OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 28 NOVEMBER 1972[1]

Mr President,
Members of the Court,

The problems raised by the reference for a preliminary ruling concerning which I am delivering my opinion today are similar to those of Case 32/72. I can therefore confine myself, in my preliminary remarks, to a few details.

As you know, Article 9 of Regulation No 120/67 (OJ, Special Edition, 1967, p. 33) on the common organization of the market in cereals provides that a carry-over payment may be granted for common wheat, durum wheat, rye and barley harvested in the Community remaining at the end of the marketing year (that is, on 31 July). That opportunity is to be considered in conjunction with the intervention system applicable to cereals. The price guarantee which it gives must take into account the fact that during a marketing year storage costs are incurred and thus market prices rise. For this reason, during the marketing year the target, intervention and threshold prices laid down within the organization of the market constantly increase. In the case of wheat and rye, the prices reach their highest level in May. No increase is provided for the months of June and July, because at that time cereals from the new harvest are already appearing on the market. From June onwards the normal intervention prices of the new marketing year are applicable and these—as the Commission has assured us—have hitherto always been below those of the previous marketing year. In these circumstances the holder of cereals might be tempted even in May to offer stocks of the old harvest for intervention, even though the market is still capable in the following period of obsorbing them. It is in order to counter this that provision is made for the granting of a carry-over payment for cereals of the old harvest. It is designed to ensure that cereals can be held in stock without risk until 31 July. For the calculation of the carry-over payment, according to Article 9(3) of Regulation No 120/67 the rule applied is that the payment shall not exceed the difference between the target price valid for the last month of the marketing year and that valid for the first month of the next marketing year.

The opportunity given by Article 9 of Regulation No 120/67 was put into operation before the end of the 1968/1969 marketing year, in particular for common wheat and rye (that is what appears from Regulation No 882/69 of the Council of 13 May 1969, JO L 117 of 16 May 1969). The details of the conditions for granting the carry-over payment were laid down by Regulation No 963/69 of the Commission of 27 May 1969 (JO L 126 of 28.5. 1969), Article 3 of which I quote in particular:

'In order to benefit from the carry-over payment which is granted by the competent authority of the Member State in whose territory the stocks are to be found, the applicant must:

— have declared to the aforementioned competent authority, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment and also the quantities of each of the cereals referred to in Article 1 held by him on 31 May 1969, with details of the agent and the warehouse where the stocks may be inspected;

— have submitted to the same competent authority, by registered letter, telex message or telegram sent not later than 5 August 1969, a request for payment giving details of the aforementioned stocks of cereals held by him on 31 July 1969. Such a request must, at least,

1 — Translated from the French version.

contain the information and declarations referred to in Annex II hereto.'

Article 5 is equally important and lays down that:

'1. The competent authority of each Member State shall carry out the necessary supervision of stocks and their movements within its territory.

2. The competent authorities of Member States shall adopt all supplementary measures required to take account of special conditions in their territories and in particular the periods of time during which the stocks and their movements are under supervision.'

These provisions are also of importance for the plaintiff in the main action, a milling undertaking whose registered office is in the Federal Republic of Germany (in the neighbourhood of Stuttgart). It appears that on 31 May 1969 it held stocks of common wheat and rye in respect of which it intended to claim a carry-over payment. It communicated this to the defendant in the main action, the competent German authority, on a form sent to it by the latter. The form bore the date 6 June 1969, but it was not posted until 9 June 1969. Because of this circumstance, however, that is, because the time-limit laid down in Regulation No 963/69 of the Commission was not observed, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel refused to grant the carry-over payment.
The Magstadt undertaking considers this refusal to be unjustified. It takes the view that, with regard to this time-limit, what is involved is merely an ordinary time-limit, that is to say, a time-limit which permits indulgence when there is an excusable non-compliance. In these circumstances, it says, particular regard must be paid to the fact that the owner of the undertaking returned only on 9 June from a holiday abroad and that the forms were not received by the plaintiff until 8 June 1969. However, as its argument was not accepted either as a result of the administrative complaint or before the Verwaltungsgericht Frankfurt, it brought the matter before the Hessischer Verwaltungsgerichtshof where it is still pending at the moment. Whilst it is true that as regards the time-limit for lodging the claim which expired on 5 August, that court has already stated that it is a question of an absolute limitation period, non-compliance with which results in the loss of the right, nevertheless considering that the matter might be otherwise in respect of the time-limit for lodging the first declaration of intention (that is, the time-limit expiring on 7 June 1969), it stayed the proceedings by an order of 28 June 1972 and has submitted the following preliminary question to you:

'With regard to the time-limit laid down in the first indent of Article 3 of Regulation No 963/69 of the Commission of 27 May 1969 (JO L 126 of 27.5.1969, p. 8 to p. 9), under the terms of which the applicant must have declared, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the carry-over payment, is this

(a) an absolute limitation period, that is to say, a period, the non-observance of which always leads to the loss of the right to the carry-over payment, or only an ordinary time-limit, that is to say, a time-limit the non-observance of which may, in certain circumstances, not have the effect of the loss of the right to the carry-over payment?

(b) If the latter should be the case does the Community law of the EEC contain rules or general principles which lay down in which circumstances failure to observe time-limits which are not absolute limitation periods but ordinary timelimits does not lead to the loss of the rights in question?'

