22 Throughout the proceedings the Commission based its argument on the express presumption that Regulation No 1579/76 was indeed applicable to the situation of the applicant and therefore Article 69 (3) should be applied in the present case as it has appeared that that presumption was without foundation.

23 Consequently the defendant should be ordered to bear the costs of the case including those of the proceedings for the adoption of interim measures.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the defendant to pay the costs.**

Kutscher Donner Mertens de Wilmars

Sørensen Mackenzie Stuart O'Keeffe Bosco

Delivered in open court in Luxembourg on 31 March 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 16 MARCH 1977 [1]

Mr President,
Members of the Court,

Under the provisions relating to the common organization of the market in sugar which are laid down in Regulation No 3330/74 (OJ L 359 of 31. 12. 1974, p. 1) a refund is granted on the export of sugar outside the Community having regard to the level of the world market

1 — Translated from the German.

price. It may be fixed in advance in the export licence which is necessary for the exportation. It is fixed in national currency if an invitation to tender is held for the purposes of the exportation.

In accordance with the abovementioned provisions and on the basis of the standing invitation to tender for white sugar provided for in Regulation No 2101/75 (OJ L 214 of 12. 8. 1975, p. 5) in the context of which weekly partial invitations to tender were held, the applicant in the present proceedings, an export undertaking having its registered office in Belgium, received in the spring of 1976, before 15 March 1976, export licences with a refund fixed in advance for certain amounts of sugar. In accordance with Regulation No 2101/75 which provides that an export licence is valid from the day of issue until the end of the fifth month following that during which the award was made some of the licences issued to the applicant were valid until 31 July and some until 31 August 1976. As is usual in such cases under the law governing the organization of the market the applicant had to lodge a deposit to guarantee that the export would be carried within the period of validity of the licences.

After the issue of the licences the Council adopted Regulation No 557/76 on 15 March 1976 (OJ L 67 of 15. 3. 1976, p. 1) in which new representative rates were fixed in the agricultural sector differing from those set out in Regulation No 475/75 (OJ L 52 of 28. 2. 1975, p. 1) *inter alia* for Belgian francs. These rates became applicable for the market in sugar from the beginning of the new marketing year, that is, from 1 July 1976.

In view of this Article 5 (1) of Regulation No 557/76 provides that: 'The provisions of Regulation (EEC) No 1134/68 (OJ, English Special Edition, 1968 (II), p. 396) in respect of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account shall apply'. In this respect it should be pointed out that the following provision is laid down by Article 4 (1) of the latter regulation:

'In the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account, the Member State concerned, using the new parity relationship ... shall adjust the following amounts, given in units of account, if they appear in national currency in the documents or certificates issued in pursuance of the common agricultural policy ... :

(a) amounts which have been fixed in advance for a transaction or part of a transaction still to be carried out after the alteration of that parity relationship;

...'

In addition the second subparagraph of Article 4 (1) provides that:

'However, any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within thirty days of the entry into force of the measures fixing the altered amounts, obtain cancellation of the advance fixing and of the relevant document or certificate.'

With regard to the second subparagraph of Article 4 (1) of Regulation No 1134/68, Article 5 (2) of Regulation No 557/76 further provides that it 'shall apply only if the application of the new representative rates is disadvantageous for the party concerned'.

Furthermore on 15 March 1976 Commission Regulation No 571/76 (OJ L 68 of 15. 3. 1976, p. 1) was adopted in implementation of Regulation No 557/76. Article 1 of that regulation provides that with respect to products for which a monetary compensatory amount is fixed, cancellation of the advance fixing and the relevant document or

certificate as provided in the last subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68 may be applied only in the case of export licences issued in Germany, Belgium, Luxembourg and the Netherlands. With regard to the last subparagraph of Article 4 (1) of Regulation No 1134/68, Article 2 of Regulation No 571/76 further provides that it shall apply to the products and Member States concerned with effect from the dates set out in Article 2 (2) of Regulation No 557/76, that is to say, for sugar from 1 July 1976. In addition Article 2 (2) of Regulation No 571/76 provides that: 'The said provisions shall apply only to advance fixing and to the relevant documents or certificates issued before 15 March 1976'.

