On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 173 and 189 of the Treaty establishing the EEC;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses Application No 30/67 as inadmissible;**

2. **Orders each party to bear its own costs.**

Lecourt Donner Strauß

Trabucchi Monaco

Delivered in open court in Luxembourg on 13 March 1968.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 8 FEBRUARY 1968[1]

Mr President,
Members of the Court,

The applicants in the case on which I have now to give you my opinion are in the milling business—either as companies or partnerships—in the region of Bologna and Ancona. They obtain at least part of their raw material from that region.
They feel aggrieved by Regulation No 128/67 of 13 June 1967 (Official Journal of 21 June 1967), in which the Council, on the basis of Regulation No 120/67 (on the common organization of the market in cereals), fixed the prices and principal marketing centres for cereals for the 1967–1968 marketing year. More precisely, they feel aggrieved by Articles 2 and 3 of Regulation No 128/67 and Annexes A and B thereto, in so far as these fix the derived intervention prices for common wheat for the Bologna and Ancona marketing centres, that is to say, the levels below which, in the interests of producers, market prices must not fall. In the applicants' view these levels, taking into account average transport costs in deficit areas, are too high.
Accordingly, they instituted proceedings for

1 — Translated from the German.

annulment on the basis of the second paragraph of Article 173 of the EEC Treaty on 18 August 1967.

In the Council's view, however, they are not entitled to do this, since the conditions set out in that article are not fulfilled.

The Council, the defendant in the action, has therefore confined itself, following service of the application, to raising an objection of inadmissibility pursuant to Article 91 of the Rules of Procedure.

The applicants have had the opportunity of submitting further written observations on this plea. The Council's objection having finally been debated at the hearing on 17 January 1968, the Court must now reach a decision as to the admissibility of the application, having regard to all the circumstances of the present case.

Legal consideration

In this case the obstacle of admissibility can in fact be overcome only on the basis of the second paragraph of Article 173 of the EEC Treaty, which governs the right of natural and legal persons to institute proceedings for annulment. Furthermore, since the contested measure is quite clearly not a *decision addressed to another person* (within the meaning of Article 189: a measure *designating* another person *as the person to whom it is addressed*), the application could be admissible only if this were a decision adopted *in the form of a regulation* but which is of direct and individual concern to the applicants.

The case-law of the Court regarding the legal problems raised here is already so extensive and well-established that the solution to the present case appears quite simple.

If we first attempt to ascertain the *legal nature* of the contested measure (this being the first requirement under Article 173, although apparently, according to the present case-law, this is not strictly necessary: cf. Case 40/64, [1965] E.C.R. 226) we must reach the following conclusion, having regard to the content and objective of the measure at issue, its *designation* being of course inconclusive. In my opinion, what is at issue in this case is not a decision, that is to say, not an act which, in the sense of Article 189, is addressed to a person distinguished by name or at least whose content indicates that it applies only to a limited class of persons (for example, where the person to whom it is addressed is not designated—as in the case of provisions of individual concern incorrectly included in a regulation). We are therefore not concerned, in the sense of the second paragraph of Article 173, with an apparent regulation, with the outward form of a regulation which on closer inspection may be seen to conceal a decision, but with a *true regulation*, that is to say, a legislative act of general application. This is true not only of the contested measure taken as a whole, but also of those parts of it in which marketing centres and regions are differentiated (for instance, with regard to the fixing of prices). The important fact is that even the special provisions relating to the various regions are also general in conception and are addressed to an abstractly defined class of persons, that is to say, a category of interested parties, not to a limited number of identifiable persons within the meaning of Joined Cases 16 and 17/62 and 19 to 22/62. In fact, the minimum price disputed by the applicants (buying-in by the intervention agencies of the Member States being initiated when the market price falls below it) applies to all persons wishing to do business with producers in that area during the relevant marketing year, that is to say, we are here faced with a general criterion imposed 'in the public interest' within the meaning of Case 40/64 ([1965] E.C.R. 226). It may well be true that, as at the time of the entry into force of the measure, it is possible to ascertain the class of those concerned, if not without some difficulty. It may also be conceded that the applicant, as principal buyers of the region (but not the 'necessary' buyers, as they have incorrectly stated), are concerned above all others, and that they represent the 'destinazione effetuale' of the measure in question (to use the expression employed in their reply to the Council's objection). However, this is not the important factor, which is that the contested measure affects other processers (outside the region) and persons who decide to conclude the relevant commercial transactions during the course of the marketing year

