article, the Member States were empowered to take, on a transitional basis and without prejudice to the future action of the common institutions, any implementing measures compatible with the principles of the regulation, and that they were entitled to prepare legislative or other measures for the purpose of enabling them to assume fully, on the entry into force of Regulation No 87, the functions devolving on them in the interest of the Community under the second paragraph of Article 7 of that regulation.

4. The third subparagraph of Article 43 (2) is complied with when the basic elements of the regulations concerning the common agricultural policy are adopted by the Council in accordance with the procedure laid down by Article 43. On the other hand, the provisions implementing the basic regulations may be adopted according to a procedure different from that in Article 43, either by the Council itself or by the Commission by virtue of an authorization complying with Article 155.

5. Without distorting the Community structure and the institutional balance, the Management Committee machinery enables the Council to delegate to the Commission an implementing power of appreciable scope, subject to its power to take the decision itself if necessary. The legality of the Management Committee procedure, as established by Articles 25 and 26 of Regulation No 19, cannot therefore be disputed in the context of the institutional structure of the Community.

In Case 30/70

Reference to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof (Higher Administrative Court of the Land of Hesse) Kassel, for a preliminary ruling in the action pending before that court between

OTTO SCHEER, having its offices in Hannover,

and

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

on the interpretation of Article 16 (2) and (3) of Regulation No 19 of the Council of 4 April 1962, on the progressive establishment of a common organization of the market in cereals, in relation to the second paragraph of Article 7 of Regulation No 87 of the Commission of 25 July 1962, on the establishment of detailed rules of application in respect of import and export licences for cereals and cereal products, and to Paragraph 7 of the German Law of 26 July 1972 implementing Regulation No 19.

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents

of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

On 13 March 1963 the Otto Scheer undertaking obtained from the Einfuhr- und Vorratsstelle für Getreide und Futtermittel an import licence in respect of 150 metric tons of oats.

In accordance with Paragraph 7 (1) of the German Law of 26 July 1962 implementing Regulation No 19 (Bundesgesetzblatt 1962, I. p. 455) the issue of the licence was conditional on the lodging of a deposit, amounting to 10% of the free-at-frontier price, the cif price or the offer price of the products, guaranteeing that the obligation to import during the period of validity of the licence would be fulfilled.

As no import transaction was effected during the period of validity of the licence, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel by decision of 24 July 1963 declared DM 3 682.20 of the deposit forfeited.

When on 9 September 1963 the Einfuhr- und Vorratsstelle rejected Otto Scheer's objection, that undertaking brought an action on 19 September 1963 before the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main.

It maintained that the second paragraph of Article 7 of Regulation No 87 of the Commission of 25 July 1962, on the establishment of detailed rules of application in respect of import and export licences for cereals and cereal products (OJ 1962, p. 1895), on which paragraph 7 of the German Law implementing Regulation No 19 is based, is illegal, in particular because it involves a sub-delegation to the Member States of the power to lay down the detailed rules for the lodging, amount and forfeiture of the deposit.

By judgment of 15 June 1966 the Verwaltungsgericht Frankfurt-am-Main dismissed the action. It held in particular that the German Law implementing Regulation No 19 was not based on a sub-delegation of powers, as on the contrary Member States have an original power to legislate on a matter relating to the powers of the Community so long as it has not itself made use of its legislative power and that the Commission was not obliged itself to lay down immediately the detailed rules on the lodging, amount and forfeiture of the deposit.

On Otto Scheer's appeal against that judgment to the Hessischer Verwaltungsgerichtshof, that court, by order of 15 May 1970 received at the Court Registry on 17 June 1970, requested the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Article 16 (2) and (3) of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (OJ 1962, p. 933) and, more particularly, to rule whether the second paragraph of Article 7

of Regulation No 87 of the Commission of 25 July 1962, on the establishment of detailed rules of application in respect of import and export licences for cereals and cereal products, and Paragraph 7 of the German Law of 26 July 1962 implementing Regulation No 19 are compatible with Article 16 (3) of Regulation No 19.

