In Case 16/65

Reference to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht for a preliminary ruling in the action pending before that court between

C. SCHWARZE, Bremen,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt am Main,

THE COURT

composed of: Ch. L. Hammes, President, L. Delvaux and W. Strauß, Presidents of Chambers, A. M. Donner (Rapporteur), A. Trabucchi, R. Lecourt and R. Monaco, Judges,

Advocate-General: J. Gand
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:

On 31 January 1964 the Schwarze undertaking applied to and obtained from the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (hereinafter referred to as the EVSt) import licences for a total of 1 100 metric tons of barley. The EVSt is the authority in the Federal Republic of Germany which grants applications for import licences and then fixes the rate of levy under Article 2 of Regulation No 19 of the Council on the progressive establishment of a common organization of the market in cereals (Official Journal, 1962, p. 933).

The calculation of the rate of this internal levy within the Community for cereals is based upon the difference between the free-at-frontier price of the exporting Member State (which is calculated and fixed at regular intervals by the EEC Commission) and the threshold price of the importing Member State (fixed annually by each country). Regulation No 89 of the Commission (Official Journal, 1962, p. 1899) sets out the criteria on the basis of which the Commission fixes the free-at-frontier price for each individual Member State.

In this case the Commission issued a decision on 24 January 1964 fixing the free-at-frontier price for the import of barley from the Netherlands to the Federal Republic of Germany at a rate

of 291 Netherlands guilders per 1 000 kg. On the basis of this the EVSt fixed the rate of levy at DM 96.75 per 1 000 kg.

The plaintiff in the main action entered an administrative appeal against the latter decision and claimed that the rate of levy should be reduced by about DM 15 per 1 000 kg. It submitted that the Commission's decision fixing the free-at-frontier price was illegal owing to defects of both form and substance and could not therefore be applied.

The EVSt dismissed the appeal in a decision of 2 June 1964. The applicant brought an action before the Finanzgericht. Both the plaintiff in the main action and the EVSt agreed that the question whether the EEC Commission's decision of 24 January 1964 was valid should be referred to the Court of Justice, and the VIth Chamber of the Finanzgericht referred the following questions:

1. Was it necessary for the decision of the Commission of the European Economic Community of 24 January 1964 (Official Journal, German edition, 1964, p. 69) fixing the free-at-frontier price to state the reasons upon which it was based under Article 190 of the Treaty establishing the European Economic Community of 25 March 1957?

2. If so, is it sufficient for the purposes of Article 190 of the Treaty establishing the European Economic Community if a decision fixing the free-at-frontier price, preceding the decision referred to in Question 1, gives a general statement of the considerations which influenced the Commission of the European Economic Community when it fixes the prices; alternatively, must every decision fixing a free-at-frontier price contain specific reasons stating the prices, the markets, the qualities of the products and the quantities actually available taken into consideration by the Commission, and also the qualitative differences taken by the Commission as the basis for making the necessary adjustment under Article 3 of Regulation No 19 on the progressive establishment of a common organization of the market in cereals of 4 April 1962 (Official Journal, German edition, 1962, p. 933)?

3. If it is correct that the Commission, in fixing the prices referred to in Question 1, relied on the market quotations for barley harvested outside the Member States of the European Economic Community, in particular outside the Netherlands:
should Articles 2 and 3 of Regulation No 19 on the progressive establishment of a common organization of the market in cereals be interpreted to mean that the fixing of the free-at-frontier price must be based exclusively on the market quotations for cereals *harvested* in the exporting Member State, or does the term 'coming from' ('en provenance de') used in Articles 2 and 3 of Regulation No 19 mean that the fixing of the free-at-frontier price may also be based on the quotations for cereals from third countries *negotiated* in the exporting Member State?

