1. Regulation No 2727/75, as amended by Regulation No 1143/76, permits the Commission to adopt special intervention measures which vary from one Member State to another in the light of possible different trends in market prices for cereals in different regions of the Community.

   Neither the Council in granting such powers nor the Commission in exercising them by providing in Regulation No 1629/77 for the possibility of such variations in regard to common wheat of breadmaking quality and by actually introducing them in Regulation No 400/86 discriminated against producers in the Community within the meaning of the second subparagraph of Article 40(3) of the Treaty or discriminated on grounds of nationality within the meaning of Article 7 thereof. The Council applied an objective criterion when it authorized the Commission to adopt special intervention measures varying from region to region and the Commission did not commit any manifest error of assessment in the exercise of the powers conferred on it.

2. The statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and enable the Court to exercise its powers of review. However, the statement of reasons is not required to specify the often very numerous and complex matters of fact or law dealt with in regulations, provided that the regulations fall within the general scheme of the body of measures of which they form part.

REPORT FOR THE HEARING
delivered in Case 167/88 *

I — Legal background to the main proceedings

Council Regulation No 2727/75 of 29 October 1975 on the common organization of the market in cereals,[1] as subsequently amended by Regulations Nos 1143/76[2] and 1018/84,[3] established a Community price and intervention scheme.

Article 3 provides that each year a common single intervention price is to be fixed for the Community for common wheat, barley, maize and sorghum and a reference price for common wheat of breadmaking quality (that is to say meeting certain special criteria with regard to quality) which in order to encourage its production is higher than the intervention price for common wheat.

* Language of the case: French.

1 — OJ 1975, L 281, p. 1.

2 — OJ 1976, L 130, p. 1.

3 — OJ 1984, L 107, p. 1

Article 7 requires intervention agencies to buy in cereals offered by producers at the common single intervention price provided the cereals meet certain general conditions as regards quality and quantity.

Completing the permanent mandatory purchasing scheme at the intervention price, Article 8(1) of Regulation No 2727/75 makes it possible to take particular intervention measures where there is a risk of massive sales into intervention in certain regions of the Community.

Article 1 of Council Regulation No 1146/76 of 17 May 1976,[4] adopted pursuant to Article 8(3) of Regulation No 2727/75, provides that particular intervention measures may be taken if, in one or more regions of the Community, market prices show a fall or a weakness which, in view of the size of the harvest or the regional stocks and their geographical location could oblige intervention agencies to buy in large quantities.

Article 8(2) of Regulation No 2727/75 provides that special intervention measures may be adopted in respect of common wheat of breadmaking quality with a view to supporting the development of the market therein in relation to the reference price.

Article 2 of Council Regulation No 1146/76 provides that such measures may be applied by way of invitations to tender, issued by the intervention agencies, for the purchase of common wheat of breadmaking quality. Article 4 of Regulation No 1146/76 provides that when invitations to tender are issued the terms must ensure equality of access and treatment to all persons concerned irrespective of the place of their establishment within the Community.

Pursuant to Article 8(4) of Regulation No 2727/75 the Commission adopted Regulation No 1629/77 of 20 July 1977[5] laying down detailed rules of application for special intervention measures to support the development of the market in common wheat of breadmaking quality. The Commission regulation first of all defines the criteria in the light of which the measures are decided. Article 2 states that account should be taken of:

(i) the situation and the prospects regarding the availibilty of cereals on the Community market,

(ii) the import prospects for cereals and the export prospects for common wheat,

(iii) the trend in the price quotations of common wheat of breadmaking quality at the most representative centres in the Community.

4 — OJ 1976, L 130, p. 9

5 — OJ 1977, L 181, p. 26

Article 3 provides that the measures must specify:

(i) the quality and quantity of the cereals involved,

(ii) the geographical scope of the measure and any duration thereof.

As explained in the third recital in the preamble to the regulation, Article 4 provides for graduated special measures depending on the seriousness of the circumstances and ultimately extending to the purchase of common wheat of breadmaking quality by the intervention agencies.