In its order the *Hessischer Verwaltungsgerichtshof* puts the following questions, the scope of which may be decisive in settling the main action:

1 (a) Must the combined provisions of Article 16 (2) and (3) of Regulation No 19 be understood to mean that from the entry into force of that regulation the grant of an import licence could be conditional on the lodging of a deposit and that a deposit could be forfeited if importation was not effected during the period of validity of the licence?

(b) Or could such provisions concerning the lodging and forfeiture of a deposit in respect of an import licence only be adopted after the entry into force of the detailed rules of application referred to in Article 16 (3) of Regulation No 19?

2 (a) Must Article 16 (3) of Regulation No 19 be understood to mean that from the date of the entry into force of that regulation only the Commission had the power to lay down rules as to the lodging, forfeiture and amount of deposits in respect of import licences?

(b) Or were the Member States authorized, until the entry into force of the detailed rules of application to be adopted under Article 16 (3) of Regulation No 19, to lay down rules as to the lodging, forfeiture and amount of the deposits in respect of import licences, with the result that the Federal Republic of Germany was entitled to adopt in Paragraph 7 of the Law implementing Regulation No 19 rules relating to deposits in respect of import licences?

3 (a) In adopting the detailed rules of application referred to in Article 16 (3) of Regulation No 19, should the Commission have itself laid down all the requirements relating to the lodging, forfeiture and amount of the deposits in respect of import licences?

(b) Or was the Commission entitled, as it did by the second paragraph of Article 7 of Regulation No 87, to leave to the Member States the task of laying down those requirements relating to the lodging, forfeiture and amount of the deposits in respect of import licences until their harmonization in accordance with Article 26 of Regulation No 19 and merely to require the Member States to notify it of the measures taken?

4 Is the procedure of Article 26 of Regulation No 19, in accordance with which the Commission adopted Regulation No 87, compatible with Community law of a higher rank?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 5 August 1970 by the plaintiff in the main action and on 21 August by the Commission of the European Communities.

After 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.

The plaintiff in the main action and the Commission presented their oral observations at the hearing on 11 November 1970.

The Advocate-General delivered his opinion at the hearing on 2 December 1970.

For the procedure before the Court Fritz Modest, Advocate, of Hamburg, appeared for the plaintiff in the main action, and Claus-Dieter Ehlermann, the Commission's Legal Adviser, for the Commission of the European Communities.

II — Observations submitted to the Court

Otto Scheer, the plaintiff in the main action,

advances the following arguments in particular against the validity of the system of deposits:

(a) *On the formal level*

Forfeiture of the deposit constitutes a quasi-penal sanction or a fine imposed on the importer or exporter on failure to carry out the obligation of public law imposed upon him. The institutions of the Community do not have the power to impose fines or sanctions of a penal nature except in cases where they are expressly authorized by the Treaty to do so. However, Article 39 et seq. relating to the organization of the agricultural markets contain no enabling provision of this nature.

The system of deposits is based on the so-called Management Committee voting procedure. That procedure is contrary to the Treaty: it enables the Management Committee to participate in the legislative work of the Commission, makes the obligation to consult the Assembly illusory and gives the Member States the opportunity of obtaining from the Council an 'annulment' of the regulations of the Commission. The regulations of the Commission adopted in implementation of this illegal procedure are therefore invalid.

(b) *The substance of the system in dispute*

The plaintiff in the main action maintains that the system of deposits must respect the principle of proportionality, enshrined both in the German Basic Law and in Community law. In this respect the followingobservations in particular should be made:

The regulations establishing the common organization of the agricultural markets are limited in principle to the formation of market policy by means of prices. The regulation of prices has an automatic sluice-gate effect on quantitative movements in the Community market and avoids any disturbance to it. Consequently, the point of prime importance in the assessment of the market and market trends is the observance and checking, first, of the prices on the internal market and, secondly, of the situation on the world market. On the other hand, a quantitative check, such as arises from the system of import and export licences, the utilization of which must be guaranteed by means of a deposit, is only of secondary importance.