A short time after the adoption of these rules the applicant, as it has stated to this Court, decided to avail itself of the opportunity of obtaining cancellation of the licences and it alleges that it made corresponding business arrangements. Accordingly on 1 July 1976 it submitted an application to the competent Belgian authority, the Office Central des Contingents et Licences (Central Office for Quotas and Licences), an application for the cancellation of licences in respect of a partial consignment of 11 000 tonnes of sugar.

However the application was not accepted for the following reasons:

On the grounds that there existed a fear that if the right of cancellation were widely exercised it could seriously hinder good Community administration of a given agricultural market, a fear which with regard to the market in sugar resulted from the drop in world market prices and a corresponding substantial increase in the rates of refund, on 22 June 1976 the Council adopted Regulation No 1451/76 (OJ L 163 of 24. 6. 1976, p. 5) amending Regulation No 557/76. By virtue of this regulation a subparagraph is added to Article 5 (2) of Regulation No 557/76 providing that:

'Provision may be made for this disadvantage [that is, the disadvantage resulting from the introduction of new representative rates of exchange] to be compensated for by a suitable measure. In such a case, the provisions referred to in the first subparagraph shall not apply.'

On the basis of that provision on 30 June 1976 the Commission adopted Regulation No 1579/76 containing special detailed rules of application. It was published in Official Journal L 172 of 1 July 1976 on page 59 and also entered into force on that day. Article 1 (1) of that regulation provides that:

'The compensation referred to in the second subparagraph of Article 5 (2) of Regulation (EEC) No 557/76 shall be granted for those quantities of white sugar for which customs export formalities are completed on or after 1 July 1976 in connexion with partial awards under Regulation (EEC) No 2101/75 and for which an export licence was issued before 15 March 1976.'

The compensatory amounts for the individual Member States are contained in an annex to that regulation; for Belgium they were FB 10 per 100 kilograms of white sugar. Furthermore Article 1 (2) of Regulation No 1579/76 provides that:

'In respect of the export licences referred to in paragraph 1, the right to cancel under the last subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68 may not be exercised.'

For various reasons which I shall go into in more detail later the applicant believes that these measures are not valid in law. For that reason on 16 September 1976 it initiated proceedings before the Court of Justice and claims that the Court should:

- annul Article 1 (2) of Regulation No 1579/76 of the Commission;
- in the alternative, rule that the abovementioned paragraph is void at

least in respect of applications for cancellation submitted on 1 July 1976.

By this means it seeks to keep open the possibility of cancellation which was originally provided for and to prevent the deposits lodged by it from being declared forfeit for failure to use the licences.

Before I commence my examination of these applications I may further mention that the applicant has also lodged an application in accordance with Article 83 of the Rules of Procedure and was therein successful to the extent that by Order of the President of 19 October 1976 it was ordered that the Commission should instruct the competent Belgian authorities not to order the deposit forfeit until the issue of final judgment in these proceedings.

In addition in the assessment of the case it is perhaps relevant that in view of the difficulties which individual exporters faced because of the measures described above on 27 July 1976 the Commission adopted Regulation No 1811/76 (OJ L 202 of 28 July 1976, p. 8) and thereby extended the period of validity of the export licences at issue until 30 September 1976.

I — At the beginning of my examination of the present case I must make some observations as to the admissibility of the application and the related questions which can most usefully be examined before the examination of the main issue.

1. I can deal very briefly with the requirement set out in Article 173 of the EEC Treaty for actions by natural and legal persons that the contested measure must directly and individually concern such applicants. It is clear that in the present case there is no problem in this respect. In the statement of the facts of the case it became clear that the contested regulation only applies to export licences which were issued in the Federal Republic of Germany and in the Benelux countries before 15 March 1976 and which had not yet been used on 1 July 1976. If one considers that in view of the period of validity of the licences they must have been issued after 1 February 1976 there is a limited and precisely ascertainable number of persons concerned. In reality — and in this respect the case is reminiscent of the facts in Joined Cases 41 to 44/70 *(NV International Fruit Company and Others* v *Commission of the European Communities* [1971] ECR 411) — there exists a conglomeration of individual decisions which are merely contained in the form of a regulation. However as there can be no doubt that the applicant belongs to the group of persons individually and directly concerned there exists in this case, as in the abovementioned case, no ground for declaring the application inadmissible for failure to comply with the abovementioned condition laid down in Article 173 of the EEC Treaty.

