equality of treatment existing prior to the adoption of the contested measure without sufficient justification.

5. In the context of an action for damages, in order to decide upon the existence or extent of the damage alleged by the applicant, it is necessary to take into account, in an appropriate case, the fact that the applicant was able to pass on in his selling prices the disadvantages for which he claims compensation.

6. In the field of non-contractual liability of public authorities for legislative measures, the principles common to the laws of the Member States to which the second paragraph of Article 215 of the EEC Treaty refers cannot be relied on to deduce an obligation to make good every harmful consequence, even a remote one, of unlawful legislation; the damage alleged must be a sufficiently direct consequence of the unlawful conduct of the institution concerned.

7. It follows from the principles common to the legal systems of the Member States, to which the second paragraph of Article 215 of the EEC Treaty refers, that in the context of an action for damages a claim for interest is generally admissible.

In Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79,

P. DUMORTIER FRÈRES, S.A., Tourcoing (Case 64/76),

MAÏSERIES DU NORD, S.A., Marquette-lez-Lille (Case 113/76),

MOULINS & HUILERIES DE PONT-À-MOUSSON, S.A., Pont-à-Mousson (Case 167/78),

LES MAÏSERIES DE BEAUCE, S.À.R.L. (Moulin de Marboué), Marboué (Case 239/78),

COSTIMEX, S.A., Strasbourg (Case 27/79),

"LA PROVIDENCE AGRICOLE DE LA CHAMPAGNE", Société Coopérative Agricole, Rheims (Case 28/79),

MAÏSERIES ALSACIENNES S.A., Colmar (Case 45/79),

represented by G. Lesourd, Advocate at the Conseil d'État and the Cour de Cassation, Paris, and by E. Jaudel, Advocate at the Cour d'Appel, Paris, with

an address for service in Luxembourg at the Chambers of E. Arendt, Centre Louvigny, 34/B/IV, Rue Phillippe II,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by D. Vignes, Director of the Legal Department, acting as Agent, assisted by Y. Crétien, an Administrator in the said department, acting as Joint Agent, with an address for service in Luxembourg at the office of J. N. Van den Houten, Director of the Legal Department of the European Investment Bank, 2 Place de Metz,

defendant,

APPLICATIONS under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco, A. Touffait and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. In its judgment of 19 October 1977 in Joined Cases 124/76 and 20/77 *S.A.*

Moulins et Huileries de Pont-à-Mousson and *Société Cooperative "Providence Agricole de la Champagne"* v *Office National Interprofessionnel des Céréales* [1977] ECR 1795, the Court decided that:

"(1) The provisions of Article 11 of Regulation No 120/67/EEC of the Council of 13 June 1967 as worded with effect from 1 August 1975 following the amendment made by Article 3 of Regulation (EEC) No 665/75 of the Council of 4 March 1975 and repeated in Regulation (EEC) No 2727/75 of the Council of 29 October 1975, in conjunction with Regulation (EEC) No 1955/75 of the Council of 22 July 1975 and the subsequent regulations which replaced it, are incompatible with the principle of equality in so far as they provide for a difference of treatment in respect of production refunds between maize groats and meal for the brewing industry and maize starch.

(2) It is for the institutions competent in matters of common agricultural policy to adopt the measures necessary to correct this incompatibility."

2. By Regulations No 1125/78 of 22 May 1978, amending Regulation No 2727/75 on the common organization of the market in cereals (Official Journal L 142 of 30 May 1978, p. 21) and No 1127/78 of 22 May 1978, amending Regulation No 2742/75, on production refunds in the cereals and rice sectors (Official Journal L 142 of 30 May 1978, p. 24), the Council re-introduced until the end of the 1978/79 marketing year a scheme of production refunds for the maize used for the manufacture of groats and meal (hereinafter referred to as "gritz") intended for the brewing industry. The main features of those regulations are:

— Equality of treatment between the processing of maize into gritz or into starch;

— At the request of the interested parties, the refunds are to be granted retroactively as from 19 October 1977, the date of the judgment of the Court cited above.

Rules for the application of those provisions were laid down by Commission Regulation No 1570/78 of 4 July 1978 laying down detailed rules for the application of Regulation No 2742/75 as regards production refunds on starches and repealing Regulation No 2026/75 (Official Journal L 185 of 7 July 1978, p. 22).