It appears therefore that the system of deposits is ineffectual in attaining the objective sought by the agricultural regulations and is even contrary to the scheme of those regulations. Moreover, it is also ineffectual in view of the fact that it can neither guarantee that the obligation to import or export is actually carried out, nor enable the competent authorities in good time to have a sure view of the state of the market, much less future market trends.

Moreover, the intervention agencies and the Commission are not technically in a position to exploit the formation provided by the system criticized.

Finally, the obligation to lodge a deposit places a heavy burden on the liquidity of undertakings, in particular small and medium-sized undertakings and the amount of the deposit, especially in the case of advance fixing of the levy or refund, is excessive in relation to normal trade profit margins.

It follows from the foregoing that a substantial charge is imposed without any necessity on importers and exporters. However, any measure constituting a charge, whether or not it is in itself tolerable, violates the principle of proportionality when it is superfluous, when there is disproportion between the charge and the result which it may or must endeavour to achieve, when that objective cannot be attained by the method employed or when, in order to attain it, there are other methods which may be more conveniently applied.

The system of deposits also violates the principle of proportionality in that in respect of exemption from forfeiture of the deposit it refuses, otherwise than in cases of *force majeure*, to take into consideration situations in which the licence to import or export has not been utilized for wholly justifiable commercial reasons, in particular when utilization would have been contrary to the objectives of the common organization of the markets or to commercial logic (for example, in the event of amendment of

the applicable legislation between the date of the application for the licence and that of its issue).

(c) With regard to the specific questions put by the Hessischer Verwaltungsgerihtshof, the plaintiff in the main action submits the following observations in particular:

The German Law implementing the system of deposits, and in particular Paragraph 7 thereof, was adopted and published at a time (26 and 28 July 1962 respectively) when the second paragraph of Article 7 of Regulation No 87, which authorizes the Member States to decide on the detailed rules for the lodging, forfeiture and amount of the deposit, was not yet in force (Regulation No 87, which was dated 25 July 1962 and published in the Official Journal of the Communities on 28 July 1962, did not, under the terms of Article 10 thereof, enter into force until 30 July). Article 16 (2) and (3) of Regulation No 19 did not, however, by itself constitute an authorization directly enabling the German legislature to adopt Paragraph 7 of the implementing German Law.

Only the Commission may be authorized by the Council to adopt legal rules for the implementation of the common organization of the agricultural markets and it can only do so within the framework of the authorization conferred on it by the Council. Article 16 of Regulation No 19, however, contains no authorization for the Commission to delegate to the Member States the power to adopt the detailed rules of application with regard to the lodging, forfeiture and amount of the deposit and the second paragraph of Article 7 of Regulation No 87 is consequently null and void. Moreover, by omitting to lay down the maximum amount capable of being forfeited, the Commission introduced into the system of deposits disparities causing distortion of competition. The Management Committee procedure infringes the Treaty in that it confers on that Committee a right of collaboration wider than a mere right of consultation and thus adversely affects both the legislative powers of the Council and the jurisdiction of the Court of Justice.

The *Commission of the European Communities* submits substantially the following observations:

(a) Article 16 (3) of Regulation No 19 in no way obliged the Commission itself to lay down immediately all the requirements for the lodging, forfeiture and amount of the deposits in respect of import licences. On the contrary, it permitted it to leave provisionally to the Member States—as has been done by the second paragraph of Article 7 of Regulation No 87—the task of doing this.

It follows from Regulation No 19 that the Commission was only obliged to adopt before 30 July 1962 such detailed rules for the application of the system of import licences as, in view of all the circumstances, it deemed necessary in each case. The obligation for it to adopt all those edtailed rules of application constituted a well-nigh impossible task, overlooked the experimental and evolving nature of Regulation No 19 and was contrary to the wording and structure of the EEC Treaty, which is governed by the principle of the gradual and progressive establishment of the common agricultural policy.