2. Further as the Commission raised doubts in this respect it should be asked whether the period for bringing proceedings, under Article 173 of the EEC Treaty, two months from the notification of the contested measure, has been observed.

Indeed in this respect the Commission admits that in the case of measures which are published the period for initiating proceedings under Article 81 (1) of the Rules of Procedure begins to run on the fifteenth day after publication thereof in the Official Journal of the European Communities. However because it was not intended to lay down in the Rules of Procedure anything in derogation from the Treaty the Commission is of the opinion that this provision may only apply if the measure at issue does not come to the knowledge of the applicant until after its publication. If however it is possible to prove that notification occurred at an earlier date, and the Commission alleges that this is the case in the present proceedings because the applicant found

out the content of the contested measure on 5 July 1976 at the latest, then the beginning of the period for lodging proceedings must be based on *that* date. The Commission argues that calculated from that time and also taking account of the extension of the time-limits for distance in respect of Belgium the lodging of the action on 16 September 1976 must be considered out of time.

I do not believe that this view is correct.

Article 81 (1) of the Rules of Procedure clearly provides that in the case of measures which have been published the period begins to run from the fifteenth day after publication of the measure in the Official Journal and it contains no reservations in respect of prior knowledge. The purpose of this provision was correctly described by the applicant as being that the beginning of the period should be deferred in view of the fact that the distribution of the Official Journal requires time and that for that reason for distant areas in particular the day of publication cannot be equated with the day on which knowledge of the contents of the Official Journal is possible. This standard deferment — differentiation in the manner of the extension of time-limits on account of distance would also have been a possibility — is certainly not contrary to the Treaty. It represents nothing more than a closer definition of the concept of 'notification' that is to say clarification as to the beginning of the period, which is lacking in the Treaty itself. In addition I also do not believe that, in the light of the requirements laid down in the Treaty, application of this principle in respect of individual decisions of which the applicant was not notified but which became known to it before their publication produce paradoxical results as the Commission fears. In fact it must not be overlooked that under the Treaty itself the obtaining of the knowledge is only important with regard to the beginning of the period for bringing proceedings in the absence of publication or individual notification to the applicant.

As in the present case the Official Journal in which the contested regulation was published appeared on 2 July 1976 and taking account of the extension of time-limits in respect of distance applicable for Belgium, the application, which was lodged at the Court of Justice on 16 September 1976, must be regarded as having been lodged in due time.

3. The Commission has further raised the question whether in a case such as the present it would not have been appropriate to bring proceedings before a national court, possibly against the refusal of the application for cancellation or the order for forfeiture of the deposit, and to leave it to that court to refer the case to the Court of Justice under Article 177 of the EEC Treaty in order to examine the validity of the Commission regulation at issue.

In this respect too I do not feel that I can agree with the Commission when it speaks of an order of precedence whereby proceedings should be brought before national courts before proceedings for annulment are initiated in accordance with Article 173 of the EEC Treaty.

I do not overlook the fact that there exist decided cases which appear to support the Commission's view. However the fact must not be ignored that these were principally proceedings for damages brought against the Community; specifically some concerning payments to exporters payable by the Member States (Case 99/74, *Société des Grands Moulins des Antilles* v *Commission of the European Communities,* Judgment of 26 November 1975, [1975] ECR 1531) and some concerning the method of calculation to be applied by national authorities (Joined Cases 67 to 85/75, *Lesieur Cotelle et Associés SA and Others* v *Commission of the European Communities,* Judgment of 17 March

1976, [1976] ECR 391). In the other case mentioned, *Haegeman* (Case 96/71, [1972] ECR 1005) it was further important that the case concerned the refund of levies which it was alleged had been wrongly imposed, that is, a dispute which could be said to fall within the jurisdiction of national courts because the imposition of such levies was the responsibility of the Member States.

In the present case however the gist of the dispute is the legality of a measure adopted by the Commission. As the conditions laid down in Article 173 are fulfilled and as there appears to be no support in the Treaty for the order of precedence advocated by the Commission, the present case invites reference to the judgment in case 43/72 (*Merkur-Außenhandels-GmbH* v *Commission of the European Communities*, Judgment of 24 October 1973, [1973] ECR 1069). In answer to a similar objection it was stated in that case solely that the Court of Justice had the case before it within its jurisdiction and it was added that: 'It would not be in keeping with the proper administration of justice and the requirements of procedural efficiency to compel the applicant to have recourse to national remedies and thus to wait for a considerable length of time before a final decision on his claim is made'. The principle in the present case should be the same.

