3. In accordance with the above regulations, an offer must be considered as effectively made when it is received in writing by the intervention agency.

4. In order to be valid and binding upon the intervention agency, an offer for intervention must state where the goods offered are or will be at the time when the offer is made, that is, at the time when it is received by the agency. An offer which is originally incomplete in this respect may subsequently be completed, but will be effective only when it satisfies all the conditions upon which its validity depends.

5. The phrase 'are when the offer is made' contained in Article 1 of Regulation No 132/67 must be interpreted as meaning that the goods offered must, when the offer is made, be at the disposal of the intervention agency, so that any subsequent change of location remains exclusively a matter for the the agency.

6. If the objectives of the common organization of the market are to be attained, the introduction of the intervention machinery must follow rules which are as uniform as possible, so as not to impede the free movement of products within the Community under normal market conditions. In the absence of any clearly expressed intention on the part of the draftsmen of the Community regulations it cannot be considered permissible for Member States to derogate therefrom.

In Case 50/71

Reference to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof (VIth Senate) for a preliminary ruling in the action pending before that court between

WÜNSCHE OHG, Hamburg,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt,

on the interpretation of certain provisions of Regulations Nos 120/67 of the Council (OJ 2269/67), 132/67 of the Council (OJ 2364/67) and 1028/68 of the Commission (OJ L 176, 1968, p. 1),

THE COURT

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

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

(1) Since Regulation No 120/67 of the Council of 13 June 1967 (OJ 2269/67) came into force, the intervention agencies of every Member State are obliged to buy in at intervention prices not only, as was previously the case, cereals which are offered to them and have been harvested in their own State, but also cereals harvested in the other Member States (Regulation No 120/67, Article 7).
To be valid every offer for intervention must be made in writing (Regulation No 1028/68 of the Commission of 19 July 1968, Article 3) to an intervention agency (in the Federal Republic of Germany, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel) in respect of one of the three marketing centres nearest the place where the cereals are when the offer is made (Regulation No 132/67 of the Council, Article 1). The limitation on the number of marketing centres in respect of which an offer may be made is due, according to the recitals in the preamble to Regulation No 132/67, to the desire to make the intervention system as simple and as effective as possible. Nevertheless it is the intervention agency which decides 'the place where the cereals are to be taken over', that is to say the place where they must be delivered to it. If it takes them over at the marketing centre indicated by the vendor, the price to be paid is the intervention price at this centre. If, on the other hand, it designates another place for taking over, the price will be increased or reduced, as the case may be, by the transport costs (Article 2(2) and (3)).

(2) When the probability of a devaluation of the French franc arose in 1969, dealers offered increasingly large quantities of cereals harvested in France to German, Belgian or Dutch intervention agencies in order to profit from the rate of exchange. Taking the view that this flood of offers to certain Member States threatened to disorganize the system, the Commission by Decision No 89/138/EEC of 8 May 1969 (JO L 112, p. 1) authorized the Federal Republic of Germany to limit purchases of common wheat and barley to cereals havested in Germany. The Decision states, however, (Article 1(2)) that it does not apply 'to cereals offered to the intervention agency before the decision took effect'. The *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* published a notice dated 8 May 1969 in the Bundesanzeiger of 10 May 1969 in which it stated that it would no longer intervene in the cereal market in respect of cereals offered after 6.40 p.m. on 8 May 1969. Subsequently a regulation of 17 June 1969 of the German Minister for Agriculture based likewise on the Commission's decision of 8 May 1969 provided that there would no longer be intervention in the cereal market save in respect of cereals harvested in Germany; this regulation came into force at 8.45 a.m. on 9 May 1969.

(3) On forms dated 8 May 1969 which arrived about midday on 9 May, the Ludwig Wünsche undertaking the plaintiff in the main action, offered the Einfuhr- und Vorratsstelle in respect of the marketing centres at Kiel and Stuttgart cereals harvested in France which were in transit by water. The forms gave the vessel carrying the goods and the depots to which they were being sent.
On 12 May 1969 the cereals mentioned in the forms were delivered to the depots at Kiel and Stuttgart indicated in the applications. In three letters dated 12 May 1969 the plaintiff in the main action informed the Einfuhr- und Vorratsstelle that the cereals offered were in the depots stated.

