At the meetings on 21 November and 5 December 1974 it put forward its argument to the effect that applications for it to accept responsibility for changes of warehouse pursuant to subparagraph (g) must be lodged before transfer took place. It explained once more that the costs of transfer to a new warehouse resulting from determination of a storage contract must be charged against the standard amounts paid to the Member States in accordance with subparagraph (e). The representative of the Government of the Federal Republic of Germany expressed his formal disagreement with this view.

By letter of 20 March 1975 Mr Borschette, a Member of the Commission, informed the Federal Minister for Foreign Affairs that:

'The Commission has taken the following decision:

1. The costs of change of warehouses incurred as a result of the determination of a storage contract cannot be debited to the EAGGF. Because the transfer is a routine administrative act on the part of the intervention agencies, costs thereby incurred are covered by the standard amount provided for in Article 4 (1) (e). It follows that Article 4 (1) (g) does not apply.
2. Furthermore, the applications lodged after transportation by your Government for reimbursement by the EAGGF of the necessary transport costs incurred by the intervention agency are unfounded.'

By application registered at the Court of Justice on 27 May 1975 the Federal Republic of Germany initiated proceedings under Article 173 of the EEC Treaty for annulment of the Commission's decision.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided that there was no need for any preparatory enquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

(a) annul Decision No 75/023200 of the Commission of the European Communities of 20 March 1975 on the payment under Regulation (EEC) No 787/69, of expenses occasioned by the transfer of cereals bought in by the intervention agencies to other stores owing to notices to quit existing stores, to the extent to which it refuses to accept responsibility for such expenses arising out of such notices to quit;
(b) order the Commission to pay the costs.

The defendant concludes that the Court should:

(a) dismiss the application;
(b) order the applicant to pay the costs.

III — Submissions and arguments of the parties

A — Infringement of Article 4 (1) (g)

Differentiation between the costs covered by subparagraph (e) and those covered by subparagraph (g)

The Federal Republic of Germany states that Regulation No 729/70, quoted above, makes the Community entirely responsible for costs connected with the taking over of goods which are the subject of intervention.

The standard amounts calculated for Member States on the basis of subparagraph (e) cover only costs incurred for normal storage. Normal storage, within the meaning of the provision, consists of the holding of the goods in a given warehouse without their being moved.

On this point, a document prepared by the officers of the Commission for use as a basis for calculating the standard amounts and produced by the Federal Republic of Germany, shows that items such as the costs of warehouse leases, checking of goods, finance and insurance relate only to goods whilst deposited in the store. These papers contain an exhaustive list of the items taken into account in determining the standard amounts. But the list contains no entry relating to warehouse changes, in particular, on account of 'determination of the contract by the warehouse-owner'.

According to the wording of subparagraph (g), all warehouse changes and, consequently, the cost of warehouse changes resulting from the determination by the warehouse owner of the storage contract, come under that provision.

The Federal Republic of Germany draws attention to the history of the contested decision and to the statement which the Commission made when Regulation No 787/69 was adopted: in expressing therein its intention to define *a priori* the cases in which transportation was necessary, the Commission was thinking mainly of normal transportation carried out as part of the routine management of warehouses. Since the Commission has not adopted any general rules, subparagraph (g) cannot be interpreted in a way which would, in a substantial number of cases, make it impossible for Member States to be reimbursed for transportation costs.

The wording of the provision in subparagraph (g) and, with even greater clarity, the Commission's statement on the provision show in fact that provision was originally made for general recognition of the need for transportation for a whole range of typical cases. The cases involved in the present case would have been covered by a general rule, and this would have relieved the Management Committee of much routine work.

In 1971 the Commission already had a fair amount of experience of the intervention procedure followed in the Federal Republic of Germany in the case of cereals. Preparatory work on Regulation No 787/69/EEC during the Years 1968 and 1969 gave rise to an investigation in depth of the actual conditions and of the legal adjustments of the intervention machinery applied by the Member States in the case of cereals.