Article 4 of Regulation No 1570/78 provides as follows:

"For maize processed into groats and meal, broken rice produced in or imported into the Community, and wheat or maize processed into quellmehl, between 19 October 1977 and the date of entry into force of this regulation, and used respectively in brewing or baking, the production refund shall be paid provided the applicant furnishes proof that the maize, wheat or rice has been processed during such period and attaches to the application for the refund proof of sale to a brewery or bakery of the maize groats and meal, broken rice or quellmehl, giving the details regarding quantity and destination required in Article 3 (4)".

3. The applicants manufacture maize groats and meal which they sell to the brewing industry and which are used in the brewing of beer.

These applications, which were submitted on 8 July 1976 (Case 64/76),

2 December 1976 (Case 113/76), 1 August 1978 (Case 167/78), 30 October 1978 (Case 239/78), 19 February 1979 (Cases 27 and 28/79) and 20 March 1979 (Case 45/79), seek in particular an order that the European Economic Community compensate the applicants for the damage arising from the abolition, as from 1 August 1975, of the production refund for maize gritz.

4. All the applicants also commenced proceedings in the French administrative courts, seeking annulment of the decisions of the Office National Interprofessionnel des Céréales (ONIC) rejecting their claims for payment of the production refunds for maize gritz intended for brewing.

The cases before the French courts concerning the applicants in Cases 167/78 and 28/78 were the subject of references for preliminary rulings, which led to the aforesaid judgment of the Court of 19 October 1977. Following that judgment, the administrative courts in question annulled the decisions given by ONIC refusing the refund in those two cases. In the first case, ONIC appealed to the French Conseil d'État against the judgment of the administrative court.

At the hearing on 21 June 1977, the Court heard the parties in Cases 64 and 113/76 on the question of the Community's liability for the abolition of the production refund for maize gritz, postponing consideration of the questions relating to the casuality of the damage and to the nature and extent thereof.

After the Court had delivered its judgment of 19 October 1977, the applicants in Cases 64 and 113/76 requested, by a letter submitted on 13 December 1977, that the proceedings be stayed "until the Council has adopted the measures which it is required to take in pursuance of that judgment". By an application and amended claim lodged on 19 February 1979, the applicants asked for the proceedings to be reopened. The Council submitted its observations regarding the reopening of the proceedings in these cases on 20 April 1979.

5. A claim for damages following the abolition of production refunds for maize gritz is also the main issue in Joined Cases 241, 242 and 245 to 250/78 *D.G.V. and Others* v *Council and Commission.*

6. By an order of 12 June 1979 the Court decided to join the present cases for the purpose of the oral procedure.

7. 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. However, the Court asked the parties to reply to certain questions.

II — Conclusions of the parties

A — The *applicants* claim that the Court should:

— Order the defendant to compensate them for the damage which they have suffered as a result of the failure to restore the production refund, in respect of the refunds not paid, which damage amounts to:

FF 2 863 021.66 (Case 64/76),

FF 1 648 454.20 (Case 113/76),
FF 4 439 599.90 (Case 167/78),
FF 2 536 883.81 (Case 239/78),
FF 6 892 782.00 (Case 27/79),
FF 5 677 481.07 (Case 28/79),
FF 826 832.18 (Case 45/79),

with interest at the French legal rate, as from the dates on which payment of the refunds became due each month;

— In the alternative, in Cases 64 and 113/76, 27, 28 and 45/79, award on the same ground, in the event of interest to compensate for delay in payment not being granted, on the basis of the current value of the unit of account, namely FF 6.225, but subject to variations in that value on the day of the judgment of the Court:

FF 3 156 599.40 (Case 64/76),
FF 1 810 399.88 (Case 113/76),
FF 7 596 064.30 (Case 27/79),
FF 6 254 820.70 (Case 28/79),
FF 913 700.00 (Case 45/79);

— Order the defendant to compensate them, in Cases 64 and 113/76, 167/78, 27 and 45/79, for the other items of damage arising from the failure to restore that refund, which damage amounts to:

FF 2 094 348.60 (Case 64/76),
FF 1 171 327.50 (Case 113/76),
FF 1 500 000.00 (Case 167/78),
FF 2 683 288.00 (Case 27/79),
FF 1 658 843.82 (Case 45/79);

— Declare, in Case 45/79, that the failure to restore the refunds forced the applicant to commence insolvency proceedings and to cease trading permanently pending the restoration of equal treatment between the two products by the Council, as from 19 October 1977, its assets having been placed in the hands of a manager in order to enable the arrangement with its creditors to be implemented and to facilitate the partial satisfaction of those creditors;

— Order, in the alternative, in Cases 64 and 113/76, 27 and 45/79 a survey to be carried out in order to assess the damage;

— Order the defendant to pay the costs.