4. If the decision fixing the free-at-frontier price mentioned in Question 1 does not give an adequate statement of the reasons on which it is based, or if it is incorrectly based on prices for cereals harvested in a third country, and if none the less the Federal Republic of Germany has allowed the time-limit fixed by Article 173 of the EEC Treaty for contesting this decision to expire, is this decision void, voidable or binding on German importers?

5. If the answer to Question 4 is that the price-fixing decision mentioned in Question 1 is neither void nor voidable when applied to German importers:

is a German importer, even if he is only indirectly affected by the decision, entitled to contest it under the second paragraph of Article 173 of the Treaty establishing the European Economic Community on the ground that the amount of the levy is based on prices which have been incorrectly fixed?

6. If the answer to Question 5 is in the affirmative:
does an action such as that mentioned in Question 5 comply with the time-limits imposed by the second and third paragraphs of Article 173 of the Treaty establishing the European Economic Community if the importer brings it within two months of the time when the binding effects of the prices fixed, following the preliminary ruling on Question 4, are communicated to him?

The reference from the Finanzgericht was received at the Registry of the Court on 19 March 1965.

Written observations were submitted under Article 20 of the Statute of the Court:

— by the plaintiff in the main action on 5 May 1965;

— by the French Republic on 29 June 1965;

— by the EEC Commission on 30 June 1965;

— by the Kingdom of the Netherlands on 30 June 1965;

— by the Federal Republic of Germany on 1 July 1965.

In a letter of 24 June 1965 the EVSt indicated that it endorsed the observations of the Federal Republic of Germany.

The oral observations of the plaintiff in the main action, the EEC Commission and the Government of the Federal Republic of Germany were heard in open court on 5 October 1965. The Advocate-General delivered his opinion at the hearing on 28 October 1965.

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

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

The plaintiff in the main action alleges that the decision of 24 January 1964 fixing the free-at-frontier price is void and of no effect. In support of this allegation it argues as follows:

A — *Infringement of Article 190 of the EEC Treaty by reason of an inadequate statement of the reasons on which the decision was based*

The contested decision fixing the free-at-frontier price states none of the Commission's reasons on which it is based, nor are any indicated in the price list published on page 69 of the 'Agricultural Supplement' to the Official Journal for 1964. Likewise the notification of the decision of the Commission to Member States contains no statement of reasons.

In addition, even were the decision supplied with a statement of the reasons on which it was based, notification of them exclusively to Member States would not have satisfied the requirements of a State governed by the rule of law ('Rechtstaat') since the importers, *indirectly* affected to a considerable degree by the fixing of a free-at-frontier price, were given no opportunity in the present instance of checking the correctness of the prices fixed. In its judgment of 4 July 1963 (Case 24/62), also a case concerning a decision addressed to a Member State, the Court of Justice has already noted that Article 190 of the Treaty is designed to ensure that Member States *and nationals of the latter affected by the decision* may know how the Commission has applied the Treaty.

The claim made by the EVSt to the

effect that Regulation No 89 sets out the reasons on which all the free-at-frontier prices fixed under it are to be based is wholly without foundation. All the Regulation contains is the criteria according to which the Commission has to calculate and fix the free-at-frontier price in each individual instance. The truth is that the whole purpose of the statement of the reasons of fact supporting the decision which must be given each time the free-at-frontier price is fixed is to ensure that the Commission has applied the provisions of the Regulation in the proper manner.

The argument of the EVSt to the effect that the Commission's decision of 21 December 1962 fixing the free-at-frontier price and published in the Official Journal, 1963, p. 121 *et seq.*, contains 'in advance' the reasons on which later decisions fixing free-at-frontier prices were based is equally misconceived. Article 190 of the Treaty does not recognize 'statements of reasons given in advance'. In fact there is nothing in the decision of 21 December 1962 to show what were the quotations on the basis of which the Commission fixed its prices, and why it decided on the prices it did. Basically, the statement of reasons for this decision merely repeats the words of Regulation No 89. Consequently, it does not explain the prices actually fixed therein.