On the basis of those provisions the Commission adopted various special intervention measures in accordance with the market situation; the measures consisted in the purchase by intervention agencies of common wheat of breadmaking quality within quantitative limits sometimes determined by the Member States. [6]

The special measure provided by Commission Regulation No 400/86 of 21 February 1986 [7] consists in the purchase by the intervention agencies of the Member States pursuant to Articles 4(3) and 5 of Regulation No 1629/77 of:

common wheat of breadmaking quality, with various qualitative characteristics, not to exceed: [8]

Germany: 1 000 000 tonnes

France: 200 000 tonnes

United Kingdom: 50 000 tonnes

Italy: 50 000 tonnes

Denmark: 50 000 tonnes

Belgium: 50 000 tonnes

Netherlands: 50 000 tonnes

Greece: 50 000 tonnes

Luxembourg: 2 000 tonnes

at the intervention prices applicable to the 1985/86 marketing year increased by 5%.

6 — See Decision 80/533 (OJ 1980, L 138, p. 11) and Regulations Nos 1403/83 (OJ 1983, L 143, p. 21), 1427/83 (OJ 1983, L 145, p. 24) and 1428/83 (OJ 1983, L 145, p. 26).

7 — OJ 1986, L 45, p. 22.

8 — Article 1(1) of Regulation No 400/86.

Article 3 requires the Member States concerned to

(i) decide whether, in view of the quantitative limits laid down in Article 1, all offers submitted may be accepted,

(ii) if the total quantity offered exceeds the quantity provided for in Article 1, fix the percentage by which offers made are to be reduced.

II — Facts and procedure

The total quantity offered by French producers pursuant to the special intervention measure provided for by Regulation No 400/86 amounted to 1 699 740 tonnes.

Since the quantitative limit fixed for France was 200 000 tonnes, the Office nationale interprofessionnel des céréales (hereinafter referred to as 'ONIC') had, pursuant to Article 3 of Regulation No 400/86, to fix a percentage of 88.23 by which all offers were reduced. French producers could therefore have their offers accepted only to the extent of 11.77% of the quantities they had offered.

At the same time the quantities offered in the other Member States led their intervention agencies to fix a percentage of 2.55 for reducing offers in Germany and 0 in the other countries. Thus all or almost all the offers of producers were accepted in those States.

The Association générale des producteurs de blé (hereinafter referred to as 'the Association') brought the decision of the Director-General of ONIC fixing the reduction at 88.23% before the Conseil d'État; it maintained that the special intervention measure introduced by Regulation No 400/86 infringed Articles 7 and 40(3) of the EEC Treaty and that if it was held to be in accordance with certain provisions of the common organization of the market in cereals those provisions must be declared invalid under the principle prohibiting discrimination.

The Association also submitted that in any event there was no proper statement of reasons in Regulation No 400/86, contrary to Article 190 of the EEC Treaty.

The Conseil d'État decided in view of the serious nature of the dispute to stay the proceedings until the Court had given a preliminary ruling on the validity of Regulation No 400/86 and, in so far as was necessary to resolve the matter, the validity of Regulations Nos 2727/75 (Article 8(2)), 1146/76 (Article 2) and 1629/77 (Article 3).

The question for a preliminary ruling is worded as follows:

'Do Regulation No 400/86 of the Commission of the European Communities of 21 February 1986, Council Regulation No 2727/75 of 29 October 1975, Council Regulation No 1146/76 of 17 May 1976 and Commission Regulation No 1629/77 of 20 July 1977 infringe the provisions of Articles 7, 40(3) and 190 of the Treaty establishing the European Economic Community?'

The decision of the Conseil d'État was received at the Court Registry on 13 June 1988.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by:

the Government of the French Republic, represented by Régis de Gouttes, acting as Agent,

the Council of the European Communities, represented by J. Delmoly, acting as Agent,

the plaintiff in the main proceedings, represented by N. Coutrelis,

the Commission of the European Communities, represented by P. Hetsch, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it requested additional information from the Council and the Commission, which replied within the prescribed period.