(4) By decision of 14 May 1969, notified by telephone, the defendant in the main action rejected the three offers by the plaintiff on the ground that they had not been validly made because they did not state the marketing centre nearest to the place where the cereals were when the offer was made.
On 14 May 1969 the plaintiff made an objection by telex (confirmed on 16 May 1969 by letter) against this decision. The defendant rejected the objection by decision dated 28 May 1969 referring in particular to the decision of the Commission of 8 May 1969 and its own notification No 65–68/69 of 9 May 1969 on the implementation of intervention measures in respect of foreign cereals.

(5) The platintiff brought an action against this decision, first before the Verwaltungsgericht Frankfurt and then, by way of appeal, before the Hessischer Verwaltungsgerichtshof. The latter court took the view that the case depended on the interpretation of certain Community provisions and referred the following questions to the Court of Justice:

1. (a) Are the terms 'offer' and 'offered', contained in the aforementioned regulations, to be interpreted in the various Member States of the European Economic Community in accordance with the provisions and rules of national law?

   or

   (b) Has the European Economic Community created its own concept of 'offer' which accordingly must be interpreted in the same way in all Member States?

2. In the case of 1(b):
   (a) Is the term 'offer' to be understood as meaning that an offer for intervention of cereals is considered to have been made at the time at which the offer is despatched by the maker of the offer, even if it has not yet been received by the intervention agency, or
   (b) Does an offer become valid only at the time at which the offer is received by the intervention agency?

3. In the case of 1(b):
   (a) Can an offer be valid and qualify for acceptance even if it contains no statement of the place where the cereals offered are or were at the time of the offer, or
   (b) Does an offer become valid and qualify for acceptance only if it contains also a statement of the place where the cereals offered were when the offer was made?

4. In case of 3(b):
   (a) Is an offer valid only if all the necessary statements are made at the same time, including the statements of the place where the cereals offered were when the offer was made, or
   (b) In the case of an offer which does not initially contain the necessary statement of the place where the cereals offered were when the offer was made, may such an offer be subsequently completed by a later statement to that effect?

5. In case of 4(b):
   (a) Is an offer which is made successively in the manner described above to be considered as having been made at the time at which the first incomplete offer was made, or
   (b) Is such an offer to be considered as having been made only at the time of the subsequent statement of the place where the cereals offered were when the offer was made?

6. (a) Are the words 'are when the offer is made', contained in Article 1(1) of Regulation No 132/67/EEC of the Council, to be interpreted as meaning that the cereals offered must be warehoused at a specific place when the offer is made?

(b) May an offer be made in respect of cereals which are still in transit provided that the offer refers solely to a marketing centre chosen from among the three centres nearest to the actual place where the cereals in transit are when the offer is made?

7. (a) Are the provisions contained in the abovementioned regulations, which relate to the basic rules of intervention and particularly to the making of offers for intervention, of a mandatory nature, or

(b) May the individual Member States adopt different provisions or develop different procedure which would be legally admissible?

(6) The Commission of the European Communities, the plaintiff in the main action and the defendant in the main action submitted written observations.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to dispense with any preparatory inquiry.

The Commission of the European Communities, the plaintiff in the main action and the defendant in the main action made their oral observations at the hearing on 1 December 1971.

The plaintiff in the main action was represented by F. Modest of the Hamburg Bar.

The Commission was represented by its Legal Adviser, P. Kalbe.

The defendant in the main action was represented by its Agent, A. Stockburger.

The Advocate-General delivered his opinion at the hearing on 18 January 1972.

II — Observations submitted under Article 20 of the Statute of the Court

The observations submitted under Article 20 of the Statute of the Court may be summarized as follows:

A — *Observations submitted by the Commission of the European Communities*

(1) The *Commission* observes that according to the notice published in the Bundesanzeiger of 10 May the Decision of the Commission of 8 May 1969 was notified to the Federal Republic on the same day at 6.40 p.m. Under Article 1 (2) of the Decision, the *Einfuhr- und Vorratsstelle* was not obliged to accept foreign cereals save in so far as any offers were effective before the decision took effect and where such offers satisfied the conditions laid down in the detailed rules for implementation issued by the Council (Regulation No 132/67) by the Commission (Regulation No 1028/68) and by the Member States (Richtlinien zur Durchführung der Intervention in Getreidewirtschaftsjahr 1967/68 of 3 October 1967). Detailed rules for implementation could indeed be adopted by the Member States under Article 5 of Regulation (EEC) No 1028/68 which enabled them to issue supplementary provisions. In the present case the fact that the cereals offered were in transit gives rise to doubts as to the validity of the offer.