In its reply, the *Commission* states that Regulation No 729/70 does not provide in principle that the Community is to bear the whole of the intervention costs incurred in the taking over of goods. On the contrary, only interventions carried out in accordance with Community rules are financed.

The transportation effected by the Federal Republic as a result of the determination of warehouse leases appears, *prima facie,* to satisfy the conditions in subparagraph (g). The concept of 'need for transportation' must not however be considered from the viewpoint of the contractual duty of the intervention agency but solely in the light of the meaning and purpose of that provision.

It is clear from the purpose of subparagraph (g) that it can only refer to transportation arising from measures for common management of the markets or which are due to objective changes in the market situation. The provision was intended to ensure that, if abnormal situations make abnormal movement of goods necessary, this can take place even during storage under the intervention system.

The Commission emphasizes that the cases referred to in subparagraph (g) primarily involve complete financing by the Community and not a standard amount and that, in the second place, the Management Committee procedure is laid down. It concludes from this that the provision is concerned only with

exceptional cases of transportation arising from application of the Community's machinery for market management. The view of the Federal Republic of Germany is that the Management Committee's decision becomes a pure formality.

On the other hand the standard amount provided for in subparagraph (e) is intended to cover transportation costs resulting from normal storage.

When a State chooses to rent warehouses from private warehousemen it must also take into account the transportation which must be effected every time a contract for lease of a warehouse, concluded for a limited period of time, expires or a warehouse owner determines the lease.

The decision of 14 May 1971, the only one of its kind, was taken at the time because the Commission believed that the determination of the lease of the warehouses concerned reflected wholly unusual circumstances unconnected with routine management by the intervention agency of storage warehouses.

Only the subsequent development showed that the real cause was goods movements of a routine character which were inherent in the German storage arrangements under an intervention system. Moreover, the decision of 14 May 1971 was an isolated precedent which took place at a time when not sufficient experience was yet available and it could certainly not be the foundation stone of standing practice on the part of the Commission.

So long as the letting contract contains a determination clause such changes are inevitable under the storage arrangements applied by the applicant.

The fact that, in the working drafts of the Commission, the section 'Storage Costs' does not contain any heading for 'Costs of changing stores' does not mean that these costs are not covered by the standard amount. In the nature of things, the breakdown of the standard amount can only briefly indicate the main factors taken into account in calculating it. The standard amount provided for storage costs under subparagraph (e) must be regarded as a kind of miscellaneous heading intended to comprehend all storage costs not otherwise provided for.

Time when request must be made

The *Federal Republic* contends that there is nothing in the wording or the origin of the provision in subparagraph (g) requiring the request for the taking over of transportation costs to be lodged before the change of warehouse. The fact that, under the terms of this provision, transportation must comply with the conditions laid down in no way affects this interpretation. The actual conditions in which it is carried out can be checked before or after transportation. In so far as other conditions apply, the general principle of legality requires that these conditions should be laid down in general terms in advance; it is, indeed, often easier to assess the need for a change of warehouse after rather than before it is carried out. In no sense, therefore, does the submission of a request *ex post facto* conflict with Community interests.

The *Commission* contends that the request must be made before transportation. The Commission and the Management Committee have a real margin of discretion and power of decision only if they are not faced with a *fait accompli* which precludes any possibility of modifying the conditions and does not leave room for anything more than agreement or outright refusal to recognize the need for transportation.

There is no reason why the criteria enabling the need for such transport to be determined or the conditions in which it must be carried out should not be laid down in general terms so as to

avoid having to reach a decision in every individual case. But as no such rules have been laid down, individual decisions are the only alternative.

In practice, a decision authorizing transportation goes further than to fix a time-limit for transportation and, in particular, indicates the place to which the goods are to be sent. It may specify that the transportation must be the subject of an invitation to tender.

B — Legitimate expectation

The principle of good faith and the prohibition against *venire contra factum proprium* are, according to the Federal Republic of Germany, a settled principle of law which prevails in civil and commercial as well as international law. There can be no doubt that the legal relationship between the Commission and Member States must also be governed by that principle.