III — Summary of the written observations submitted to the Court

The Government of the French Republic points out that during the meeting of the management committee on 30 January 1986 several Member States (France, the Netherlands, Denmark and the United Kingdom) submitted that the proposal for a regulation made by the Commission which was to become Regulation No 400/86 amounted to introducing national quotas and was a step towards renationalization of the common agricultural policy.

The Commission justified the introduction of national quotas by the fact that prices and sales opportunities varied in the different Member States.

The French delegation, supported by the Netherlands and Denmark, stressed the illusory nature of the quota system since French wheat from the north and north-east went to Belgium and Germany and was likely to benefit in those countries from the special intervention measure: the only effect of the measure would therefore be to create distortions in competition between cereal growers in terms of transport costs.

The French Government points out in that regard that in view of the structure of the German cereal market, where almost 75% of the German production is made up of wheat of breadmaking quality, the intervention measure at the end of the marketing year represented a considerable benefit and was likely to compensate for the abolition of carryover payments.

In the absence of any opinion from the management committee the Commission finally decided to publish the text of its original proposal.

In the view of the French Government the question which arises in the present case is

whether or not the criteria for discrimination laid down by the Court are satisfied and whether or not the Commission exceeded its powers by enacting Regulation No 400/86.

The French Government states that there is nothing in Article 8(2) of Council Regulation 2727/75 or Article 2 of Council Regulation No 1146/76 which requires quantities to be apportioned among the Member States.

Article 8(4) of Council Regulation 2727/75 gives the Commission a discretion to decide on the intervention measure which is most appropriate to the circumstances, provided that equality of access and treatment are guaranteed for all the producers concerned. That discretion, moreover, is simply an application of the principle recognized by the Court that 'the competent Community institutions enjoy wide discretionary powers regarding not only establishment of the factual basis of their action but also definition of the objectives to be pursued, within the framework of the provisions of the Treaty, and the choice of the appropriate means of action'.[9]

In the view of the French Government the Commission's adoption of a regulation applying a special measure for common wheat of breadmaking quality does not as such exceed the management powers granted to the Commission by the basic Council regulations.

It remains to be determined whether or not the details of the scheme adopted by the Commission in Regulation No 400/86, namely different quotas for each Member State, infringes the prohibition of discrimination: for that it is necessary to decide whether the quantitative apportionment adopted by the Commission in Regulation No 400/86 is objectively justified and there is a sufficient statement of reasons. On that issue the French Government defers to the wisdom of the Court.

The Council considers that neither Article 8(2) of Regulation 2727/75 of the Council nor Article 2 of Regulation No 1146/76, referred to in the question for a preliminary ruling, require a quantitative apportionment of quantities by Member State as decided on by the Commission in Regulation No 400/86.

Article 8(4) of Regulation No 2727/75 appears to give a discretion to the Commission to determine the intervention measure most appropriate to the circumstances, provided equality of access and treatment are guaranteed to all concerned (see Article 4 of Council Regulation No 1146/76).

In these circumstances the question for a preliminary ruling seems basically to relate to the problem whether the quantitative apportionment as determined by the Commission was objectively justified, whether there was a sufficient statement of reasons for it and whether it complied with the aforementioned provisions of the Council regulations, in particular Article 4 of Regulation No 1146/76.

In consequence the Council does not consider it necessary at this stage to discuss

9 — Joined Cases 197 to 200, 243, 245 and 247/80 *Ludwigshafener Walzmuhle* v *Council and Commission* [1981] ECR 3211

further the validity of Regulations Nos 2727/75 and 1146/76. Moreover, the reference for a preliminary ruling from the Conseil d'État contains nothing of substance to challenge the validity of the said regulations.

The plaintiff in the main proceedings considers that the common organization of the market does not allow the Commission to apportion quantities among the Member States when it adopts a special intervention measure for common wheat of breadmaking quality.

Article 8(2) of Regulation No 2727/75 refers to the market situation for common wheat of breadmaking quality in the Community as a whole. The implementing regulation, Council Regulation No 1146/76, contains no provision authorizing national quotas but simply provides in Article 2 for purchases by intervention agencies, in particular by way of invitations to tender.