(2) Questions 1, 2 and 6

The word 'offered', at least in the second paragraph of Article 1 of the Commission decision of 8 May 1969 should, in the Commission's view, be regarded as having a Community content of a mandatory nature. The cereals could not be regarded as offered, that is validly offered, save on the following conditions:

An offer only *despatched*, as it was in the present case, before the decision took effect ought not to be regarded as validly made in view of the decision of 8 May 1969. Merely to despatch an offer to the Einfuhr- und Vorratsstelle does not in itself create a subjective right capable of justifying an exception to the application of the protective measures taken by that decision. In several Community regulations, moreover, and in particular in Regulations Nos 120/67 (Articles 12, 15 and 16), 1373/70 (Article 6) and 2591/69, the grant of certain rights is subject to

applications being *lodged* by those concerned and this must be regarded as the general rule.

The receipt of the offer is thus a condition of its validity and in particular the offer for intervention does not become valid until the declaration relating thereto reaches the Einfuhr- und Vorratsstelle.

In the present case the question of this first condition of validity is not the essential feature, however, (since the offer reached the Einfuhr- und Vorratsstelle on 9 May) if it is borne in mind that the limitation of the obligation on the intervention agency to purchase only domestic cereals took effect from 10 May 1969, the date of the publication of Notice 65–68/69 in the Bundesanzeiger. The Einfuhr- und Vorratsstelle had accordingly to accept these offers under the general rules of the obligation to intervene provided for in Regulation No 120/67 subject to the offers' fulfilling the conditions required for intervention.

The general conditions of validity of this offer may be inferred on this point from the provisions of Regulation No 132/67/EEC. In particular the phrase in Article 1 of that regulation 'where the cereals are' refers to a precise geographical place in the Community. This localization is indispensable for determining the competent marketing centre for intervention and a recital in Regulation No 132/67 moreover mentions that 'an offer may be made from a given locality'.

It is nevertheless not necessary that the goods should be deposited in a store: it is sufficient for them to be in a given place known to the Community.

On the other hand, to regard as the place of the offer a barge of which only the place of departure and the destination are known would not allow the three marketing centres nearest the place where the cereals are when the offer is made to be determined with certainty (Regulation No 132/67).

The argument of the plaintiff in the main action that it is sufficient if the offer indicates a specific destination where the goods are delivered at the latest at the time when they are to be taken over by the intervention agency is unacceptable *de lege lata*. A fixed place of offer is indispensable to allow the intervention agencies of a Member State to know with absolute certainty whether it is for them or for the agency of another Member State to intervene and to put them in a position to examine whether the goods may be accepted for intervention.

By the exclusion of goods in transit the rights of dealers would not be unreasonably restrained. The objective of the intervention system is to guarantee a minimum price to anyone who has tried unsuccessfully to find a buyer on the market at an acceptable price. The prices paid in the various marketing centres must be established in such a way that the differences between them reflect the disparities due, in the event of a normal harvest, to the usual market situation and to natural conditions of price formation on the market. Since Community intervention prices under normal monetary circumstances offer no special attraction to a dealer capable of encouraging him to transport the goods from one place to another for purposes of intervention, there is no reason either to accept offers relating to goods of which the location cannot be stated.

The logic of the system of the plaintiff in the main action would moreover lead to accepting for intervention goods which, when the offer is made, are not even harvested or purchased by the dealer. This would certainly exceed the scope provided for by Regulation No 120/67.

(3) As regards *Questions 3 to 5*, the Commission considers that Community law does not rule out the possibility that an offer of goods in transit may be valid provided that the goods offered are delivered to the place of taking-over indicated and those concerned show that their offer is still open by supplying the Einfuhr- und Vorratsstelle with the particulars, originally missing, of the exact place where the cereals are stored.

Normally it would be unimportant to determine in a similar case whether there were two offers or one offer which had become effective by being completed (either *ex tunc* or *ex nunc*). As far as the intervention agency is concerned there

could in any event be a valid offer only *ex nunc* for before this it could not examine and accept the offer.
In the particular case of the decision of 8 May 1969 and in particular of the exception in Article 1(2), this question has however considerable importance. The protection granted there to rights lawfully acquired *vis-à-vis* measures in the public interest cannot be extended by any means of an offer whose validity has been completed *ex tunc*, to dealers who have not made a regular offer. The offer accordingly should have been completed before the decision in question took effect and the Federal Republic had used the authorization given.