B — The *Council* claims that the Court should:

— Dismiss the applications;

— Order the applicants to pay the costs.

III — Submissions and arguments of the parties

A — Admissibility

1. The *Council* points out that a trader who claims to be entitled to receive from a French body a payment to be borne by the European Agricultural Guidance and Guarantee Fund must bring an action before the administrative court, in which action such court has unlimited jurisdiction, seeking an order requiring the body responsible for payment to pay it the sum in question.

However that may be, where an action for an abuse of powers is brought before the administrative court at the same time as an action under Article 215 of the

Treaty before the Court of Justice, the Council considers itself obliged to plead lack of jurisdiction or inadmissibility with regard to the latter action for several reasons: first, because the applicant can bring an action before the administrative court, in which action such court has unlimited jurisdiction, and because that action, which is an action for the payment of a refund, takes precedence over an action for damages, which is not appropriate where it is still possible to bring an action for payment; also because that lack of jurisdiction ensues from the fact that there are concurrent proceedings, as a dispute concerning a claim for the same sum has been brought before courts belonging to two different systems.

Similarly, where adversary proceedings before the national court, in which proceedings such court has unlimited jurisdiction, and an action for damages against the Community before the Court of Justice arise concurrently, the Council also considers that it must plead the inadmissibility of the latter action, as it finds the action before the national court the only appropriate one for the same reasons as those which it has just set out. On concurrency of proceedings, the Council refers to the judgment of the Court of 14 July 1967 in Joined Cases 5, 7 and 13 to 24/66 *Kampffmeyer and Others* v *Commission* [1967] ECR 245.

The Council considers that that is the line followed by the Court in Cases 96/71 *R & V Haegeman* v *Commission* (judgment of 25 October 1972, [1972] ECR 1005), 99/74, *Grands Moulins des Antilles* v *Commission* (judgment of 26 November 1975 [1975] ECR 1531) and especially in Case 46/75 *IBC* v *Commission* (judgment of 27 January 1976, [1976] ECR 65).

In its submission, those observations are equally valid when the applicants submit a supplementary claim for damages in respect of commercial loss, distinct from the claim for the payment of refunds and against which the same objection cannot be raised: a claim for the payment of refunds which is by nature inadmissible cannot be made admissible by joining to it a claim for damages in respect of commercial loss.

As regards Cases 64 and 113/76, the Council admits that it did not submit a plea of inadmissibility in time. However, it considers that the foregoing considerations are no less applicable.

2. The *applicants* emphasize that the actions which they brought in the administrative courts aimed solely to secure the annulment of ONIC's decisions rejecting their claims for payment of refunds. As those actions for abuse of powers do not give the body responsible for payment any basis for paying, particularly where there is no Community legislation stating that payment should be made, the applicants consider that the Council is contradicting itself when it maintains that there is concurrency of proceedings on the ground that the action for abuse of powers and the action under Article 215 of the Treaty have the same objective.

The applicants add that in a case concerning the existence of a debt owed to a private person by a public authority, an action for annulment is as effective as adversary proceedings in which a court has unlimited jurisdiction, since a court cannot, any more than the administration itself, order a payment to be made unless that payment rests on a legal or contractual basis. That is particularly so in this case in the absence of any Community legislation stating that payment should be made. In its judgment

of 19 October 1977, the Court itself laid down that a declaration of unlawfulness could not itself lead to a satisfactory result, in the absence of any legal provision capable of providing a basis for that payment.

The applicants recall that the Community is not a party to the proceedings before the national administrative courts, so that neither the Tribunal Administratif nor the Conseil d'État could order payment of the refunds in the course of adversary proceedings in which a court has unlimited jurisdiction, since such a decision could not be relied on against the Community institution, in particular against the European Agricultural Guidance and Guarantee Fund. ONIC is only the body responsible for making payment, a mere intermediary between the Fund and the recipient of the refund. Thus it would be inconceivable to order that body to pay a refund for which it would not be reimbursed or *a fortiori* to order it to pay damages for an unlawful act for which it is not responsible.

The applicants conclude that only the action for liability under Article 215 of the Treaty is likely to lead to a satisfactory result.