Commission Regulation No 1629/77, the source of the specific provisions which served as the basis for Regulation No 400/86, cannot be interpreted in a manner inconsistent with the Council regulations which it applies, which do not authorize any geographical apportionment in respect of special intervention measures.

Measures based on national or regional market considerations can be adopted only on the basis of Article 8(1) of Regulation No 2727/75 and Article 1 of Regulation No 1146/76, on preventive intervention, the objective of which is different from that of the special measures for wheat of breadmaking quality. In adopting Regulation No 400/86, which provides for quotas for each Member State, justified by 'different price levels and disposal possibilities in the various Member States', [10] the Commission misused the procedure since it ought in such a situation to have had recourse to preventive intervention under Article 8(1) of Regulation No 2727/75.

Commission Regulation No 1629/77 does not expressly authorize the fixing of quotas for Member States when a special intervention measure is adopted for the whole Community. Article 3 simply envisages the possibility of geographical limitation of the measure.

However, if the Court takes the view that Commission Regulation No 1629/77 does authorize a measure such as that at issue in the present case, the plaintiff in the main proceedings asks the Court to declare the second subparagraph of Article 3 thereof to be invalid inasmuch as it allows geographical differentiation not provided for in Article 8(2) of Regulation No 2727/75 and Article 2 of Regulation No 1146/76.

The difference in reduction percentages among the Member States caused inequality of treatment as between producers of common wheat of breadmaking quality in the Community although they were in a situation which was not only comparable but even, in the case of French and German producers, identical: when the Commission adopted the contested measure the market price of common wheat expressed as a percentage of the intervention price was

10 — Third recital in the preamble to Regulation No 400/86.

about 103% in Germany and 102% in France.

According to Article 8(2) of Regulation No 2727/75 the objective of special intervention measures is to support the development of the wheat market in relation to the reference price. It is in the light of that objective that the contested measure must be considered in order to determine whether it is justified from the point of view of the prohibition of discrimination, and it is therefore the market price in each area of the Community which constitutes the 'situation' to which reference must be made for such an assessment.

It may therefore be concluded that the different treatment to which producers were subjected was not justified in the interest of supporting prices, the objective of special intervention measures for common wheat of breadmaking quality.

Conversely, the complete absence of offers in the United Kingdom and Italy where market prices were very much higher than the intervention price confirms that analysis.

The Court allows different treatment of comparable situations where the difference is justified on objective grounds. Since, however, the prohibition of discrimination is a fundamental principle of Community law, it is for the authority which adopts a measure resulting in different treatment to prove the existence of such an 'objective justification'.

In order for such measures to be accepted there must be 'a particularly thorough and convincing statement of reasons'.[11] That is not so in the case of Regulation No 400/86, where the third recital in the preamble is not proof but mere assertion.

First of all, the assertion in relation to prices is incorrect, or more precisely the price differences, which do exist, are not capable of justifying the quotas allotted to each Member State.

Furthermore, the assertion in relation to disposal possibilities is not supported by even a summary analysis of the Community market in general and that of each Member State in particular.

In those circumstances the Court is unable to review the Commission regulation or to check whether the difference in treatment between producers in the Community was objectively justified.

Since it was unable to give objective grounds for a difference in treatment between producers in the Community the Commission ought to have adopted a general measure without allocating national quotas, as it did for example at the end of the 1983/84 marketing year.[12] At that time the limits on the quantities to be bought in and the resulting reduction rate were fixed on a Community level; and if the same method had been applied in 1986 the percentage of quantities accepted would

11 — See Opinion of Mr Capotorti in Case 158/80 *Rewe v Hauptzollamt Kiel* [1981] ECR 1805

12 — Regulation No 1810/84 of 28 June 1984 (OJ 1984, L 170, p 33)

have been 53.9% for every producer in the Community instead of 97.45% in Germany and 11.77% in France.