The actions of the Commission conflict with its Decision of 14 May 1971. The procedure, proposed by the Commission itself, whereby requests were summarized and submitted *ex post facto,* should at least entail consideration whether transfers of stocks already carried out were necessary and not a rejection based on the grounds set out in the Decision. Moreover, the way in which the Commission handled the requests, particularly by submitting, on two occasions, proposals for affirmative decisions to the Management Committee, strengthened the belief of the Federal Government that there was no need to make the request in advance.

The fact that the Federal Republic of Germany had, since March 1973, been aware of the viewpoint of the legal department of the Commission cannot affect its claim for legitimate protection. The Directorate-General for Agriculture at first worked on the basis of a different concept, as is indicated in particular by the fact that, on 16 July 1974, it once more placed before the Management Committee for cereals a draft decision granting the applications of the Federal Republic of Germany.

The applicant did not become aware of the whole of the legal standpoint contended for by the Commission until the decision which is the subject of these proceedings.

The *Commission* doubts whether the principle that good faith must be protected can be applied in dealings between the Community and Member States to the same extent as in those between the Community or the Member States on the one hand, and individuals on the other.

As a general rule, the Member States play a part, in one form or another, in the actions of the Community institutions. In consequence, they are, because of their day-to-day contact with the Community authorities, much better informed than an individual can be about developments as they take shape.

The applicant ought to have known, by March 1973 at the latest, that the Commission would not for long maintain its previous attitude. From that date at the latest there could no longer be any question of good faith in pursuing the practice previously considered to be the correct one. Although the draft decision which was placed on the agenda of the meeting of the Management Committee for cereals on 1 August 1974 adopted the standpoint of the German Federal Republic, it is equally true that, at the time, officials of the Commission expressed reservations on this point, with the result that the draft was not discussed in depth.

Whilst it is true that different departments of the Commission adopted different standpoints on the issues in dispute the applicant, which knows the procedure by which the Commission adopts a decision, must have known that

the question had not yet been finally clarified as between the departments concerned and that it could not, even in general terms, rely upon a draft decision from a single department especially as it was aware that another department took the opposite view.

C — Whether transportation was 'made necessary'.

The *Federal Republic of Germany* contends, in the alternative, that, even if the Commission's interpretation is the correct one, the warehouse changes concerned are the result of measures connected with the common management of the market.

During 1968 and 1969 the quantity of intervention cereals stored in the Federal Republic suddenly rose to more than 2·7 million tonnes. This development was kept within limits by different measures of the Commission in favour of exports and in particular by consignments delivered as food aid. It was this which enabled numerous depots to be largely emptied. As there was nothing to indicate at that time that the warehouses concerned would shortly be filled, the warehouse owners determined the contracts in order to fill up their storage space with other more profitable goods.

The Federal Republic of Germany supplies figures showing clearly, in its opinion, that, in years when considerable quantities of intervention cereals were sold, the figure of storage contracts determined was also high, and vice versa.

The *Commission* doubts whether there is any relation of cause and effect between the sale of a large quantity of intervention cereals and the figure of storage contracts determined. In its opinion it might at most be possible in each individual case to establish that transportation carried out after determination of a warehouse lease was due to a measure of market management, for example if, as a result of an export tender for food aid, a particular warehouse were emptied to such an extent that, for the sake of greater efficiency, it was considered desirable to transfer the small remaining quantity to another warehouse.

On this point the Commission states that, in 1969, it declared to be 'necessary' the transportation of a total of more than one million tonnes of intervention cereals in order to free the warehouses concerned for the new harvest.

IV — Procedure

The oral observations of the parties were made at the hearing on 5 February 1976.

The Advocate-General presented his opinion at the hearing on 26 February 1976.

Law

1 By application of 27 May 1975 the Federal Republic of Germany seeks annulment of the decision of the Commission, communicated by letter of 20 March 1975, in which it rejected the request of the Federal Republic for an acknowledgment that the transportation of certain cereals was made necessary within the meaning of Article 4 (1) (g) of Regulation (EEC) No 787/69 (OJ L 105 English Special Edition 1966-1972, p. 14).