To the extent to which the Community did not make use of the legislative power which by Article 43 of the EEC Treaty the Member States conferred on it in the sphere of the common agricultural policy, the Member States remained competent, subject to the limits imposed by the Treaty itself, to adopt sets of rules. The Community did not establish a complete and definitive set of rules for products covered by Regulation No 19 and the matters not governed by the Community implementing provisions remain within the sphere of competence of the Member States.

The second paragraph of Article 7 of Regulation No 87 does not therefore involve a delegation of powers; it obliges the Member States to lay down provisionally detailed rules for the lodging, amount and forfeiture of the deposit and thus to continue to exercise their legislative powers so long as the Community does not take it upon itself to do so.

Even if Article 16 of Regulation No 19 is interpreted as meaning that the Community

made complete use of its powers in the sphere of licences when adopting that regulation, it should be noted that the second paragraph of Article 7 of Regulation No 87 reconveys powers to the Member States in a perfectly legal manner.

(b) The so-called Management Committee procedure is in conformity with the Treaty. The power to make laws for the Community obviously cannot be conferred on bodies other than the Council and the Commission; the collaboration of a committee in the legislative work of the Commission is, however, perfectly legal.
The fourth indent of Article 155 of the EEC Treaty enables the Council to entrust the Commission with the implementation of the rules laid down by it and to evaluate to what extent and under what conditions it intends to confer powers of implementation on the Commission. The Council does not exceed the limits of that power of evaluation by subjecting the attribution of powers to the Commission to the obligation to obtain the opinion of a committee composed of representatives of the Member States before adopting measures of implementation.
The negative opinion of the Management Committee does not deprive the Commission of its powers; it merely obliges it to communicate the measure adopted to the Council and enables the Council to take a different decision. There is nothing against the Council's reserving such a right and, when it does so, this in no way has an adverse effect on review by the Court of Justice.
The powers conferred on the Commission within the framework of the Management Committee procedure are powers of implementation; they may thus be exercised according to rules other than those ladi down by the third subparagraph of Article 43 (2) of the Treaty solely for measures intended to lay down the principles of the common organization of the market. The principles governing the institutional balance between Council and Commission are respected in this case.
As to the Council's option, on a qualified majoritiy, to take a decision different from that of the Commission, it must be remarked that the Council's powers of amendment in the framework of the Management Committee procedure and those provided for by the first paragraph of Article 149 of the EEC Treaty are not comparable.

Grounds of judgment

1 By order of 15 May 1970, received at the Court on 15 June 1970, the Hessischer Verwaltungsgerichtshof under Article 177 of the EEC Treaty has requested a preliminary ruling on the interpretation of Article 16 (2) and (3) of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (OJ 1962, p. 933) and, in particular, to rule whether the second paragraph of Article 7 of Regulation No 87 of the Commission of 25 July 1962 on the establishment of detailed rules of application in respect of import and export licences for cereals and cereal products (OJ 1962, p. 1895) and Paragraph 7 of the German Law of 26 July 1962 implementing Regulation No 19 of the Council (BGBI. I, p. 455) are compatible with Article 16 (3) of Regulation No 19.

2 It appears from the file sent to the Court that this question was raised in the context of an appeal against a judgment of the Verwaltungsgericht Frankfurt-am-Main

which had dismissed an application for annulment directed against a decision of the Einfuhr- und Vorratsstelle für Getreide und Futtermittel declaring a deposit forfeited as the plaintiff in the main action had not effected within the prescribed period an importation covered by a licence issued under Paragraph 7 of the German Law of 26 July 1962, in accordance with the provisions of the second paragraph of Article 7 of Regulation No 87 of the Commission. In view of the grounds of the judgement at first instance and the submissions made by the plaintiff in the main action on appeal concerning the legality of the system of deposits established by virtue of the abovementioned Community and national provisions, the Hessischer Verwaltungsgerichtshof has formulated its question by means of four subordinate questions. The first three questions refer to different aspects of the same problem, namely the division of powers between the Community and the Member States during the first stage in the application of the import and export system provided for by Article 16 of Regulation No 19, before the entry into force of Regulation No 87 of the Commission, adopted in implementation of paragraph (3) of that article, and under that implementing regulation. By reason of the connexion between these three questions, they may be joined for the purposes of the answer.