It is also apparent that the method adopted by the Commission in 1986 meant that Community farmers did not benefit from the special intervention measure in its entirety. Only 1 261 700 tonnes were accepted, whereas provision had been made for 1 502 000 tonnes. That fact is confirmation, if confirmation were necessary, of the inadequacy of the geographical apportionment adopted for the intended purpose and thus of the discriminatory nature of Regulation No 400/86.

The plaintiff in the main proceedings therefore proposes that the Court should reply to the Conseil d'État that Commission Regulation No 400/86 does not comply with Council Regulations No 2727/75 (Article 8(2)) and No 1146/76 (Article 2) in that it fixes a quota for each Member State in respect of a special intervention measure for common wheat of breadmaking quality.

In the alternative, the plaintiff in the main proceedings proposes that the Court should rule that by allocating a quota to each Member State for common wheat of breadmaking quality to be brought into intervention Commission Regulation No 400/86 has infringed Article 7, 40(3) and 190 of the EEC Treaty because without objective justification it has treated Community producers in comparable situations differently.

As a preliminary point, the Commission observes that the tendering procedure was not used in connection with the contested special measure, so that the provisions of Article 2 of Council Regulation No 1146/76, referred to by the national court in the grounds of its decision, do not apply in the present case.

The statement of reasons in Regulation No 400/86, in particular in relation to the fixing of different quantitative limits of purchase in the various Member States, is in accordance with the requirements laid down by the Court.

Special intervention measures are intended to support the price of common wheat of breadmaking quality where the situation on the market so requires.[13] The contested special measure meets that objective. As stated in the first recital in the preamble to Regulation No 400/86, the measure is based on the existence at the beginning of 1986 of considerable stocks of common wheat of breadmaking quality without any foreseeable outlets in the near future, a situation which threatened to undermine the stability of the market.

The differentiation in the maximum quantities which may be purchased by the intervention agencies in the various Member States is justified by the fact that the general excess of stocks covered differing situations. In the words of the third recital in the preamble to the regulation the situation of the market in common wheat of breadmaking quality was 'characterized by differing price levels and disposal possibilities in the various Member States'.

13 — See Article 8(2) of Regulation No 2727/75.

The differentiation is thus clearly and precisely stated to be due to the general situation of the Community market, taking into account the differing price levels and disposal possibilities in the Member States. The criteria which led the Commission to that view are well known since they are set out in Article 2 of Regulation No 1629/77. In addition, Article 3 of Regulation No 1629/77 expressly states that special intervention measures must specify in particular the quality and quantity of the cereals involved and the geographical scope of the measure.

The Commission therefore considers that the obligation to state reasons imposed by Article 190 of the EEC Treaty has been met. In stating on the one hand the Commission's view of the state of the market and on the other the objective criteria of differentiation, the preamble to the regulation together with the general provisions of Article 8(2) of Regulation No 2727/75 and Articles 2 and 3 of Regulation No 1629/77 clearly and unambiguously make those concerned aware of the reasons for the measure adopted and enable the Court to carry out its review of the measure's lawfulness.

With regard to the alleged discrimination between Community producers of common wheat the Commission states that the special intervention measures provided for by Article 8(2) of Regulation No 2727/75 may be decided on by the Commission whenever the market situation so requires in order to support the price of common wheat in relation to the reference prices. The Council has given the Commission wide discretion in the exercise of that power since the Commission must determine the nature and application of the special measures.

Article 3 of Regulation No 1629/77 allows the Commission to adopt such a measure where as a result of the trend in prices such intervention proves particularly necessary. Depending on the circumstances the Commission may need to adopt a special measure which differentiates on the basis of the situations in the markets of different Member States in order to limit its scope to what is strictly necessary and to avoid disturbing other markets. It does not, however, prevent producers from offering their cereals to intervention agencies in the Member State of their choice.

The Commission considers that, as the third recital in the preamble to Regulation No 400/86 makes clear, the differentiation in question was objectively justified by the different prices and disposal possibilities for common wheat of breadmaking quality in the Member States, so that it was appropriate first of all to satisfy offers originating from markets where prices were lower and disposal possibilities limited.