(4) Finally the Commission observes that the definition of an offer is binding on Member States. This mandatory nature arises from the fact that uniform intervention conditions have been created by Community regulations and in particular by Regulation No 132/67. Article 5 of Regulation No 1028/68 allows Member States to take only supplementary measures which it is expressly stated must be compatible with relevant Community law.

B — *Observations of Wünsche*

1. *Wünsche, the plaintiff in the main action*, stresses first of all the special facts of the proceedings as presented to the national court. The question of the lawful nature of an offer for intervention of goods in transit arose more or less fortuitously, for, before the national court, the plaintiff contested the regularity with regard to German law of the notice (in the Bundesanzeiger of 10 May 1969) in which the Einfuhr- und Vorratsstelle implemented the authorization from the Commission of 8 May just as it contests, still from the point of view of national law, the legality of the Ministerial Regulation of 17 June 1969, with which this time the competent authority implemented the said authorization, in so far as the said regulation was declared retroactive to 9 May 1969. In its opinion its offer for intervention, which was in any case prior to 17 June 1969, is in any event lawful, but it does not contest the fact that the Court of Justice is not concerned with this aspect.
The plaintiff in the main action refers in the second place to the system set up by the German authorities in the Richtlinien implementing intervention for the 1967/68 cereal marketing year, which came into force as from 3 October 1967 (Bundesanzeiger No 185 of 30 September 1967). This system consisted in appointing in advance and by a general measure a certain number of places (stores) for taking over, and under it the Einfuhr- und Vorratsstelle constantly received offers of goods in transit by water and far from regarding these offers as irregular and rejecting them it kept them pending until it received notice of the delivery of the cereals into one of the 'stores for taking over' appointed in the annexes to the Richtlinien above referred to.

(2) In the view of the plaintiff in the main action the proceedings are concerned basically with two points:

(a) What is the importance of the place of storage of the cereals when the offer for intervention is made and of the statement of this place in the offer itself?

(b) What from the point of view of German and Community law was the scope of the 'general decision' of the Einfuhr- und Vorratsstelle? Was this decision, which was prior to the offer in question, compatible with Community law?

(a) As regards the first point the plaintiff observes that the intervention machinery as laid down by Regulation No 132/67 leaves the control of operations to the seller, for it is he who freely determines the place from which he offers the cereals to the intervention agency. The power of the intervention agencies to decide the place for taking over the cereals is confined within very narrow limits, for if they do not accept straight away the marketing centre indicated as the place for taking over, they are forced to accept a place for taking over situated in its immediate

proximity, for otherwise they would have to bear disproportionate transport costs.
This means that the place in which the cereals are when the offer is made cannot be given the function of regulating the market.
The only significance of this place is for the question whether and to what extent transport costs must be taken into account when the intervention agency takes the cereals over at a depot other than that indicated by the seller in his offer. This is why neither the implementing provisions of Regulation No 132/67 nor Regulation No 1028/68 of the Commission mention that the seller must indicate in his offer the place where the goods are. All that is required is a written offer, since a statement of the place where the goods are may be asked for subsequently by the intervention agency (which would only exceptionally be the case where it did not accept the marketing centre mentioned in the offer as the place for taking over).

(b) As regards the second point the plaintiff observes that by a decision of a general nature which is binding on it (Richtlinien of 3 October 1967 concerning the 1967/68 marketing year, extended to the 1968/69 marketing year by notice of 1 August 1968) the Einfuhr- und Vorratsstelle appointed a certain number of depots as places accepted unconditionally in advance for taking over by it on condition that the seller who makes the offer bears the transport costs to one of the said depots and that he makes an agreement in advance with the proprietor of the depot to be sure of finding space available there. The agreement of the said proprietor should be notified to the Einfuhr- und Vorratsstelle who would keep the offers pending until it received such notification and evidence of delivery to the depot appointed for taking over in the offer whereupon it would then accept the offer (Angebotsannahme or Einkaufsschlußschein) (Richtlinien 5.11, 5.12, 6.3 and a.1 and Annex D).
This general decision should be regarded as *the decision* which the intervention agency is required to take on the place where the cereals are to be taken over under Article 2(1) of Regulation No 132/67, for the said article is silent as to the time at which the decision must be taken (before or after the offer).
Under this system it does not matter where the cereals offered are at the time of the offer and whether the place has been mentioned in the offer.
If this information were contained in the offer the Einfuhr- und Vorratsstelle could no longer have fixed another place for taking over.
(3) Having regard to these explanations the plaintiff proposes that the various questions should be answered as follows:

Question 1

The word 'offer' in Article 1 of Regulation No 132/67 and Article 3 of Regulation No 1028/68 must be interpreted according to the rules of national law in so far as the said provisions of Community law do not provide otherwise. It follows that the offer must be made *in writing* and it takes effect only as from the time at which the intervention agency has received it.