If it is to serve its purpose and comply with Article 190 of the EEC Treaty, the statement of reasons should contain the following information:

(a) the offers;
(b) the quantities;
(c) the qualities; and
(d) the sources of information,

on the basis of which the Commission fixed its free-at-frontier prices.

B — *Infringement of Articles 2 and 3 of Regulation No 19, Article 1 of Regulation No 86 and Articles 1 and 2 of Regulation No 89, in that the decision was based not on quotations for the price of barley harvested in the Netherlands but on those for barley imported into the Netherlands from third countries*

When the Commission fixed the free-at-frontier price for Netherlands barley on 24 January 1964, it took as its guide the price of barley originating not in the Netherlands but in the United States of America, which happened to be in the Netherlands at the time. The price of the American barley was at that time *lower* than that of Netherlands barley by approximately 4 units of account. The free-at-frontier price for Netherlands barley which served as the basis for the calculation of the levy in respect of importations into the Federal Republic of Germany (see Article 2 of Regulation No 19) did not, therefore, correspond to the price for which a German importer in the Netherlands could buy barley of Netherlands origin.

In giving the reasons for its decision, the Commission claimed that it had had to take into account also the price quotations for cereals not harvested in the exporting Member State. According to Article 3 of Regulation No 19 and Article 2 of Regulation No 89, the free-at-frontier price should be calculated in accordance with the price most favourable for the importing Member State, on the basis of current prices in the markets of the exporting Member State which are the most representative for exports to that State. The Federal Government agrees, while referring for a more detailed explanation to Article 2 of Regulation No 55 of the Council of 30 June 1962 (Official Journal 1962, p. 1583); this, too, makes it clear, says the Government, that in fixing the levy for products processed from cereals there is no need to know whether the basic product was produced in the importing Member State or not.

This argument, says the plaintiff in the main action, is misconceived.

Neither Article 3 of Regulation No 19, nor Article 2 of Regulation No 89 states what must be the place of origin of the cereals for which the 'most advantageous price' is to be fixed. The answer is given in Article 2 of Regulation No 19, Article 1 (1) of Regulation No 86 (Official Journal, 1962, p. 1894) and Article 1 of Regulation No 89.

From Article 2 of Regulation No 19 it appears that the free-at-frontier price for barley is fixed for the sole purpose of determining the rate of levy for intra-Community trade.

According to Article 1 (1) of Regulation No 86, the rates of levy for intra-Community trade apply only to cereals harvested in the exporting Member State. Consequently the free-at-frontier prices are only calculated and fixed for cereals harvested in the exporting Member States. It follows from this that by virtue of Articles 1 and 2 of Regulation No 89 the Commission should have regard solely to quotations for cereals of the latter kind.

In the last part of its submissions the plaintiff in the main action states that the expiry of the two months' time-limit imposed by Article 173 of the Treaty should in no way prevent the examination as to validity sought by the reference for a preliminary ruling. The fact that the Member States to which the decision was addressed, in particular the Federal Republic of Germany, did not contest the decision within this time-limit precludes only these from bringing an action; but it cannot prevent the decision itself from being the subject of an investigation under Article 177 of the Treaty.

The *Commission* observes that the questions asked by the Finanzgericht in the guise of a request for an interpretation of the Treaty are in fact intended to make the Court pronounce on the validity of the decision of 24 January 1964. The Commission proposes to examine the questions in the light of this view and give its opinion as to the validity of the decision. It explains that the grounds on which Schwarze and the Finanzgericht believe the decision of 24 January 1964 fixing the free-at-frontier price to be invalid do not affect its formal existence in law, but only its legality.

Pursuing in this respect the line adopted implicitly by the Court of Justice in Joined Cases 73 and 74/63, and expressly supported by the Advocate-General, the Finanzgericht and Scharze consider that a decision by the Commission must be held invalid when examination of a reference for a preliminary ruling as to validity, prompted, during proceedings in a national court, by a person not capable of instituting proceedings under the second paragraph of Article 173 of the Treaty (and after the time-limit prescribed by the third paragraph of that Article has elapsed), shows it to be illegal. The Commission does not contest this view.