Although market prices for common wheat of breadmaking quality had been quite firm since October 1985, in most Member States above the intervention price, the diversity of situations underlying that general tendency was the reason for the solution which the Commission adopted.

Market prices in the three main countries producing common wheat of breadmaking quality, France, the United Kingdom and the Federal Republic of Germany in that

order, showed the same upward tendency but levels were different and the disparities sometimes considerable.

Analysis of the market prices during the period in question shows that in the three principal producer countries the need to support prices was felt mainly in France and Germany, and of those two above all in Germany. The firmer trend in prices of common wheat of breadmaking quality on the French than on the German market was due in particular to the improvement in French exports of common wheat during the period from October 1985 to January 1986.

French exports to non-member countries during November and December 1985 and January 1986 reached or considerably exceeded one million tonnes, a figure far beyond the volume of exports made during the same period by the two other main producer countries.

The Commission observes that the quantities of common wheat for which export refunds were granted exceeded one million tonnes on 31 October 1985, with a refund fixed at ECU 77.50 per tonne, and the total quantity of common wheat so exported reached almost three million tonnes on 30 January 1986.

There can be little doubt that French producers benefited in large measure from those awards. Moreover, during the same period the Commission had to sell for export large quantities of common wheat from intervention,[14] in order to slow down the rise in prices on the French market.

Thus the situation in respect of common wheat of breadmaking quality on the French and German markets was not comparable: apart from a price advantage of more than 1% French producers of common wheat had a natural export sales outlet out of all proportion to the sales possibilities of the same kind of common wheat produced in Germany. Since the need to support market prices was objectively different the Commission was right to impose different quantitative limits on offers which might be accepted in the two countries.

In addition the Commission states that the withdrawal from the German market of one million tonnes of common wheat of breadmaking quality indirectly benefited French producers, who traditionally supply the German market with wheat of breadmaking quality.

The Commission therefore concludes that the differentiation in question is objectively justified and does not constitute discrimination between producers prohibited by the second paragraph of Article 40(3) of the Treaty.

14 — Pursuant to the provisions of Article 7 *et seq.* of Commission Regulation No 1836/82 of 7 July 1982 laying down the procedure and conditions for the disposal of cereals held by intervention agencies (OJ 1982, L 202, p. 23).

IV — Answers to questions put by the Court

The Council was requested by the Court to answer in writing the following question:

'In the Council's opinion do the special intervention measures provided for in respect of common wheat of breadmaking quality by Article 8(2) of Council Regulation 2727/75, as amended by Regulation No 1143/76, exclude recourse, for the same cereal, to particular intervention measures within the meaning of Article 8(1) of that regulation?'

In the Council's opinion the particular and special intervention measures provided for by Article 8(1) and (2) of Regulation No 2727/75, as amended by Regulation No 1143/76, cover different situations, for which they should as a general rule provide different solutions. There is, however, nothing in those provisions to preclude both kinds of measures from being applicable to common wheat of breadmaking quality.

The Commission was requested by the Court to answer in writing the following questions:

'(1) In view of the linguistic divergencies in Regulation No 400/86 can the Commission confirm that it intended to adopt a measure based on Article 8(2) of Regulation No 2727/75?

(2) The Commission is requested to state how much intervention there was on the market in common wheat (1985/86 marketing year) pursuant to Article 7 of Regulation No 2727/75.

(3) The Commission is requested to inform the Court of the relationship between market and intervention prices for wheat of breadmaking quality in the Member States concerned for the six months prior to each of the special intervention measures which the Commission has adopted for that cereal and the state of the other parameters referred to in Article 2 of Commission Regulation No 1629/77 in the light of which the Commission adopted each of those measures.'

1. In spite of the linguistic divergencies to which reference has been made the Commission confirms that with Regulation No 400/86 it did intend to adopt a special intervention measure within the meaning of Article 8(2) of Regulation No 2727/75. That is clear both from the general structure of Regulation No 400/86 and from its purpose.