It is on that question that I am now going to give my opinion.
I shall begin by referring to the opinion recently delivered by my colleague Mayras in Case 32/72. As you know, that case involved problems of the carry-over

payment granted at the end of the 1967/1968 marketing year; that payment had been determined by Regulation No 602/68 of the Commission (JO L 114 of 17.5.1968) in a manner similar to that provided by Regulation No 963/69 which concerns us now. In this respect I should like to emphasize that the arguments advanced by my French colleague concerning the time-limit in the second indent of Article 3 of Regulation No 602/68 (that is to say, in legislation which is absolutely identical to the second indent of Article 3 of Regulation No 963/69) strike me as totally convincing. In fact, on the basis of the arguments which Mr Advocate-General Mayras draws draws from the wording and the general structure of the regulation, and in view of the fundamental principles developed in the judgments on the matter and set out by him, it cannot be disputed that the aforementioned regulation lays down a strict time-limit, that is, a time-limit the non-compliance with which leads in principle to loss of the right to payment.

If in the present proceedings we now concern ourselves with interpreting the *first indent* of Article 3 of Regulation No 963/69, that is to say, the provision which lays down a time-limit for the lodging of the declaration of intention with regard to obtaining the carry-over payment, I consider that undeniably—I anticipate the result—the disputed time-limit should be regarded as of the same nature. It appears to me that the Commission has demonstrated this convincingly.

In fact in this connexion I may refer to the wording of the regulation. The beginning of Article 3 ('In order to benefit from the carry-over payment ...'), which, moreover, applies equally to the time-limit for claims and to the time-limit for lodging the declaration of intention, certainly supports the assumption that the coming into being of the right is dependent upon the fulfilment of both these prior formalities.

Furthermore, the other considerations raised with regard to the time-limit for lodging the application mentioned in the second indent also apply to the time-limit laid down in the first indent. In particular, it is significant that, in these relatively detailed Community rules (unlike other Community provisions) there are no provisions for derogation in case of failure to observe the time-limit not attributable to a fault on the part of the person concerned or not causing damages. The power possibly given to the competent national authorities to accept non-observance of time-limits in certain cases—for special reasons—might, because it necessarily implies a margin of discretion for the administration, jeopardize the uniformity of the application of rules of law. Such a solution would be difficult to reconcile with the principles which the Court of Justice has often emphasized in this connexion. Nor is it possible to rely upon the derogation provided for in Article 5(2), that is to say, the rule laying down that 'The competent authorities of a Member State shall adopt all supplementary measures required to take account of special conditions in their territories and in particular the periods of time during which the stocks and their movements are under supervision'. As the Commission has properly emphasized the general structure of that article shows clearly that such 'supplementary measures' may refer only to Article 5(1), that is, the execution of supervision. There cannot therefore be any question of validly deducing from these provisions the permissibility of derogations from the time-limits fixed by Article 3.

Lastly, it is not possible either to claim to keep to the strict observance of the time-limit for lodging the application mentioned in the second indent of Article 3, and at the same time to grant indulgence in respect of the declaration of intention provided for in the first indent. Rather the opposite should be the case. According to the spirit of Regulation No 963/69, the declaration of intention must clearly permit an inventory of cereals held on 31 May to be prepared; to a certain extent it is the decisive starting point for all further steps. The checks related to it must therefore be especially strict, whilst later mere checks of documents may suffice. From this point of view there exists in fact a considerable interest in requiring a declaration *as rapidly as possible*. If it were done otherwise there would be danger of a carry-over payment also being claimed for cereals from the

new harvest, or of one and the same quantity being declared several times for these purposes. The necessity for ensuring minimum security against abuse, in view of the considerable financial interests at stake, accordingly excludes the possibility of granting indulgence when the person concerned has not observed the time-limit. Only the assumption that the time-limit for lodging the declaration of intention also constitutes an absolute limitation period can in fact ensure the achievement of one of the essential purposes of Regulation No 963/69, which is to make those concerned act swiftly.

At best, and here again I am in agreement with my French colleague, I can add the following remark: it is possible to envisage a procedure of derogation in case of *force majeure*, that is to say by falling back on a general principle of law. A deeper examination of this however is not, of course, appropriate in the present context since, clearly, none of the circumstances relied upon by the applicant (absence of the owner of the undertaking for holiday reasons—late transmission of the form of declaration by the Einfuhr- und Vorratsstelle für Getreide und Futtermittel can be taken into consideration. In fact the rules as contained in the Community provisions are sufficiently detailed and complete for the person concerned to be able to notify his declaration in a valid manner, even in the absence of the form drawn up by the national administration. Furthermore, in the light of experience acquired in the previous year, it was clear that the declarations in question had to be made at the time in question; consequently the persons concerned had to make their own arrangements for the necessary steps to be taken even in their absence. Consequently there are no circumstances enabling resort to be had to '*force majeure*' present in the case which is pending before the national court.

The question submitted by the Hessischer Verwaltungsgericht should therefore be answered as follows:

The provision in the first indent of Article 3 of Regulation No 936/69 stipulating that the applicant must have declared, by registered letter, telex message or telegram sent not later than 7 June 1969, his intention to apply where appropriate to be granted the necessary carry-over payment, lays down an absolute limitation period, that is to say a time-limit the failure to observe which results in principle in loss of the right to the carry-over payment.