The questions relating to the system of the first period of application of Regulation No 19

3 Questions 1, 2 and 3 are worded as follows:

1 (a) Must the combined provisions of Article 16 (2) and (3) of Regulation No 19 be understood to mean that from the entry into force of that regulation the grant of an import licence could be conditional on the lodging of a deposit and that a deposit could be forfeited if importation was not affected during the period of validity of the licence?

(b) Or could such provisions concerning the lodging and forfeiture of a deposit in respect of an import licence only be adopted after the entry into force of the detailed rules of application referred to in Article 16 (3) of Regulation No 19?

2 (a) Must Article 16 (3) of Regulation No 18 be understood to mean that from the date of the entry into force of that regulation only the Commission had the power to lay down rules as to the lodging, forfeiture and amount of deposits in respect of import licences?

(b) Or were the Member States authorized, until the entry into force of the detailed rules of application to be adopted under Article 16 (3) of Regulation No 19, to lay down rules as to the lodging, forfeiture and amount of the

deposits in respect of import licences, with the result that the Federal Republic of Germany was entitled to adopt in Paragraph 7 of the Law implementing Regulation No 19 rules relating to deposits in respect of import licences?

3 (a) In adopting the detailed rules of application referred to in Article 16 (3) of Regulation No 19, should the Commission have itself laid down all the requirements relating to the lodging, forfeiture and amount of the deposits in respect of import licences?

(b) Or was the Commission entitled, as it did by the second paragraph of Article 7 of Regulation No 87, to leave to the Member States the task of laying down those requirements relating to the lodging, forfeiture and amount of the deposits in respect of import licences until their harmonization in accordance with Article 26 of Regulation No 19 and merely to require the Member States to notify it of the measures taken?

4 In the context of proceedings under Article 177, it is not for the Court to rule as it is requested to do, on the compatibility of the provisions of a national law with Regulation No 19 of the Council. On the other hand, the Court has jurisdiction to provide the national court with all the criteria of interpretation relating to Community law which may enable it to judge the compatibility with Community law of the provisions of the national law in the light of the legal situation created by the entry into force successively of Regulation No 19 of the Council and Regulation No 87 of the Commission.

5 Evaluation of the legal situation thus created requires that the dates of entry into force of the various legislative measures invoked should be established with precision. Regulation No 19 entered into force, under the terms of Article 29 thereof, on 21 April 1962. Implementing Regulation No 87 of the Commission —adopted in accordance with the procedure laid down in Article 16 (3) of Regulation No 19—entered into force, under the terms of Article 10 thereof, on 30 July 1962. The entry into force of that Law thus coincides with that of Regulation No 87 of the Commission. It follows that the effect of that Law does not have to be examined in the context of the legal situation prior to the entry into force of Regulation No 87.

(a) The period subsequent to the entry into force of Regulation No 87

6 Article 16 (3) of Regulation No 19 provides that 'The detailed rules for the application of this article ... shall be adopted in accordance with the procedure laid down in Article 26'. For its part, Regulation No 87, adopted in implementation of the said Article 16, provides in the second paragraph of Article 7 thereof that until

subsequent provisions are adopted 'the detailed rules relating to the lodging and forfeiture of the deposit, as well as to its amount, shall be laid down by Member States and notified without delay to the Commission and the other Member States'. This provision is criticized by the plaintiff in the main action on the ground that the Treaty does not permit the institutions of the Community to 'delegate to the Member States the task of taking the legislative measures which they should themselves adopt in the framework of the common organization.'

7 Article 16 (3) of Regulation No 19 must be interpreted in relation to the legal context in which it is inserted and to the time at which it came into being. In itself, this enabling provision does not have the effect of determining the nature of the future detailed rules of application with regard to the delimination of functions between the Community and the Member States. The object of Regulation No 19, which forms its legal context, is the 'progressive' establishment of a common organization of the market, as is indicated both in the preamble and, in particular, in Article 1 of the regulation itself. This concept is fully in conformity with the system of the Treaty as it appears from the general provisions of Article 8 and, in the particular sphere of agriculture, from Articles 39 (2) (b) and 40 (1).