1. Statement of reasons

Significance of the Commission's price-fixing decisions

The Commission's decisions fixing the free-at-frontier price for cereals constitutes one of the two determinative factors forming the basis of calculation for intra-Community levies, the second factor being the threshold price of the importing Member State. The criteria for the fixing of free-at-frontier prices for cereals are set out in Regulation No 89:

The free-at-Frontier price shall be the most favourable price (cf. Articles 4 and 6 of Regulation No 89), to the importing Member State on the most representative markets (Article 3 of Regulation No 89), for exports to that State, plus freight charges (Article 5 of Regulation No 89).

In practice the prices are fixed in the following manner: Member States transmit their estimates by telex, based on the facts available to them, to the Com-

mission by a certain time. As soon as the telex messages arrive, the competent officials in the Directorate-General for Agriculture calculate the prices, checking them by comparison with the facts in their possession. The proposal of the Directorate-General for Agriculture is sent to the Commission; at the same time the Authorities responsible for calculating the levies in the Member States are informed of it by telex. Once the proposal of the Directorate-General for Agriculture has been adopted by the Commission, the decision fixing the price is notified to the permanent representatives of the Member States in accordance with the second paragraph of Article 191 of the Treaty; at the same time the abovementioned authorities of the Member States are advised by telex of the proposal.

The free-at-frontier prices for cereals are fixed at least once a week; approximately 220 prices must be fixed each time. Both the frequency of the price-fixing and the main factors taken into account in this operation are determined by the economic situation in the market for the product concerned. The more susceptible a product is to short-term price fluctuations, the greater should be the frequency of the price-fixing. If the latter needs to be done daily, the authorities have no more than about an hour in which to calculate prices, and if weekly or fortnightly, a day at most. This brief period is enough to allow the various prices to be fixed, keeping strictly to the criteria which the Commission is obliged to observe, because the task is entrusted to a highly specialized group of officials who work in close collaboration with equally specialized officials in the various Member States. But such dispatch would be impossible if they had to devote their attention to drawing up for every price-fixing decision a statement of reasons more detailed than is customary in their practice hitherto (and not, claims the Commission, required by the Treaty).

The statement of reasons for the decision fixing the free-at-frontier prices of 24 January 1964

The plaintiff in the main action and the Finanzgericht are mistaken in their assumption that the prices published in the 'Agricultural Supplement' to the Official Journal constitute themselves the decision fixing prices; these price lists are merely a schedule to the decision proper which remains unpublished, being merely notified to the Government to which it is addressed.

The decision proper consists of a preamble and three Articles. It refers to the Treaty and to the Commission's decision of 21 December 1962 fixing the cif prices for cereals, flour, groats and meal. This latter decision mentions all the provisions from which the Commission derives its power to fix free-at-frontier prices, enumerates the criteria to be taken into account by the Commission and also the factors on the basis of which the prices must be fixed.

The preamble to the decision of 24 January 1964 contains moreover a reference to the prices of which the Commission had notice. It explains that the free-at-frontier prices in force must be adjusted to these prices in accordance with the tables annexed to the decision.

Extent of the obligation to state reasons for the price-fixing decisions

The scheme for the common organization of the markets requires that these decisions should fix:

— as quickly as possible,
— after calculations which are sometimes extremely complex,
— a large number of prices.

In these circumstances the conditions to be satisfied in stating the reasons for price-fixing decisions should be kept to the strict minimum required by the Treaty.