Question 2

The word 'offer' must as a rule be interpreted as meaning that the offer for sale of cereals for intervention is treated as made when the offer reaches the intervention agency. If however a provision of Community law or of national law adopted for the execution of Community law provides that the good faith of the person making the offer must be protected against the consequences of a change in the legal position arising *ex post facto* the day on which the offer is despatched must be the criterion.

Question 3

The offer is valid and capable of being accepted even when it does not indicate the place where the cereals offered are when the offer is made. It is sufficient for the offer to state the amount and kind of cereals offered, the month of delivery and the marketing centre or, if the intervention agency has taken the decision referred to

in Article 2(1) of Regulation No 132/67 in advance, the depot for taking over.

Question 4

The offer of cereals to be taken over takes effect as soon as the intervention agency has all the information required in writing. It is not necessary for this information to be supplied simultaneously in a single document. Information lacking may be supplied in writing in supplemental documents. The statement of the place where the cereals are when the offer is made does not constitute on of the statements which the offer must necessarily contain.

Question 5

The offer takes effect only as from the time when all the information required is supplied. But where it is necessary to protect the good faith of the person making the offer against consequences of a change in the legal position, the date which must be taken into account is that on which the offer is either despatched or completed.

Question 6

When the intervention agency has made the decision referred to in Article 2(1) of Regulation No 132/67 before delivery of the offer, the offer is valid even if the goods are not in a given place when the offer is made, for example where they are in transit and where the offer contains no information with regard thereto.

Question 7

The seventh question relates to the question whether No 5.11 of the Richtlinien is compatible with Article 2(1) of Regulation No 132/67. Nothing in the Community regulations prevents intervention agencies from deciding in advance and in a general way the place for taking over especially since such a general decision in advance allows intervention to be carried out speedily. In this respect the Richtlinien comply with Regulation No 132/67 since they are issued within the scope of that regulation.

The undoubtedly mandatory nature of the Community provisions does not moreover prevent regard being had to the spirit of those provisions without adhering to their letter. As soon as it is admitted and found that the spirit of the provision is that the statement of the place of storage is solely intended to allow the intervention agencies to take the decision referred to in Article 2(1) of Regulation No 132/67 in such a way as to take proper account of the realities and as soon as the intervention agency has made its decision taking proper account of the realities even *before* the offer has been delivered it must be recognized that it accords the spirit of the provisions in question to admit that in such a case the statement of the place of storage is superfluous and as a result is not obligatory.

The seventh question must therefore be answered as follows:

In principle the provisions laying down the general rules for intervention are binding. It is not right however to interpret and apply them literally. For the purpose of implementing the rules with regard to intervention Member States may in principle adopt supplementary provisions where they are compatible with the objectives of the intervention system. Intervention agencies may take the decision referred to in Article 2(1) of Regulation No 132/67 before the offer is made with the result that it is not necessary for the place of storage of the goods to be indicated in the offer itself at the time when the offer is made.

C — *Observations of the Einfuhr- und Vorratsstelle*

(1) The *Einfuhr- und Vorratsstelle, the defendant in the main action*, observes as a preliminary that the system laid down by the Richtlinien implementing the Community rules provides an alternative: persons making an offer may comply with Regulation No 132/67 to the letter, that is to say by giving the exact place where the cereals are when the offer is made, choosing a marketing centre and waiting in reply for a place for taking over to be notified to them by the Einfuhr- und Vorratsstelle

or, on the other hand, as the Richtlinien allow, offer the cereals from one of the places for taking over appointed in advance by the Einfuhr- und Vorratsstelle but subject to the cereals' being already there when the offer is made. Neither of these alternatives allows cereals in transit to be offered: if an offer of cereals in transit were to be made it would either be held in suspense until the depot for taking over was given or it would be refused.

(2) The Einfuhr- und Vorratsstelle then observes with regard to the *first* and *sixth* questions that Article 7 of Regulation No 120/67, Article 1 of Regulation No 132/67 and Article 3 of Regulation No 1028/68 have created their own concept of 'offer' which must be interpreted in the same way in all Member States. This may be inferred from the fact that the Community authorities have laid down very precisely what offer for intervention must contain. Such detailed rules imply that the concept of offer must everywhere have the same meaning. Further the fact that cereals produced in any Member State may be offered to the intervention agency of any other Member State likewise implies that all these agencies have the same requirements with regard to the concept of a valid offer.