8 In view of the experimental nature of the first system of the organization of the markets, crystallized in Regulation No 19, and of the shortness of the time which elapsed between the entry into force of the basic regulation and that of implementing Regulation No 87, it was legitimate, in the interests of a rapid implementation of the organization of the markets, to confer temporarily on the Member States functions which, at a more advanced stage of development, have been taken over by the common institutions. It therefore appears that, far from presenting an anomaly at the stage of development considered, the intervention of the Member States constituted no more than the implementation of the general obligation expressed in Article 5 of the Treaty, whereby Member States are required to take all appropriate measures to ensure fulfilment of the obligations resulting from action taken by the institutions of the Community and, in general, to facilitate the achievement of the Community's tasks.

9 Consequently, Article 16 (3) cannot be interpreted in such a way as to prohibit the Member States—previously informed, particularly through the Management Committee, of the intentions of the Commission as regards the first implementation of the system of imports and exports laid down in Regulation No 19—from preparing legislative or other measures for the purpose of enabling them to assume fully, on the entry into force of Regulation No 87, the functions devolving on them in the interest of the Community under the second paragraph of Article 7 of that regulation.

(b) The intermediate period between the entry into force of Regulation No 19 and that of Regulation No 87

10 The provisions of Article 16 (2) of Regulation No 19, relating to the effect of import licences for cereals and to the lodging of deposits, were applicable from the entry into force of that regulation. In so far as the detailed rules of application indispensable to the functioning of the import and export system laid down in that same Article 16 had not yet been determined by the Community, the Member States were entitled and, by virtue of the general provisions of Article 5 of the Treaty, obliged to do everything in their power to ensure the effectiveness of all the provisions of the regulation.

11 Consequently, Article 16 of Regulation No 19 must be interpreted in the sense that, before the entry into force of the implementing provisions provided for in paragraph (3) of that article, the Member States were able to take, on a transitional basis and without prejudice to any future action on the part of the common institutions, any implementing measures compatible with the principles of the regulation.

The question relating to the compatibility of the Management Committee procedure with Community law of a higher rank

12 The Court is asked by Question 4 whether the procedure of Article 26 of Regulation No 19 of the Council, in accordance with which Regulation No 87 of the Commission was adopted, is compatible with Community law of a higher rank.

13 This question concerns the legality of the so-called Management Committee procedure introduced by Articles 25 and 26 of Regulation No 19 and re-enacted by numerous other agricultural regulations.

It appears from the file of the case and the observations submitted to the Court that the question put concerns more particularly the compatibility of the Management Committee procedure with the Community structure and the institutional balance as regards both the relationship between institutions and the exercise of their respective powers.

14 It is alleged in the first place that the power to adopt the system in dispute belongs to the Council which, under the terms of the third subparagraph of Article 43 (2)

of the Treaty, should have acted on a proposal from the Commission and after consulting the Assembly and that therefore the procedure followed derogated from the procedures and powers fixed by this provision of the Treaty.

15 Both the legislative scheme of the Treaty, reflected in particular by the last indent of Article 155, and the consistent practice of the Community institutions establish a distinction, according to the legal concepts recognized in all the Member States, between the measures directly based on the Treaty itself and derived law intended to ensure their implementation. It cannot therefore be a requirement that all the details of the regulations concerning the common agricultural policy be drawn up by the Council according to the procedure in Article 43. It is sufficient for the purposes of that provision that the basic elements of the matter to be dealt with have been adopted in accordance with the procedure laid down by that provision. On the other hand, the provisons implementing the basic regulations may be adopted according to a procedure different from that in Article 43, either by the Council itself or by the Commission by virtue of an authorization complying with Article 155.

16 The measures dealt with by implementing Regulation No 87 of the Commission do not go beyond the limits of the implementation of the principles of basic Regulation No 19. The Commission was thus validly authorized by Regulation No 19 to adopt the implementing measures in question, the validity of which cannot therefore be disputed within the context of the requirements of Article 43 (2) of the Treaty.