The Commission claims that a price-fixing decision contains an adequate

statement of reasons if it satisfies the requirement that the addressee or addressees, in this case the Member States, be kept fully informed. It is in fact the appropriate authorities in the Member States which supply the Commission with the necessary proposals. In addition the detailed information on the basis of which prices are fixed is available to Member States since their representatives sit on the Management Committee for Cereals. Regulation No 89 was adopted after consultation with that Committee in accordance with the procedure provided for in Article 26 of Regulation No 19. The interpretation and application, and any necessary alteration, of the criteria mentioned in Regulation No 89 have been discussed by the Management Committee on several occasions.

The statement of reasons for price-fixing decisions cannot be made to suit the needs for information of third parties affected by these decisions, such as importers. The price-fixing is done exclusively (in the case of cif prices for cereals, for instance) or at least partially (as in the case of free-at-frontier prices for cereals) on the basis of information supplied by importers and exporters. This information is a commercial secret and Article 214 of the Treaty obliges the Commission not to disclose such confidential information. Moreover if this were not observed the sources providing such information would dry up.

In determining the free-at-frontier price for cereals, the starting point should be the lowest freight costs between the representative market and the frontier crossing point. The point made above about information supplied in confidence by importers and exporters applies equally, *mutatis mutandis*, to the information supplied in confidence by the transporters. Disclosure of the freight costs would have more far-reaching consequences than were intended or could be intended by the system of levies on cereals; it would affect competition in the transport market itself. Up to now the Council has taken the view that it would be unwise to publish the tariffs under the common transport policy. Furthermore, revealing the facts might help some importers or exporters to gain a dominant position in the market.

The Commission observes that it is aware of the fact that it is difficult for importers to check the fixing of prices, but repeats its assertion that the only absolute requirement to be met in stating the reasons is that of satisfying the need to inform addressees. Where there is no reason to fear that sources of information will be revealed, the relevant departments of the Commission have on occasion informed importers of the offers and other factors taken into account when a particular price was fixed.

2. Calculation of the free-at-frontier price on the basis of the price of barley imported into the Netherlands

The Finanzgericht considers that the disputed decision is illegal if, as Schwarze states, the Commission calculated the free-at-frontier price for imports into Germany of barley from the Netherlands on the basis of the price for barley imported into the Netherlands.

On the information available to the Commission, this statement is correct. However, neither the provisions of Regulation No 19 (Articles 2 and 3) nor those of Regulation No 86 (Article 1) cited above require that the free-at-frontier price be fixed on the basis of products harvested in the exporting Member States. A comparison of the German text with the text of the other three languages shows that the ambiguous German word 'stammend' must be interpreted not in the sense of 'originating in' (Ursprung) but as 'coming from' (Herkunft).

The system introduced by Regulation No 19 means that all cereals in free circulation in the exporting Member State are subject to the intra-Community levy, whether or not harvested in that country. The text and general tenor of Regulation No 89 do not imply any restriction on the system set up under Regulation No 19.

Nor does Regulation No 86 afford justification for a strict interpretation of Regulation No 89. Regulation No 86, on the adoption of a basic criterion for the application of intra-Community levies, does not apply to the fixing of free-at-frontier prices; its purpose has nothing to do with the question at issue.

The Commission concludes that the decision of 24 January 1964 is not illegal, either for failure to state reasons or to give adequate reasons, or because the prices were wrongly fixed; it is legal and therefore valid.

The Commission also remarks that Question 4 has no relevance to the decision in the main action. It considers therefore that the Court is under no obligation to reply to it. Questions 5 and 6 are therefore similarly irrelevant.

The Government of the *French Republic* observes that the very wording of Questions 2, 4, 5 and 6 shows them to fall outside the terms of Article 177.

Question 2

Whether or not a decision contains an adequate statement of reasons is not a question of interpretation. In replying to this question the Court would be evaluating a specific measure adopted by a Community institution and expressing a view on a problem which must be determined in the context of annulment proceedings.

Question 4

A reply by the Court to this question is likely either to trespass on the province of annulment proceedings or, by implication, to allow a Community act to be annulled by national courts. But the Court has power to annul only in the context of the procedure set out under Article 173, not that of Article 177.