4. In conjunction with the problem referred to above the Commission has further raised the question whether the applicant is not in fact seeking payment of full indemnification by the Communities because the compensation introduced by Commission Regulation No 1579/76 does not cover the whole of the profit expected by the applicant. In the view of the Commission this question must also be raised in view of the fact that the ground of action relied on by the applicant of the breach of its legitimate expectation in fact — at least in accordance with previous practice — comes under proceedings concerning the liability of public bodies or their servants. In my opinion this argument is sufficiently answered by the fact that the principal application formulated by the applicant clearly seeks the partial annulment of Commission Regulation No 1579/76. It is also clear that once this aim is achieved the possibility of annulling export licences sought by the applicant will be retained and consequently the deposits which up to now have been blocked by the abovementioned order of the President of the Court of Justice, will not be forfeit but will be released by the national authorities. Seen in this light the proceedings for annulment are perfectly reasonable. In no circumstances does the fact that, on the other hand, the applicant has relied on the argument set out above and emphasized that the compensation introduced by the Commission cannot solve all its problems, give grounds for transforming the action into an action for performance against the Community, as the Community is not empowered to release the deposit which represents the actual request of the applicant.

5. Finally the Commission has further raised doubts as to the fact that the action is solely directed to the annulment of Article 1 (2) of Regulation No 1579/76, that is the annulment of the abolition of the right of cancellation applicable to export licences. Therefore the possibility of compensation provided for in Article 1 (1) of the abovementioned regulation should remain which would in reality amount to the right to choose either cancellation of the licences or compensation. Against this it is clear that the Commission regulation is an inseparable whole; the abolition of the right of cancellation was necessarily linked to the introduction of the compensation as even the enabling Council Regulation No 1451/76 clearly refers to the *replacement* of the possibility of cancellation by a right to compensation. It is my impression that it is not necessary to examine this problem in connexion with the examination of

the admissibility of the action. For the present it is sufficient that the applicant, who only wishes to make use of the possibility of cancellation which previously existed, seeks a ruling that the abolition of the right of cancellation is unlawful and that this head of claim cannot be regarded as inadmissible. If it were to appear that the application is well founded it would be necessary to examine the further question whether part of the contested regulation can be valid or whether it must be annulled in its entirety, while possibly retaining certain effects under Article 174 of the EEC Treaty; this further question would have to be examined in conjunction with the examination of the substance of the case to which I shall now immediately turn.

II — The substance of the case

In support of its application the applicant argues principally that the rules laid down in the middle of March 1976 created *rights* for the licence holders concerned. These merit absolute protection as vested rights and therefore their subsequent abolition is inadmissible as it is incompatible with the principle of legal certainty. In the alternative the applicant takes the view that the persons concerned were entitled at least to rely on the fact that from 1 July 1976 they could have their licences cancelled and in reliance on that fact they were entitled to make corresponding arrangements. This expectation too deserves protection. Infringement thereof could in any event have been considered on the grounds of overwhelming public interest but this does not exist in the present case.

1. First it is necessary therefore to examine whether the legal position existing after the middle of March 1976 with regard to the possibility of cancellation of export licences can in fact be referred to as acquired rights held by licence holders.

I must say immediately, having analysed the relevant texts and taken account of the sense and purpose of the pertinent provisions, that this appears extremely doubtful.

As we have heard in the course of the proceedings, because Article 4 of the abovementioned Regulation No 1134/68 was specially drafted to deal with an alteration in the relationship between the parities of the currency of a Member State and the value of the unit of account, simple analogous application to a factual situation in which the *representative rates* applicable in the agricultural sector were altered was out of the question. As the Commission showed with reference to the currency coefficients applicable to the amounts of refunds the present case does not basically concern a modification of the amounts of the refunds expressed in national currency but merely modification of the monetary compensatory amounts and, as special measures are not generally taken in the case of alterations in the relevant information with regard to monetary compensation, it was necessary to adopt an express legal measure, namely Council Regulation No 557/76, and by this means to extend the possibility provided for in Regulation No 1134/68 to situations such as the present. This is also the explanation for the fact that in Regulation No 557/76 a *condition* is included; the possibility of cancellation of licences was to be dependent on the introduction of the new representative conversion rates being disadvantageous to the person concerned. Accordingly Article 5 (1) of Regulation No 557/76 was not to become applicable from the date of entry into force of the regulation, 15 March 1976, but only when the condition set out in the second subparagraph was fulfilled.