Regulation No 400/86 is intended to support the market in common wheat of breadmaking quality at a level 5% above the intervention price by the purchase into intervention of some 1 500 000 tonnes of such wheat; particular measures are intended to forestall large purchases into intervention by alternative measures. In addition, the provisions of Regulation No 400/86 concerning the details of the purchase of common wheat of breadmaking quality are determined in accordance with those laid down by the aforementioned Commission Regulation No 1629/77.

2. In answer to the second question put by the Court the Commission sets out in Annex 1 a statistical table showing the cumulative trend for the 1985/86 marketing year of intervention purchases of common wheat pursuant to Article 7 of Council Regulation No 2727/75.

3. With regard to the relationship between the market and intervention prices for common wheat of breadmaking quality the Commission sets out in Annex 2 statistical tables showing the monthly trend for each of the marketing years since Regulation No 1629/77 was adopted.

In relation to the other parameters referred to in Article 2 of the aforementioned regulation the Commission states that it has no monthly statistics on the aggregate state of stocks throughout the Community, in particular those available on the free market (private stocks).

For the purpose of its management the market is tracked during the marketing year mainly on the basis of the trend in the aforementioned price relationship. Account is also taken if necessary of figures and estimates made on the basis of information communicated by Member States and trade circles. They are brought up to date regularly in order to make a general review of the supply situation in the Community, incorporating the quantitative parameters showing the state of the market in each cereal. Interim, estimated and provisional figures are not kept after they have been brought up to date but are used to draw up a (provisional) account at the end of the marketing year.

The Commission is therefore able to inform the Court of the state of cereal supplies on the Community market and the import and export prospects only in respect of the contested special measure. Annex 3 contains two sets of tables made available to the management committee in January 1986. The first two, (a) and (b), show the quantities of common wheat, both feed grain and grain of breadmaking quality, available to intervention in the various Member States on 26 January 1986. Tables (c) and (d) show in respect of common wheat the data supplied by the French and German authorities for the review of the situation as at 14 January 1986 and in particular give a forecast of the intervention stocks expected at the end of the marketing year.

The interpretation of those data and comparison of the various special measures adopted since 1977 by the Commission, however, call for two additional observations.

In the first place, in order to assess the state of the market at a particular moment with a view to adopting a special intervention measure it must be emphasized that the decisive criterion is the trend in the relationship between the market and intervention prices for the relevant cereal during the months immediately preceding the measure contemplated.

That price relationship is the result of decisions taken by traders in the market. It thus reflects the balance between supply and demand during the period considered and hence between the various parameters contemplated by Article 2 of Regulation No 1629/77.

Secondly, in order to compare the various special measures adopted since 1977 two sets of factors should in particular be considered.

First of all, the market in cereals was adversely affected by the surpluses progressively accumulated after the record harvests of 1982 and 1984. The development of surplus stocks of common wheat led the Commission, from the beginning of the 1983/84 marketing year, to limit the quantities which might be offered to intervention under special measures, whereas intervention had previously been available without any such limit. The special measure at issue must therefore be placed in the context of the progressive control of production.

The second factor to be taken into account is the period of the marketing year when the measure is adopted.

The contested special measure is the only one which was adopted in the middle of the marketing year. In that respect it deals with a situation different from that existing at the beginning or end of the marketing year when all the other measures were adopted.

Measures adopted at the beginning of the marketing year are intended, if necessary, to support the market price of common wheat of breadmaking quality in relation to the reference price: with the new marketing year in mind the aim is to raise the market as a whole for common wheat to the level of the reference price so that even when the harvest is not yet finished producers may already count on a particular price level. At the end of the marketing year, that is to say when the approach of the new harvest prevents measures to encourage exports of stocks which have been held for almost a year, the measures are intended to absorb the stocks which have not been able to find sales outlets during the marketing year.

Since it took effect in the middle of the marketing year, the special measure provided for by Regulation No 400/86 had to take account of its own impact on the market in order to avoid causing fresh disturbances which might affect market stability. That is why it is based on the comparative trend in the various markets during the latter months of 1985 and January 1986 in the relationship between the market and intervention prices and the trend in export patterns during the same period.

T. F. O'Higgins
Judge-Rapporteur