Questions 5 and 6

The scope of application of Article 173 has been clearly defined. Accordingly a ruling given under the Article 177 procedure cannot open the way to an application on the basis of Article 173, since the respective areas of application of these two Articles must be sharply distinguished. Question 6 is irrelevant if Question 5 is held inadmissible.

In the light of the above considerations, the French Government submits that the reference from the Finanzgericht for a preliminary ruling on Questions 2, 4, 5 and 6 should be declared inadmissible, in order to make it clear that Article 177 cannot be used:

— to elicit from the Court, in a reply to questions supposedly of interpretation referred to it, a decision on matters concerning not the interpretation of the Treaty of Rome but the validity of measures adopted by institutions of the EEC;
— as a means of enabling private persons to circumvent the provisions of Article 173; or
— to enable a national court to adopt a judgment of the Court in order to decide in national proceedings questions of law which, under the conditions and in accordance with the procedures laid down by the Treaty of Rome, are exclusively the province of the Community Court.

As to the substance of the questions, the Government of the *French Republic*, as also the Governments of the *Federal Republic of Germany* and of the *Kingdom of the Netherlands* have come to the same conclusions as the Commission. The three governments place particular emphasis on the need to safeguard the professional secrecy of the informants.

Grounds of judgment

Contents of the questions referred

The conclusion to be drawn from the formulation of the questions put by the Hessisches Finanzgericht is that the court is concerned less with the interpretation of the Treaty or of a measure adopted by a Community institution than with obtaining a preliminary ruling on the validity of such a measure, which the Court is empowered to give by subparagraph (b) of the first paragraph of Article 177. In Questions 1 to 3 the Finanzgericht indicates the points which in its view militate against the legality of the Commission's decision and in Questions 4 to 6 it asks the Court what would be the consequences if the decision were held to be invalid. The form taken by the dispute in the main action as set out in the reference to this Court confirms this view as the plaintiff in the main action has based its conclusions on the alleged illegality of the Commission's decision.

The Government of the French Republic objects in its observations that several of the questions exceed the bounds of an interpretation of the Treaty and says that if the Court replies to these questions alleged to be ones of interpretation it will, in fact, be deciding questions which relate not to the interpretation of the Treaty but to the validity of measures adopted by institutions of the EEC.

Although the Court may have no jurisdiction under Article 177 to declare such a measure void, as the French Government maintains, this provision does expressly confer jurisdiction on the Court to decide on the validity of such a measure. If it appears that the real purpose of the questions submitted by a national court is concerned rather with the validity of Community measures than with their interpretation, it is appropriate for the Court to inform the national court at once of its view without compelling the national court to comply with purely formal requirements which would uselessly prolong the procedure under Article 177 and would be contrary to its very nature. Although this type of strict adherence to formal requirements may be defended in the case of litigation between two parties whose mutual rights must be subject to strict rules, it would be inappropriate to the special field of judicial cooperation under Article 177 which requires the national court and the Court of Justice, both keeping within their respective jurisdiction, and with the aim of ensuring that Community law is applied in a unified manner, to make direct and complementary contributions to the working out of a decision. Any other approach would have the effect of allowing the national courts to decide themselves on the validity of Community measures.

There are, therefore, no grounds for alleging that the parties to the main action have circumvented the provisions of Article 173 of the Treaty. The national court did not intend to determine, on a national level, questions of law exclusively reserved for the Court of the Communities; the parties applied for a reference to the Court of Justice and the Finanzgericht agreed, and complied with the conditions and procedure laid down by the Treaty.

Questions 1 and 2

The first question put by the Finanzgericht is whether the Commission's decision of 24 January 1964 was subject to the requirement (under Article 190 of the Treaty) to state the reasons upon which it was based.