It is true that the applicant has argued that if account is only taken of the effects directly connected with the modification of the representative rates, namely

the modification of the monetary compensatory amounts, the matter was sufficiently clear by the middle of March when the implementing Regulation No 571/76 was adopted by the Commission. At that time the disadvantages were already calculable and it was for that reason that the right of cancellation was restricted to export licences issued in Germany and in the Benelux countries.

In my opinion it would be a misconception of the meaning and scope of the Commission regulation and also of the basic principle of the rules laid down by the Council to draw from this the conclusion that from that time onwards the persons concerned possessed a vested right.

In my opinion the abovementioned Commission regulation was solely intended to state that a disadvantage for certain exporters *is a possibility* but not that it in fact exists already. In addition I believe that the spirit of the rules laid down by the Council is most closely followed if it is assumed that on the date on which the new representative rates took effect, that is 1 July 1976, the persons concerned should take stock of the situation and determine whether, in spite of the modification of the representative rates and taking account of the situation on the world market, the transactions which had originally been foreseen and for which the refund had been fixed in advance could not be carried out in a satisfactory manner. It is possible to say this because under the system of the organization of the agricultural market the cancellation of licences must constitute the exception and consequently the conditions applicable thereto should be strictly interpreted.

In addition the fact may not be overlooked that it is not possible to foresee with certainty future developments with regard to currencies. That frequent changes must in fact be expected is shown by the modification of the representative rate of the French franc which was changed in Regulation No 650/76 of 25 March 1976 shortly after being fixed in Regulation No 557/76.

Moreover it should be added that if the presence of disadvantages within the meaning of Regulation No 557/76 was already certain in March 1976 and accordingly the right of cancellation was firmly established it would be barely comprehensible for the exercise of the right of cancellation to be deferred to a period commencing on 1 July 1976. If the view taken by the applicant is correct it would clearly have been in the interests of the Community authorities responsible for the administration of the organization of the market to permit exercise of the right of cancellation before that date so that the development of the sugar balance was clear as early as possible, that is to say, which export licences were being used and which were not.

These considerations are taken into account, and this is certainly no impermissible alteration of the scope of Council Regulation No 557/76 as the applicant believes, by Commission Regulation No 571/76 in that Article 2 expressly provides that the possibility of cancellation laid down by Regulation No 1134/68 *applies* from 1 July 1976 onwards. Properly understood this not only entails the deferment of the *exercise* of the right of cancellation but it also thereby makes clear that it only *arises* if it is evident on 1 July 1976 that an actual disadvantage results for the exporter from the currency measures adopted. On the other hand, finally, reliance may not be placed on the fact that the contested regulation of the Commission refers to the fact that the right of cancellation cannot be exercised. From all that has already come to light the conclusion cannot be drawn that the right of cancellation existed before 1 July 1976; rather was the intention merely to bring out that as earlier regulations referred to

the possibility of cancellation that legal position had to be amended.

Accordingly, with regard to the main line of argument it must be stated that before 1 July 1976 the legal position of exporters was in no way certain; in respect of the cancellation of export licences at most they had in a sense a conditional right. In this respect the facts in the present case reveal considerable similarity to those in Case 1/73 *(Westzucker GmbH* v *Einfuhr- und Vorratsstelle für Zucker,* Judgment of 5 July 1973, [1973] ECR 728 *et seq.).* No more than in that case can the possibility be ruled out that further modifications of the law may be undertaken up to the time when the condition is fulfilled, that is up to the time when an actual right arises. If, as in the present case, such change is necessary in view of an alteration in the relevant economic circumstances, a fairly frequent occurrence in economic law, the annulment of the amendment of the law cannot consequently be demanded in reliance on vested rights.