(which anyone may do at any time). It is therefore in fact impossible to identify, at the time of entry into force of the measure, all persons who may be concerned thereby during its period of validity; in fact, according to the case-law of the Court, we are here dealing with a measure which is applicable to an 'objectively defined situation', that is to say, a legislative act or, in other words (to use the expression employed in the second paragraph of Article 173 and in Article 18, a regulation, against which the individuals concerned may not institute proceedings for annulment. However unsatisfactory this consequence may appear from the point of view of legal policy, it is unavoidable *de lege lata*. Purely on the basis of the legal nature of the measure criticized the application must be dismissed as inadmissible.

The result would be the same if the question regarding the legal nature of the contested measure were left open and an investigation were merely made as to whether—as required by Article 173—the measure is of *individual* and *direct* concern to the applicants. Since these conditions are complementary in character we need merely ascertain whether the act is of *individual concern* to the applicants, a question which the Court has already on several occasions examined in depth.

It is clear from the case-law on this point that according to the wording and general scheme of Article 173 it is not possible simply to adopt the criteria evolved by the Court of Justice in relation to Article 33 of the ECSC Treaty[1] (which have met with general approval amongst legal writers). According to this case-law, and contrary to the opinion of the applicants in the present case, what is required is not simply that the applicants should have an 'intérêt direct et actuel', but that they should show that the measure is of special, that is to say 'individual', concern to them. What is to be understood by this, whether in the case of a decision addressed to another person or a decision adopted in the form of a regulation, is clear from previous judgments of the Court. The decision must affect the applicant by reason of certain attributes which are peculiar to him, or by reason of circumstances in which he is differentiated from all other persons, and must by virtue of these factors distinguish him individually just as in the case of the person addressed (Cases 25/62, 1/64, 38/64, 40/64). This element is missing in the present case just as it was in *Plaumann* (Case 25/62) or in *Glucoseries Réunies* (Case 1/64) (where, moreover, only *one* product was involved). In the first case it was held that a Commission decision with regard to customs was not of *special* concern to importers of clementines already established as such before the decision was adopted, just as, in the second, it was held that this was true of a producer of glucose established within the Community whose sales outlets in France were threatened; in both cases the Court pointed to the fact that other persons could at any moment have undertaken similar business transactions and therefore have fallen within the ambit of the disputed measure. In the present case the remarks already made with regard to the legal nature of the contested measure have shown that the latter affects not only mills situated in the region of Bologna and Ancona but also undertakings in the processing industry established elsewhere, as well as producers of cereals and finally any person who intends to undertake commercial transactions in respect of common wheat in the relevant region during the 1967–1968 marketing year. There can accordingly be no doubt that the applicant undertakings are not 'individually distinguished' within the meaning of that expression as employed in the case-law of the Court.

Accordingly, the application, whether or not it complies with the condition of *direct* concern, must in any case be dismissed because the contested measure is not of individual concern to the applicants, there being no need in this event to enter into considerations of legal policy as to the expediency of the criterion which I have examined.

1 — Cf. Cases 16 and 17/62, [1962] E.C.R. 471.

Summary

My opinion is therefore as follows:

The objection of inadmissibility raised by the defendant Council under Article 91 of the Rules of Procedure is well founded. The Court should therefore dismiss as inadmissible the application submitted by Industria Molitoria Imolese SpA and the other applicants.

Since the problems raised in this case have already been considered in earlier judgments and since the Council has made no submission as to costs it only remains for the Court to order the applicants to bear their own costs.