17 Secondly, the plaintiff in the main action criticizes the Management Committee procedure in that it constitutes an interference in the Commission's right of decision, to such an extent as to put in issue the independence of that institution. Further, the interposition between the Council and the Commission of a body which is not provided for by the Treaty is alleged to have the effect of distorting the relationships between the institutions and the exercise of the right of decision.

18 Article 155 provides that the Commission shall exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. This provision, the use of which is optional, enables the Council to determine any detailed rules to which the Commission is subject in exercising the power conferred on it. The so-called Management Committee procedure forms part of the detailed rules to which the Council may legitimately subject a delegation of power to the Commission. It follows from an analysis of the machinery set up by Articles 25 and 26 of Regulation No 19 that the task of the Management Committee is to give opinions on draft measures proposed by the Commission, which may adopt immediately applicable measures whatever the opinion of the Management Com-

mittee. Where the Committee issues a contrary opinion, the only obligation on the Commission is to communicate to the Council the measures taken. The function of the Management Committee is to ensure permanent consultation in order to guide the Commission in the exercise of the powers conferred on it by the Council and to enable the latter to substitute its own action for that of the Commission. The Management Committee does not therefore have the power to take a decision in place of the Commission or the Council. Consequently, without distorting the Community structure and the institutional balance, the Management Committee machinery enables the Council to delegate to the Commission an implementing power of appreciable scope, subject to its power to take the decision itself if necessary.

19 The legality of the so-called Management Committee procedure, as established by Articles 25 and 26 of Regulation No 19, cannot therefore be disputed in the context of the institutional structure of the Community.

20 The plaintiff in the main action has also criticized the Management Committee procedure inasmuch as that machinery has deprived the Court of Justice of certain of its functions by instituting 'a right of annulment' reserved to the Council for measures taken by the Commission.

21 That objection is based on a false analysis of the Council's right to take over the decision. The procedure laid down by Article 26 of Regulation No 19 has the effect of enabling the Council to substitute its own action for that of the Commission where the Management Committee gives a negative opinion. The system is therefore arranged in such a way that the implementing decisions adopted by virtue of the basic regulation are in all cases taken either by the Commission or, exceptionally, by the Council. These measures, whatever their author, are capable of giving rise in identical circumstances either to an application for annulment under Article 173 or to a reference for a preliminary ruling under Article 173 of the Treaty. It therefore appears that the exercise by the Council of its right to take over the decision in no way limits the jurisdiction of the Court of Justice.

Costs

22 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Hessischer Verwaltungsgerichtshof, the decision as to 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 oral reservations of the plaintiff in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 2, 5, 8, 39, 40, 43, 149, 155, 173, 177 and 189;
Having regard to Regulation No 19 of the Council of 4 April 1962 and Regulation No 87 of the Commission of 25 July 1962;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities.

THE COURT

in answer to the questions referred to it by the Hessischer Verwaltungsgerichtshof by order of that court of 15 May 1970, hereby rules:

(1) Article 16 of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals is to be interpreted in the sense that:

(a) the provisions of paragraph (2), relating to the effect of import licences and to the lodging of deposits, were applicable from the entry into force of that regulation;

(b) before the entry into force of the implementing provisions provided for by paragraph (3), the Member States were empowered to take, on a transitional basis and without prejudice to any future action of the common institutions, any implementing measure compatible with the principles of the regulation;

(2) Examination of the question put has not revealed any factor capable of affecting the validity of the second paragraph of Article 7 of Regulation No 87 of the Commission, adopted in application of Article 16 (3) of Regulation No 91;

(3) Article 16 (3) of Regulation No 19 did not prohibit the Member States from preparing legislative or other measures for the purpose of enabling them to assume fully, on the entry into force of Regulation No 87, the functions devolving on them in the interest of the Community under the second paragraph of Article 7 of that regulation.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 17 December 1970.

A. Van Houtte R. Lecourt

Registrar President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE

(See Case 11/70, p. 1140)