For the rest, the principle of the inadmissibility of an action due to the existence of concurrent proceedings, is, in the opinion of the applicants a derogation from the general law and thus cannot be invoked when Articles 178 and 215 of the Treaty do not entail any limitation upon that legal order. Moreover, in French administrative law, as in the law of the principal Member States, no bar to proceedings is created by the existence of concurrent adversary proceedings in which a court has unlimited jurisdiction.

B — Substance

1. The *applicants* claim in their applications that the Council has not taken all the measures that are necessary in order to comply with the judgment of the Court of 19 October 1977: the only effect of Regulations Nos 1125 and 1127/78 is to prevent any aggravation of the damage suffered by those in the maize industry as from the date of that judgment, without however eliminating the damage suffered during the period between 1 August 1975 and 19 October 1977. Those regulations are unlawful because they permitted the continuance of the situation created by the regulations which the Court declared invalid.

The applicants express the view that if as regards the future the Council could choose between different methods of restoring equality between the two products, it opted itself, in Regulation Nos 1125 and 1127/78, as it had always done before 1 August 1975, for the method of granting a refund at the same rate for gritz and for starch. In any case, as regards the past, since the starch manufacturers had drawn refunds, the repayment of which could not be requested, the only option available was to pay the same refunds to those in the maize industry retroactively.

Consequently, the applicants consider that they are entitled to maintain that observance of the principle of equality should have led to their being granted during the entire period from 1 August 1975 to 19 October 1977 production refunds at the same rate as the refunds which had been granted during the same period to the starch industry, with the result that the refusal to grant the said

refunds constitutes direct and certain damage for which they are entitled to claim compensation.

The applicants emphasize that, as ONIC continued during the period in dispute to keep records of the declarations concerning the quantities of maize used for the production of gritz intended for the brewing industry, the basis for the calculation of that particular head of damage is easy to ascertain, the more so as it is not disputed that following the measures taken in 1975 the maize industry did not pass on the loss of income suffered in its selling prices, the brewers having resisted any increase owing to the freezing of the price of beer.

The applicants in Cases 64 and 113/76 claim in respect of a second head of damage residing in an appreciable reduction in their sales, as most breweries were forced to change over to the purchase of starch as a total or partial substitute for gritz. The applicants submit letters from their customers which it is claimed prove the causal link between that change and the abolition of the refunds. In their opinion, this head of damage must be assessed in the first place by reference to the reduced tonnage of maize meal which they processed after the abolition of the refunds. Secondly, the sales effected could only be obtained by offering the buyers prices which caused the applicants considerable financial loss, since they had to undertake to pass on to their customers the amount of the refunds claimed. The applicants add that a considerable proportion of their customers have taken their business elsewhere, which has also caused them considerable commercial damage.

A further item of damage suffered by the applicant in Case 167/78 during the period in dispute is alleged to have been due to the increase in the price of maize, which it was not in fact possible to make up for by means of an equivalent increase in the selling price to the breweries, owing to the abolition of the refund. Consequently, the trading results which showed a profit during all the years preceding 1975, showed a large deficit in 1976, 1977 and during the first months of 1978. The combined loss incurred in 1976 and 1977 forced the applicant to cut its staff as from 1977 in order to reduce its general costs and that involved the applicant in further liabilities. In spite of those measures, the applicant suspended its commercial operations in May 1978 and on that occasion dismissed further staff and this involved the payment of compensation. A final item of damage suffered by the applicant arises from the fact that it continued from May 1978 to bear the fixed costs of its operations without any possibility of recovering those costs through results because of the cessation of manufacturing.

The applicant in Case 27/79 alleges a further head of damage as a result of the closure at the end of 1976 of its factory at Valenciennes. In that regard it points out that the competition from starch had been particularly keen in the north of France, where the only French starch factory is situated. That competition led to a reduction in the activities of that region's maize industry, even before the abolition of the refunds for gritz took effect. As soon as that abolition became

known, the brewers immediately switched to the use of starch, and they had also resisted any increase in the cost of their supplies owing to the freezing of their own prices. At the same time, the selling price of gritz had undergone an increase of approximately 15 % as a result of a similar increase in the threshold price of maize. Thus the total return on 100 kg had fallen to a level below the production cost and that situation was aggravated by a considerable drop in sales, which increased the burden of the fixed manufacturing costs.