For there to be a valid offer within the Community meaning, the goods must be delivered to a *fixed* place. It is not sufficient to give the temporary place where the goods are when the offer is made.

Only a fixed place allows it to be established whether there is a valid offer for a specific place, for Article 1 of Regulation No 132/67 allows as a marketing centre only one of the three centres nearest to the place where the cereals are when the offer is made.

The obligation imposed by Regulation No 1028/68 on intervention agencies to take a *speedy* decision likewise prevents account being taken of goods in transit for which it would be necessary to make a complicated inquiry as to the exact place of offer.

Finally Article 2 of Regulation No 132/67 requires that intervention agencies shall be able to determine with certitude what will be for them the least expensive place for taking over, that is to say in respect of which they will have the least transport costs to pay. It is thus essential to know with certainty the place where the cereals are when the offer is made.

(3) As regards the *second* question the Einfuhr- und Vorratsstelle maintains that there is a valid offer only from the time when the offer reaches the intervention agency. Offers constitute declarations of intention to do a legal act and cannot have a legal effect until they reach the addressee. It follows that the conditions on which Article 1 of Regulation No 132/67 makes the effectiveness of offers depend must be satisfied when they reach the intervention agencies and not solely when the offer is despatched. A decision by the intervention agencies on whether the offers which have been made to them are valid can relate only to the time at which the agencies have full knowledge of the offers.

(4) The defendant in the main action proposes that a reply should be given to the *third* question to the effect that in order for an offer to be valid and capable of being accepted it must always contain a statement of the place where the cereals offered are when the offer is made. Since Article 3 of Regulation No 1028/68/EEC requires intervention agencies to decide without delay on the acceptance or rejection of offers the agencies must be able to infer from the offers themselves the place where the cereals were when the offer was made. Having regard to the importance that the place where the cereals are has in determining whether there is a valid offer it is indispensable for the offer to contain a true statement of that place.

(5) With regard to the *fourth* question the Einfuhr- und Vorratsstelle is of the opinion that there is nothing to prevent an originally incomplete offer, that is to say an offer made without a statement of the place where the cereals are, from being subsequently completed on condition that when the originally incomplete offer is submitted it is clearly established between the person making the offer and the intervention agency that so long as the

offer is incomplete it will not be treated as an offer for intervention within the meaning of Article 1 of Regulation No 132/67, but will be held in suspense without being taken into account until it is completed.

(6) With regard to the *fifth* question the defendant in the main action is of the opinion that when an offer has thus been made in successive stages it cannot be regarded as 'made' within the meaning of Article 1 of Regulation No 132/67 until it has been completed by a statement of the place where the cereals are.

(7) With regard to the *seventh* question the defendant states that since the objective of the provisions laying down general rules for intervention was to establish a Community system of intervention applicable in the same way in all member countries and involving a uniform system of prices, those rules are of a binding nature.

Grounds of judgment

By order dated 19 July 1971 received at the Court Registry on 29 July 1971 the Hessischer Verwaltungsgerichtshof has raised under Article 177 of the Treaty establishing the EEC various questions relating to the interpretation of Article 7 of Regulation No 120/67 of the Council (OJ No 117 of 19.6.1967), Article 1 of Regulation No 132/67 of the Council (OJ No 120 of 21.6.1967) and Article 3 of Regulation No 1028/68 of the Commission (JO L 176 of 23.7.1968, p. 1).

This interpretation is requested with regard to the question whether the Einfuhr- und Vorratsstelle für Getreide und Futtermittel was bound to buy in quantities of cereals harvested in France and offered for intervention at the marketing centres of Stuttgart and Kiel. The offers were made by forms dated 8 May and received on 9 May 1969 with a statement that the cereals were in transit to depots for taking over at Kiel and Stuttgart. The said offers were completed by a statement of the arrival of the goods at the said depots on 12 May 1969, that is to say at a date subsequent to the entry into force of the Commission's decision of 8 May 1969 (JO L 112 of 9.5.1969, p. 2) authorizing the Federal Republic of Germany to restrict intervention purchases of cereals offered to it after the entry into force of the decision.