2 In each year, from 1971 to 1974, an average of 2·5 million tonnes of cereals were, in the Federal Republic of Germany, stored in private warehouses on the basis of private contracts, following purchases of cereals carried out by the German intervention agency in fulfilment of the obligation placed upon it by the main regulation for cereals, No 120/EEC. Of these amounts, an average of 12 500 tonnes per year had to be transported from one warehouse to another for the reason that the owner of the first warehouse lawfully determined the storage contract after giving six months' notice. These notices were, as a general rule, due to economic considerations which, in particular, concerned the amount to be earned by using warehouse space to capacity.

3 After completing the transfers of stocks, the Government of the Federal Republic of Germany applied for the Commission to accept responsibility for the costs of transportation of the stocks in accordance with Article 4 (1) (g) of Regulation No 787/69. It was only by letter of 20 March 1975 that the Federal Republic of Germany was finally informed of the Commission's decision to refuse to recognize the need for these transportations within the meaning of subparagraph (g):

1. because these transportations constituted routine administrative acts on the part of the intervention agencies and the costs involved were included in the standard amount provided for under subparagraph (e) of Article 4 (1);

2. because the application for recognition of the need for the transportation should have been submitted before transportation took place.

4 According to the wording of the preamble to Regulation No 787/69 a standard method should be established for taking over any losses arising from intervention, taking into account the degree of discretion which Member States have under Community rules and the fact that a certain number of costs are not harmonized. It is provided, under Article 2 (a) of the regulation, that net losses borne by intervention agencies shall be chargeable to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund. Under Article 3 (1) (a) it is provided that, in order to apply Article 2 (a), the agencies shall draw up, for each marketing year, an account which shall be debited with the items mentioned in Article 4 (1). These items, seven in all, are:

(a) the value of the quantities in stock at the beginning of the marketing year;

(b) the expenditure on buying- in during the marketing year in question;

(c) the costs incurred, during buying-in and selling, by placing in and removing from storage;

(d) the costs of any drying which becomes necessary;

(e) the costs of storage;

(f) any denaturing costs;

(g) the costs of transportation made necessary after the taking over of cereals by the intervention agency.

5 These arrangements make it clear that each stage in the intervention procedure between buying-in and the final availability of the cereals is intended to be covered by the standard or actual amounts corresponding to these seven items. By the use of a standard amount, of the criterion of whether the expenditure is necessary or of a combination of the two, the regulation tries to ensure that, notwithstanding the degree of discretion enjoyed by the Member States, the Fund does not have to bear financial consequences which are to be ascribed to bad management of the intervention by a Member State.

6 Subparagraph (g) reads as follows: 'the total amount of the costs incurred through transportation made necessary after the taking over of goods by the intervention agency, and carried out under conditions concerning, in particular, the need for transportation to be determined according to the [so-called Management Committee] procedure ...; this amount shall include the costs of placing in and removing from storage arising from such transportation, calculated as provided for under (c).' To enable the expenditure to be classified under (g), the first requirement is that transportation is made necessary and the second is that the transportation made necessary shall be carried out under conditions to be determined by the Commission after hearing the opinion of the Management Committee.

7 In so far as the transportation does not fulfil these two conditions, the costs of transportation carried out after the taking over by the intervention agency are not to be borne by the Agricultural Guidance and Guarantee Fund. Item (e), which is intended to cover the storage costs of all quantities of cereals stored by the intervention agency is not capable, either by its wording or by the method of calculation described by the Commission, of covering the costs of transportation which does not fulfil the conditions in subparagraph (g). To enable a Member State to submit to the Commission, pursuant to Article 5 (2) of the regulation, information necessary for calculation of the standard amount used for item (e), which also includes the incidental costs of transportation which is not made necessary within the meaning of

subparagraph (g), the Member State must be able to forecast the average quantity of cereals to be transported, the number of transportations, the route followed and the cost. In stating, in the contested Decision, that the transport costs concerned were met by payment of the standard amount referred to in subparagraph (e) and, during the proceedings, that it was the duty of the Federal Republic of Germany to include these costs in the information which it supplied to the Commission under Article 5 (2), the Commission placed an erroneous interpretation on this provision.