The last sentence of Article 3 of Regulation No 19 of the Council on the progressive establishment of a common organization of the market in cereals reads: 'The Commission shall determine the free-at-frontier price according to the criteria laid down in Article 26'. Measures taken within this jurisdiction with regard to price-fixing are binding upon the Member States concerned and must be treated as decisions within the meaning of Articles 189, 190 and 191 of the Treaty. These Articles therefore apply to such decisions.

The second question put by the Finanzgericht is whether the disputed decision, which merely refers to an earlier decision giving only a general indication of the considerations which guided the Commission when fixing the free-at-frontier prices, satisfies the requirements of Article 190 or whether it should have contained specific reasons showing the prices, the markets, the quality and the quantities in fact available which the Commission had taken into consideration and the differences in quality upon which it based the decision.

The decision of 24 January 1964 appears, in the form in which it was notified to the Member States to which it was addressed, to be a modification of earlier decisions on free-at-frontier prices and refers expressly to the original decision of 21 December 1962 and to the subsequent decisions through which the prices fixed by this earlier decision were corrected. The Commission declared on the basis of the information at its disposal that prices were to be corrected on the basis of a table annexed to the decision.

In view of this succession of decisions fixing free-at-frontier prices it was permissible for the present decision to be based on the subsisting general considerations set out in the original decision of 21 December 1962, so that those considerations must be deemed to be set out in this decision.

The course adopted by the Commission, of publishing only the original decision in full and, in the case of later decisions, confining itself to publishing the tables which they contained in the Agricultural Supplement to the Official Journal was an appropriate means of making it known to all parties concerned that the reasons upon which the original decision was based were incorporated without modification so far as the subsequent adjustments were concerned.

The next question to be considered is whether the statement of reasons thus incorporated in the decision of 24 January 1964 was sufficient to support the decision. The objection is that this statement of reasons did not give the concrete facts upon which the Commission relied in making the decision.

Under Article 7 of Regulation No 89 of the Commission the exporting states determine every Thursday the data for calculating the free-at-frontier price for each product falling within the scope of the Regulation. They then calculate the free-at-frontier price therefrom and supply the Commission with such data and such prices each Thursday not later than 3 p.m. Under Articles 8 and 9 of this Regulation the Commission shall determine the free-at-frontier price on the basis of these data every Friday. If the data for calculating the said prices change before either of those days, the Member States shall inform the Commission of the new position and the free-at-frontier price resulting from it forthwith. The Commission is in turn to fix the free-at-frontier price before the normal date should this prove necessary on the basis of the data furnished by a Member State or of information deriving from its own resources.

The degree of precision of the statement of reasons for such a decision must be weighed against practical realities and the time and technical facilities available for making such a decision. A specific statement of reasons for each individual decision fixing a free-at-frontier price as envisaged by the Finanzgericht would mean the publication and technical evaluation af all the facts submitted by the exporting Member State or gathered by the Commission's staff for several hundreds of prices requiring to be fixed. In view, first, of the time available for the issue of the decisions and, secondly, of the number of prices to be fixed, the requirement of such a specific statement of reasons would be incompatible with the proper functioning of the machinery provided for in Regulation No 19 of the Council and Regulation No 89 of the Commission. The preparation and drafting of this kind of statement of reasons would take up so much time that the determination of prices would run the risk of being, to some extent, out of date by the time it was issued.

Moroever a comparison of the free-at-frontier prices as fixed with the general criteria published is sufficient to inform persons with a legitimate interest of the character of the data on the basis of which the decision was taken and of the conclusions to be drawn therefrom. The need to protect the parties to whom the decision is addressed and nationals of Member States affected by the decision, as also the need for proper judicial review, is sufficiently met as long as the Commission, as here, puts at the disposal of the parties the technical data used by it in fixing the free-at-frontier prices whenever the decision is challenged before a court having the appropriate jurisdiction.