According to Article 7 of Regulation No 120/67 of the Council intervention agencies appointed by the Member States are obliged, subject to certain conditions, to buy in cereals which are offered to them and have been harvested in the Community. Article 1 of Regulation No 132/67 of the Council states that all offers for intervention shall be made to an intervention agency in respect of a marketing centre chosen from among the three centres nearest to the place where the cereals are when the offer is made. Under Article 3 of Regulation No 1028/68 of the Commission all offers for intervention must be made in writing. Finally Article 5

of the same regulation empowers intervention agencies to adopt, as need may arise, supplementary procedures and conditions for taking over compatible with that regulation to take account of special conditions existing in each Member State.

Question 1

4 Question 1 asks whether the words 'offer' and 'offered' contained in the aforesaid regulations must be interpreted in the same way in the various Member States.

5 Article 7 of Regulation No 120/67 obliges intervention agencies to buy in the cereals which are offered to them only if the offers comply with conditions, in particular in respect of quality and quantity, to be determined in accordance with paragraph (5) of that article. Where, in order to stabilize markets and to ensure a fair standard of living for the agricultural community concerned, intervention measures must be taken, then according to the fifth recital to that regulation, such measures must be standardized so as not to impede the free movement of cereals within the Community.

6 As the obligation to intervene depends decisively on a prior offer, it is important that the concept of a valid offer and the conditions thereby involved shall apply throughout the Community, in order that the desired standardization of the conditions for intervention may be achieved. This requirement appears indispensable, not only because the Community authorities themselves determine those conditions, but also inasmuch as it is necessary to ensure that the additional conditions, which in certain cases the intervention agencies of each Member State are authorized to lay down, are compatible with the objectives of the intervention system. Terms used in Community law must be uniformly interpreted and implemented throughout the Community, except when an express or implied reference is made to national law.

7 It follows, therefore, that although intervention agencies are empowered, under Article 5 of Regulation No 1028/68 to adopt additional procedures and conditions for taking over, they cannot however derogate from the Community concept of an offer as contained in particular in Regulations Nos 120/67 and 132/67.

8 It is appropriate therefore to reply that the terms 'offer' and 'offered', contained in Regulations Nos 120/67, 132/67 and 1028/68, must be uniformly interpreted in the Member States, in accordance with the objectives of the intervention system laid down by those regulations.

Question 2

9 The Court is asked whether the word 'offer' must be interpreted as meaning that an offer of cereals for intervention must be regarded as made as soon as the person making the offer despatches it or only when it is received by the intervention agency.

10 An offer for intervention, made in due form, automatically obliges the intervention agency to buy in the cereals offered. Save in exceptional circumstances, a legal transaction with such cogent consequences can become binding upon the addressee, on whom it purports to impose obligations, and can thus be regarded as complete, only when it comes to his knowledge.

11 It is appropriate therefore to reply that an offer within the meaning of the regulations referred to by the national court can be regarded as made when it is received in writing by the intervention agency.

Question 3

12 The Court is asked further to say whether there is a valid offer capable of being accepted when it contains no indication of the place where the goods are or were when the offer was made.

13 Under Article 1(1) of Regulation No 132/67 of the Council all offers for intervention shall be made to an intervention agency in respect of a marketing centre chosen from among the three centres nearest to the place where the cereals are when the offer is made and under Article 2(1) of the same regulation the intervention agency shall decide on the place where the cereals are to be taken over.

14 According to the defendant in the main action and the Commission these provisions necessarily imply that the person concerned must indicate the place where the goods are when the offer is made so as to allow the intervention agency to decide whether the condition in Article 1 of Regulation No 132/67 is satisfied and to appoint the place for taking over which appears the most advantageous to it.

15 The plaintiff in the main action, without denying that this information must as a rule be supplied, objects however that it has become superfluous in a case in which a Member State, in the present case the Federal Republic of Germany, has made use of the power conferred upon it by Article 5 of Regulation No 1028/68 to lay

down additional conditions and has by a decision of general scope appointed in advance in respect of each marketing centre places for taking over where the intervention agencies undertake to take delivery of the cereals without the dealer's incurring any other costs. According to the plaintiff in the main action it would thus no longer be of any use to indicate the place where the goods are when the offer is made since there is no longer any need for the intervention agency either to verify whether the marketing centre indicated is one of the three referred to in Article 1 or to indicate a place for taking over, since this has been indicated and accepted in advance.