2. However is it possible that the regulation in question infringes the legitimate expectations of exporters who were entitled to assume that from 1 July 1976 the cancellation of export licences would be possible and who, in reliance thereon, have made certain arrangements?

In agreement with the Commission it may immediately be doubted whether such a submission has any place at all in the context of proceedings for annulment of a measure of extensive scope. The applicant has not given further evidence, for example by making reference to any similar general legal principle. It merely relied on the fact that similar arguments have repeatedly been raised in proceedings concerning the liability of public bodies or their servants. However it is evident that no direct comparison can be made between proceedings concerning on the one hand financial compensation payable to an individual who has suffered loss or, on the other, the revocation of a sovereign act with effect *erga omnes* which might thus affect the interests of third parties and so raises questions of legal certainty. For that reason in cases such as the present concerning measures of general application there is strong support for requiring at least that reference should not merely be made to the subjective position of the applicant but that stress should be placed on evidence that the expectation of the economic sector concerned in general has been disregarded. As there is no such evidence in the present case it appears quite admissible not to examine in any further detail the argument relating to the breach of legitimate expectation.

If this objection is not upheld one must at least accept the Commission's view that a legitimate expectation cannot categorically exclude any change in the law. In this respect various considerations must be taken into account before it can be concluded that a legal provision must be annulled for failure to take account of the abovementioned principle. Thus it is important to examine what interests are involved on the part of the economic sectors concerned and whether there exists a stable or weak position of confidence. It is further important whether there exist substantial public interests which tell in favour of an amendment of the law. Finally it is also relevant whether the amendment of the law was implemented in a way which took sufficient account of the legitimate interests.

The following assessment may be made in the present case with regard to the abovementioned points of view:

— Doubts may be felt from the outset whether, in accordance with the fundamental principles of the law relating to refunds, protection is merited if, as apparently occurred in the present case, arrangements are made which

consist solely of an exchange of licences in order to obtain increased profit. In fact this is scarcely compatible with the meaning and purpose of the rules relating to refunds which seek to make certain marketing operations possible in accordance with the conditions of the world market.

— In view of what I have already stated it should further be assumed that with regard to rules whereby the economic position after 1 July 1976 was to be relevant for the exercise of the right of cancellation it was only with circumspection that the economic circles concerned could make arrangements at an earlier date. In addition it is important that any possibly existing confidence in the unaltered retention of the legal situation was already substantially shaken from very early on. This had already happened at the end of April 1976 when in the Management Committee for Sugar reference was made to the intention to introduce in the near future an amendment to Regulation No 557/76 and the chairman of the Committee therefore asked that the business circles concerned should be informed of this intention. The intended development became more obvious from the adoption of the abovementioned Council Regulation No 1451/76 of 22 June 1976. Even though it merely refers to empowering the Commission it was clear to those with experience that use would be made of this right immediately, particularly where the market in sugar was concerned. Moreover it was clear that the right of cancellation would disappear with the introduction of compensation. In my opinion this is obvious not only from the text of the provision which was added to Article 5 (2) of Regulation No 557/76 by Regulation No 1451/76. This is also evidenced by the preamble to Regulation No 1451/76 which refers to the risk of disturbance which would result if the right of cancellation were widely exercised; it is thus self-evident that such a risk could only be obviated by abolishing the right of cancellation but certainly not by creating a right to choose between cancellation and compensation. I take the view that such factors must be given a weight similar to proposals of the Commission for the adoption of a regulation which were recognized as being of significance with regard to the reliance on the protection of legitimate expectation in the judgment in Cases 95 to 98/74, 15 and 100/75 *(Union Nationale des Coopératives Agricoles de Céréales and Others* v *Commission and Council of the European Communities,* Judgment of 10 December 1975, [1975] ECR 1615).

— With regard to the existence of substantial public interest on the other hand to support alteration of the law, in my view this arises from the fear that wide use might be made of the right of cancellation, a fear which at the time of the preparation of the regulation at the end of April and beginning of May 1976 was based on the development of the world market prices and the related sharp rise in refunds for sugar exports. The quantity involved becomes apparent if it is remembered that at the end of April 1976 there were unused export licences for 60 000 tonnes of sugar in the Netherlands and in the Federal Republic of Germany alone. It would be erroneous to rely on hindsight and only to have regard to the applications for cancellation which were in fact submitted on 1 July 1976 as it may certainly be assumed that the prior warning of the intention to alter the law had its effect on the conduct of the exporters.