8 Notwithstanding this erroneous ground for its Decision, regard must be paid to the ground, advanced by the Commission in the course of the proceedings, that only 'transportation arising from measures connected with the common management of the market or which arise from objective changes in the market situation' is capable of being reimbursed under item (g).

9 It is clear both from the wording of subparagraph (g) and from the statement made by the Commission when the regulation was adopted, that the intention was that, after consultation with the Management Committee, the Commission should promulgate general rules 'determining in advance the cases in which the transportation in question could be effected'.

10 Although it is within the powers of the Commission, after consultation with the Management Committee, to promulgate, on the basis of the objective which it has set itself, general rules prescribing the cases coming under subparagraph (g), it must do so in advance to enable the Member States, if need be, to revise their arrangements. In the absence of general rules, it cannot hold that transportation is not made necessary solely because it was the result of the determination of leases if, given the particular circumstances of intervention and of its connexion with the monetary situation, the storage system operated in a State where such determination is allowed is economically sound.

11 The Commission is also under a duty, after consultation with the Management Committee, to determine whether the second condition in subparagraph (g) is fulfilled, in particular whether the mode of transport chosen for the cereals and the route followed involve the Fund in necessary costs only.

12 It does not follow from the wording of subparagraph (g) that the request for recognition of the need for the transportation must be submitted before transportation takes place.

13 If the request is made after transportation, the Member State runs the risk that, after consultation with the Management Committee, the Commission will decide that the transportation of the cereals in question either was not necessary or could have been effected more economically. Although there was nothing to prevent the Commission from deciding, after consultation with the Management Committee, that, as a general rule, it was essential to obtain advance authorization from it, no such rule had been promulgated; it could not, therefore, reject a request merely because it was made after transportation, particularly in view of the fact that, in encouraging the Federal Republic of Germany to send in its requests together once a quarter or, where appropriate, half yearly, it created at least the impression that it was possible to grant a request made after transportation, for the costs to be taken over. Furthermore, on 14 May 1971, the Commission adopted a decision recognizing, after transportation occurred, that it was made necessary by the determination of a lease; it is, therefore, possible, after transportation has taken place, to check the items of expenditure in order to decide whether the expenditure was necessary.

14 The contested decision must, therefore, be annulled.

15 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. Since the defendant has failed in its conclusions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Annuls the decision of the Commission communicated to the Federal Republic of Germany by letter of 20 March 1975;**

2. Orders the Commission of the European Communities to pay the costs.

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 4 May 1976.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 26 FEBRUARY 1976 [1]

Mr President,
Members of the Court,

1. By decision of 20 March 1975, the Commission rejected applications from the Government of the Federal Republic of Germany the purpose of which was to cause the European Agricultural Guidance and Guarantee Fund ('the EAGGD') to be debited with the transportation costs incurred through the determination of leases for the storage of cereals from 1 January 1971 to 31 December 1974. The applications were based on the provision in Article 4 (1) (g) of Regulation No 787/69 of the Council on the financing of intervention expenditure in respect of the domestic market in cereals and in rice (OJ L 105, English Special Edition 1966-1972, p. 14). Under this provision, the guarantee section of the EAGGF is to be debited with 'the total amount of the costs incurred through transportation made necessary after the taking over of goods by the intervention agency and carried out under conditions concerning, in particular, the need for transportation, to be determined according to the procedure provided for in Article 26 of Regulation No 120/67/EEC or Article 26 of Regulation No 359/67/EEC; this amount shall include the costs of placing in and removing from store arising from such transportation, calculated as provided for under (c)'.

After consulting the Management Committee for Cereals, the Commission came to the conclusion that transfers of cereals resulting from the determination of leases constituted routine administrative acts on the part of the German intervention agencies, because of their widespread practice of using private warehouses and of the provision normally made in the relevant leases for the right to determine them by notice;

1 — Translated from the Italian.