For these reasons it must be concluded that the Commission was entitled to confine itself to setting out in a general form the essential factors to and the procedure which formed the background to its evaluation of the facts without its being necessary to specify the facts themselves.

It must therefore be concluded that the points raised by the Finanzgericht in Questions 1 and 2 are not capable of affecting the validity of the Commission's decision.

Question 3

The Finanzgericht's third question is whether the Commission infringed Articles 2 and 3 of Regulation No 19 by basing its decision upon market quotations for barley harvested outside the Member States, and in particular outside the Netherlands. This question must be considered because the Commission has admitted in its written observations that the decision was based on such quotations.

The German version of these Articles, which says that the free-at-frontier price is the price for products 'coming from' ('stammend aus') the exporting Member State, does seem to be ambiguous. The three other versions of the Articles however, in which the expression 'stammend aus' corresponds to 'en provenance de', 'proveniente de' and 'afkomstig uit', show that it was not the intention in Regulation No 19 to distinguish between products harvested in the exporting Member State and those in free circulation within it. This interpretation is also compatible with the principles laid down in Article 9 (2) of the Treaty extending the customs union to 'products coming from third countries which are in free circulation in Member States'.

The next argument of the applicant in the main action is that Regulation No 86 of the Commission of 25 July 1962, which contains provisions intended to

avoid deflection of trade, fixes different levy rates for cereals on whether they are harvested in an exporting Member State or come from it without having been harvested there.

The provision does not, however, reduce the force of the above observations, especially as Regulation No 89 of the Commission, issued on the same date and laying down criteria for determining the free-at-frontier prices for cereals, repeats the wording of Regulation No 19, thus confirming that the rules in Regulation 86 have no influence on the machinery for fixing free-at-frontier prices. Thus Question 3 gives no ground for invalidating the disputed decision.

Questions 4 to 6 only apply if the Court holds the statement of reasons to be inadequate, or the decision to be unlawful because it is based on quotations for cereals coming from third countries. It is not, therefore, necessary to give an answer to them.

Costs

The costs incurred by the Government of the French Republic, the EEC Commmission, the Government of the Kingdom of the Netherlands and the Government of the Federal Republic of Germany which have 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 actions pending before the Hessisches Finanzgericht, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the applicant in the main action, the EEC Commission and the Government of the Federal Republic of Germany;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 9, 177 and 190 of the Treaty establishing the European Economic Community;
Having regard to Regulation No 19 of the Council, and Regulations Nos 86 and 89 of the Commission of the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
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 Hessisches Finanzgericht hereby rules:

1. **Examination of the questions referred by the Hessisches Finanzgericht to the Court reveals no factor capable of affecting the validity of the decision of the EEC Commission of 24 January 1964 fixing free-at-frontier prices for cereals;**

2. **The decision on costs in these proceedings is a matter for the Hessisches Finanzgericht.**

Hammes Delvaux Strauß

Donner Trabucchi Lecourt Monaco

Delivered in open court in Luxembourg on 1 December 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 28 OCTOBER 1965[1]

Mr President,
Members of the Court,

The six questions put to you by the Hessisches Finanzgericht will give you an opportunity not only to give your opinion on a problem of great importance for the efficient functioning of the common organization of the markets within the framework of the European Economic Community. They will also induce you to give some precise answers on the position and the effect of Article 177 in the complex of the rules of the Treaty fixing your jurisdiction and the judicial guarantees accorded to the nationals of Member States.

The facts are simple. On 31 January 1964 the Schwarze undertaking of Bremen obtained from the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (EVSt) import certificates for 1 100 metric tons of barley to be imported from the Netherlands during the course of February. At this point the EVSt set a rate of DM 96.75 per metric ton for the levy prescribed by Article 2 of Regulation No 19 of the Council, on the progressive establishment of a common organization of the market in cereals. It is known that the levy rate equals the difference between the free-at-frontier price for the exporting Member State calculated and fixed

1 — Translated from the French.