16 Such an interpretation of Article 1 of Regulation No 132/67 is incompatible both with the wording and the objective of this provision. This obliges intervention agencies, so that the organization of the intervention system may be as rational and as inexpensive as possible, to verify in any event whether the marketing centre indicated is one of the three nearest to the place where the cereals are when the offer is made. It is proper for the system of intervention, which is intended to guarantee that, having regard to the regional price differences, producers may sell their cereals at fair prices when they cannot be sold in normal conditions of profitability, to include precautions designed to ensure that there is no encouragement to transport the goods with the sole objective of obtaining a more advantageous intervention. The obligation to indicate the place where the goods are when the offer is made and to hold them there at the disposal of the intervention agency, by allowing the latter to check that the offer is in order and if so giving it the opportunity of itself indicating the place for taking over, contributes to the attainment of this objective.

17 This condition does not lose its significance and usefulness where the places for taking over are indicated in advance in a general way. Moreover, it is in this way that the authorities of the Federal Republic of Germany say they apply the additional measures which they have adopted.

18 It is therefore appropriate to reply that an offer for intervention, to be in order and to be binding on the intervention agency, must indicate the place where the goods offered are or will be when the offer is made, that is to say when it is received by the said agency.

Questions 4 and 5

19 The Court is asked whether, if the place where the cereals are is not stated in the offer, such an offer may subsequently be completed and if so whether it may be regarded as made at the date of the originally incomplete offer.

20 The proper functioning of the intervention system does not prevent an incomplete offer, otherwise in order as to form, from being subsequently completed by the indication of the place where the goods are. It is however only as from the time at which the offer is complete that it is capable of being effective.

21 It is appropriate therefore to reply that an offer which is originally incomplete may be subsequently completed but that it will be effective only when it satisfies all the conditions upon which its validity depends.

Question 6

22 The Court is asked by the sixth question to rule whether the phrase 'are when the offer is made' used in Article 1 of Regulation No 132/67 means that the offer is in order only when the goods offered are stored in a given place or whether the indication of one of the three marketing centres referred to in the said Article 1 may be made in relation to goods in transit.

23 It follows from the replies given to the previous questions that Article 1 of Regulation No 132/67 implies that when the offer is made the goods offered must be at the disposal of the intervention agency in order that any subsequent change of location may remain exclusively a matter for the agency. This is the meaning of the phrase 'are when the offer is made'.

Question 7

24 Finally the Court is asked whether the provisions contained in the aforesaid Community regulations are mandatory or whether the Member States may derogate therefrom.

25 The provisions, the interpretation of which is requested, relate to essential factors in the common organization of the market in cereals. If the objectives of the common organization of the market are to be attained, the introduction of the intervention machinery must follow rules which are as uniform as possible, so as not to impede the free movement of cereals within the Community under normal market conditions.

26 In the absence of any clearly expressed intention on the part of the draftsmen of the Community regulations it cannot be considered permissible for Member States to derogate therefrom.

Costs

27 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Hessischer Verwaltungsgerichtshof, costs are a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties to the main action 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 38 to 47 and 177;
Having regard to Regulation No 120/67 of 13 June 1967 and Regulation No 132/67 of 13 June 1967 both of the Council of the European Economic Community;
Having regard to Regulation No 1028/68 of the Commission of the European Communities of 19 July 1968;
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,

THE COURT

in answer to the questions referred to it by the Hessischer Verwaltungsgerichtshof by order of that court dated 19 July 1971, hereby rules:

1. **The terms 'offer' and 'offered', contained in Regulations Nos 120/67, 132/67 and 1028/68, must be uniformly interpreted in the Member States, in accordance with the objectives of the intervention system laid down by those regulations.**

2. **In accordance with the above regulations, an offer must be considered as effectively made when it is received in writing by the intervention agency.**

3. **(a) In order to be valid and binding upon the intervention agency, an offer for intervention must state where the goods offered are or will be at the**

time when the offer is made, that is, at the time when it is received by the agency.

(b) An offer which is originally incomplete in this respect may subsequently be completed, but will be effective only when it satisfies all the conditions upon which its validity depends.

4. The phrase 'are when the offer is made' contained in Article 1 of Regulation No 132/67 must be interpreted as meaning that the goods offered must, when the offer is made, be at the disposal of the intervention agency, so that any subsequent change of location remains exclusively a matter for the agency.

5. In the absence of clearly expressed provision Member States cannot derogate from the provisions contained in the aforesaid regulations.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 1 Februry 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER

(see Case 49/71, p. 39)