For the applicant in Case 45/79 the increase in the price of maize, which could not be passed on in the selling prices of gritz owing to the abolition of the refund, had particularly serious consequences: formed in 1965, it had set up a new factory which required considerable investment and consequent ammortization. Another factor should be taken into account: the heavy fall in those selling prices, which occurred first in the north of France, but which rapidly spread through the entire French brewing industry as a result of the way in which it is concentrated.

The applicant adds that the reduction by half in the amount of the refund at the end of March 1975 created a huge demand for maize gritz during the preceding period, which led the customers to build up a large stock by 31 March 1975. The result was that during April the applicant received no orders from the brewing industry and the factory was forced to stand idle. The same thing happened on 31 July. These violent fluctuations forced the company to incur high operating costs in order to deal with an increase in work, whilst the following month it no longer had sufficient work to keep the work-force occupied. In 1975 that led to a loss of cash flow. The applicant was forced to commence insolvency proceedings in September 1976. Although it was granted a "règlement judiciaire" [a procedure whereby the insolvent retains control over his estate and creditors are paid under court supervision], it was not authorized to continue trading as there was no prospect of improvement in sight. The entire work-force was laid off and redundancy payments were made. The trading losses for the first eight months of 1976 and the costs connected with the insolvency proceedings led to a heavy loss of cash flow. The balance sheet for 1977 shows a similar loss, caused mainly by the expenses of the receiver and the fixed costs still being incurred.

2. The *Council* recognizes that technically gritz and starch are entirely interchangeable as regards the brewing of beer. It asserts that in fact Community brewers, and French brewers in particular, have not altered their practice of using maize gritz for the brewing of beer, even after the abolition of the refund.

As regards the French market, that assertion is corroborated by the following figures:

French consumption of maize gritz:

1971	1972	1973	1974	1975	1976	1977 (7 months)
80 728 t	86 350 t	102 853 t	106 963 t	109 467 t	117 130 t	74 545 t

According to the Council, the tendency in the French brewing industry since 1971 has been towards a greater use of raw grain:

	1971	1972	1973	1974	1975	1976
gritz used per average hectolitre of beer brewed	3.85 kg	4.23 kg	4.53 kg	4.84 kg	4.83 kg	4.77 kg
gritz used per average degree/hectolitre	0.80 kg	0.85 kg	0.91 kg	0.97 kg	0.96 kg	0.94 kg

Moreover, the production of beer in France increased relatively little from 1973:

1971	1972	1973	1974	1975	1976	1977
hectolitres brewed						
20 956 233	20 395 009	22 664 020	22 097 834	22 660 123	24 585 077	23 539 864
degree/hectolitres brewed						
100 799 480	100 343 444	112 640 179	109 163 300	112 847 412	123 908 788	117 228 522

The Council goes on to recall that gritz represents 14.7% of the total average cost price of a hectolitre of beer. It declares that the French maize industry passed on a part of the lost profit due to the abolition of the refund in its prices for the gritz sold to breweries. In this regard, the Council submitted the following table to the Court, indicating in French francs the average purchase price to breweries of gritz and maize starch per 100 kg with a calculation of the price per degree/hectolitre (DH). These average prices were worked out on the basis of information concerning several factories manufacturing maize gritz in the northern region.

	Gritz		Starch	
	Prices charged	Prices FF/DH (calculation based on 29.3 DH per 100 kg)	Prices charged	Prices FF/DH (calculation based on 34 DH per 100 kg)
1974: 1st quarter	51.5 FF			
2nd quarter	53 FF			
3rd quarter	65 FF			
4th quarter	70 FF			
1975: 1st quarter	80 FF			
2nd quarter	97 FF			
3rd quarter	116 FF			
4th quarter	116 FF	(3.95)	100 FF	(2.94)
1976: 1st quarter	116.5 FF			
2nd quarter	101.5 FF			
3rd quarter	106 FF			
4th quarter	109 FF	(3.72)	132 FF	(3.88)
1977: 1st quarter	108 FF			
2nd quarter	110 FF			
3rd quarter	113 FF			
4th quarter	117 FF	(3.99)	115 FF	(3.38)
1978: 1st quarter	108 FF			
2nd quarter	113 FF			
3rd quarter	118 FF			
4th quarter	122 FF	(4.16)	132 FF	(3.88)

From this table the Council draws the following conclusions:

— between 1974 and 1978 there was a considerable all-round increase in the price of maize gritz, due to the increase in the target price and the threshold price;

— the price per 100 kg of maize gritz sold to the breweries increased by 45% between the first and the third quarter of 1975 and by 19.59% between the second and the third quarter of the same year. Between the 1974/1975 marketing year and the 1975/76 marketing year the Community target price for maize increased by only 10%; it emerges from those figures that the French maize industry passed on its selling prices to breweries more than the average increase in the price of maize on the Community market; thus it largely passed on the lost profit due to the abolition of the refund in its selling prices;

— even after that price increase, the cost per degree/hectolitre was higher when gritz was used than when starch was used;

— in 1976 the price of maize gritz fell somewhat between the first quarter and the other quarters of the year: but in the fourth quarter of 1976 cost per degree/hectolitre with the use of starch had become higher than the cost per degree/hectolitre with the

use of gritz; in those circumstances, a brewer had no reason to purchase maize starch; that is one of the reasons why the consumption of maize gritz did not fall during that period;

— between 1977 and 1978 there was an increase in the selling price of maize gritz to breweries, which again made the cost per degree/hectolitre with the use of gritz higher than the cost per degree/hectolitre with the use of maize starch, although that did not result in a fall in the consumption of gritz in the French brewing industry.

The Council is well aware of the relative value of the table, but it believes that it indicates a general tendency as regards the gritz producers in France.

The Council goes on to state that while the selling prices of maize gritz to breweries were rising, the cost of beer increased only moderately. Consequently, the Council concludes that ultimately it was the brewers who suffered indirectly the effects of the abolition of the refund, whilst the gritz producers passed on those effects, at least in part, in the prices charged for their gritz to the breweries.

The Council recalls that the producers in the northern region of France are in a special situation: the only two producers of maize starch in France are established in that region. None the less, according to the Council, the brewers in that region prefer maize gritz to maize starch and use it in much greater quantities. The Council indicates other factors peculiar to the market situation of gritz in the northern region of France: the maize industry in that region consists largely of relatively old plants the productivity of which is lower than that of other factories set up in other regions; the production of beer in the north has been in decline for several years; the production of the Alsace region has risen, to the detriment of the northern region; for the producers of maize gritz in the north, the sale of their products in Alsace presents difficulties, due essentially to questions concerning the transport of those products.

The Council then considers the situation of a number of French undertakings producing maize gritz. In this regard, the Council recalls that the applicant in Case 28/79 opened a factory at *Pringy* in 1975 and that the monthly returns submitted to ONIC show that the applicant's sales to breweries rose from 18 173.7 tonnes in the 1975/1976 marketing year to 22 225.29 tonnes in the 1976/1977 marketing year.

The Council further points out that the applicant in Case 27/79 closed its factory at Valenciennes at the end of February 1976. The figures produced by the applicant show that that factory's production stood at 267.01 tonnes in August 1975 and 666.57 tonnes in December 1975. The Council goes on to state that following the closure of the factory at Valenciennes the production of the factory at Strasbourg belonging to the applicant in Case 27/79, which is the largest French producer of maize gritz, seems to have leapt forward rather impressively: the production in the best month of the last quarter of 1975 (September) was 1 066.945 tonnes and production in the best month of the first quarter of 1976 (March) was 2 539.751 tonnes. According to the Council, the closure of the factory at Valenciennes, which was already contemplated before 1975, was due to the applicant's desire to reorganize its production and to retain in operation only its best, and, in any case, its most productive factory. Besides, an examination of the figures supplied shows, according to the Council, that the applicant is faring well as regards its production of maize gritz: January 1976, 1 382.810 tonnes; June 1976, 3 669.693 tonnes; June 1977, 2 966.503 tonnes.

The Council further points out that the production of the applicant in Case 45/79 rose appreciably between August 1975 (23 tonnes) and December 1975 (429 tonnes) and that the first half of 1976 was very good (864 tonnes in January, a particularly good month for that sector; 785 in June; there was a drop in the following month, coinciding with the slack autumn period for the brewing of beer). The Council adds that the applicant seems to suggest the real reasons for its difficulties in its application: for several years it had been experiencing certain financial difficulties, due in particular to heavy investments.