— The extent of the anticipated cancellations referred to above could certainly be regarded as a substantial disruptive factor for the sugar balance whether it was assumed that corresponding amounts would remain on the internal market and would thus involve storage expenses and influence the future export policy or that they would in part be exported on the basis of new licences, that is to say, with increased refunds, thereby causing an

increased financial burden on the Community budget. This conclusion is not altered by the applicant's reference to the fact that there is a tolerance limit of 5 % for exports in any case which over the whole year — the invitations to tender in the 1975/76 marketing year ran to over 1 000 000 tonnes — would entail uncertainty of approximately the same order of magnitude as that resulting from the cancellation of the export licences involved in the present proceedings. There is certainly a substantial difference according to whether such uncertainty is spread out over the whole marketing year or whether it is concentrated on the end of the marketing year and the particularly difficult period of the transition to the following marketing year. Further, the assessment of the Commission is not open to criticism on the ground that it had the opportunity, by means of its refunds policy, of avoiding the risk of the extensive cancellation of export licences. Indeed the formulation of the refund policy cannot be expected to be as effective as the abolition of the possibility of cancellation quite apart from the fact that any sudden alteration in the export policy at the end of the marketing year and relating to a relative short period of time would scarcely appear justifiable.

— Lastly with regard to a final important element in this respect it is significant that the amendment of the law did not solely concern the abolition of the right of cancellation. As we know this was linked to the introduction of compensation which corresponded to the difference between the monetary compensatory amounts before and after 1 July 1976. This could be regarded as sufficient for the interests of the exporters as it had the effect of getting over disadvantages for which in principle Council Regulation No 557/76 solely provided a guarantee. In fact it was ensured that any person who complied fully with the system, by making arrangements only after 1 July 1976, could effect exports on the basis of the licences issued originally without any disadvantage.

— In addition on 27 July 1976 the Commission took a further step in that by means of Regulation No 1811/76 it extended the validity of the licences concerned until 30 September. As no complaints by other exporters have come to light this apparently at least had the effect of enabling any difficulties to be overcome for persons who had already made other arrangements and no longer wanted to make use of the licences which they had originally obtained.

On the assumption that the argument of the infringement of legitimate expectation may be relied on at all in an action for annulment the only possible conclusion is that in the present case such an allegation is not justified as not all the necessary preconditions are satisfied. Therefore the alternative arguments raised by the applicant are not sufficient for the annulment of the contested Commission regulation.

3. Accordingly it only remains for me to examine whether a different view should be taken because the amendment of the law decided on on 30 June 1976 entered into force on 1 July but by reason of the belated delivery of the Official Journal only became known to the plaintiff on 2 July 1976, that is after it had made use of its right of cancellation by submitting applications to the competent Belgian authority.

This is however not the case even if it is assumed that this is an instance of retroactive effect as the actual notification to the persons concerned, the necessary precondition for the regulation to take effect, occurred after the time of its entry into force. I have no difficulty in accepting the arguments of the Commission in this respect to the effect that there is no question of the categorical exclusion of such 'retroactive effects' and that it must not necessarily be assumed that the right of cancellation did definitively arise on 1 July 1976.

Justification for the 'retroactive effect' in the present case may be derived from the fact that it was to be feared that the admission of the cancellation of export licences even on a single day could lead to substantial disruption of those Community interests at stake. Another factor in this connexion is that the persons concerned had been given sufficient prior warning by the adoption of Council Regulation No 1451/76. Finally, quite apart from the fact that under the system of the rules the persons concerned had as it were to draw up the balance sheet on 1 July 1976 and make their arrangements accordingly, it is relevant that the protection of legitimate expectations was ensured by the simultaneous introduction of compensation, that is a form of damages, and the subsequent extension of the period of validity of the licences.

I therefore believe that it is also not possible to criticize the 'retroactive effect' on 1 July 1976 and to revoke the regulation at issue in so far as it was to take effect from 1 July 1976.

III — Finally the only possible conclusion is that the application must be dismissed not as being inadmissible but as being without foundation. In view of this result the applicant must bear the costs of the proceedings.