As regards the applicant in Case 167/78, the Council observes that that company's factory, which is now closed, had for a long time been one of the oldest plants in France. The Council recalls that in order to manufacture a tonne of gritz 1.80 tonnes of maize are normally required; the factory at Pont-à-Mousson often used more and ONIC had been induced to fix a yield co-efficient of 1.80 for the payment of the refunds. Moreover, during the 1970s the company had not carried out the necessary modernization of its plant at Pont-à-Mousson. The Council adds that in 1975 and 1976 the company had been faced with serious management problems.

As regards the applicant in Case 113/76, which bought out the applicants in Cases 167/78 and 45/79, the Council points out that it saw its production rise from approximately 4 200 tonnes for the 1975/1976 marketing year to approximately 11 550 tonnes for the 1977/1978 marketing year.

The Council concludes that the production of maize gritz intended for the brewing of beer is not in a state of crisis since the total production is being maintained; the undertakings with relatively low production are not able to withstand the ever stronger competition which has been a feature of the market for some six years or the competition from the German maize industry; some companies have experienced difficulties, or are doing so still, which arose in 1975 as a result of their less skilful adjustment to the market, the obsolescence of their plant and the inadequacy of their productivity in relation to other more efficient concerns.

The Council then expresses its views on the situation of the maize gritz market in Germany and in the Benelux countries. In this regard, it recalls that Federal Germany, where the use of maize gritz for the brewing of beer intended for the national market is prohibited, is none the less the leading producer and exporter of maize gritz in the Community. In this context it recalls also that since 1974 German exports of maize gritz have risen impressively:

1974	1975	1976	1977
135 923 t	141 754 t	175 437 t	191 296 t

According to the Council, the German undertakings normally have modern factories with high productivity. Their production is not as a rule devoted exclusively to maize gritz; they are also geographically well situated, along the Rhine, which enables them to reach numerous regions of the Community without incurring high transport costs.

The Council adds that exports of gritz from the Federal Republic are directed in particular at the French market: they rose from 7 197 tonnes in 1972 to 21 370

tonnes in 1977; they had already doubled between 1972 (7 197 tonnes) and 1974 (14 294).

The Council also submitted to the Court figures relating to the exports of maize gritz from the Benelux countries:

	1974	1975	1976	1977
Netherlands	6 760 t	7 806 t	17 166 t	16 835 t
Belgium-Luxembourg	14 598 t	8 016 t	21 995 t	28 141 t

In this regard, the Council emphasizes that in those figures the proportion of exports to the other Member States is predominant. They prove that for the Netherlands and Belgo-Luxembourg markets the abolition of the refund did not cause any real commercial difficulty. The Council adds that an undertaking producing maize gritz was formed in Benelux in February 1976. It was already producing 8 600 tonnes in the first six months of the 1975/1976 marketing year. Subsequently, it increased its production to over 26 000 tonnes in 1976/1977. From this analysis the Council draws the conclusion that the French producers of maize gritz have for a number of years been meeting ever stronger competition from the German producers and that that competititon is one of the main causes of their difficulties. Only the French undertakings of relatively large dimensions, with a certain level of productivity, were able to withstand that competition. Finally, the Council notes that the factories of the two principal German exporters of maize gritz, that is to say, the applicants in Cases 241 and 242/78, are situated, in the one case, on the Main Canal and in the other case on the Rhine. Their position on the Alsace market is therefore better than that of the producers in the north of France, taking into account the constraints of transport between the northern region and Alsace.

The Council concludes that the abolition of the refund did not in fact occasion any real damage for the Community maize industry as a whole in respect of the period from 1 August 1975 to 19 October 1977. That abolition was not the direct cause of the difficulties experienced by a limited number of French producers during recent years. The Council adds that the maize industry's lost profit, if it exists, was ultimately borne by the consumers and does not display the characteristics of damage which must be borne by the Community within the meaning of the judgment of the Court of 25 May 1978 in Joined Cases 83 and 94/76, 4, 15 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209. According to the Council such damage cannot really be identified: it concerns the maize gritz producers of the Community as a whole and they have not in reality suffered damage in relation to the starch industry: they have in fact, generally speaking, increased their production and their turnover since 1975 and there has been no quantifiable shift away from the use of maize gritz and towards the use of maize starch.

Finally, the Council points out that if it were proved that the increase in the French imports of gritz was due to the disadvantage at which French maize was put in relation to German gritz by the effect of the compensatory amounts, there would consequently be no relationship of cause and effect between the abolition of the refund and the losses.

3. The *applicants* state in reply that the statistics produced by the Council prove only that as a whole the French producers of gritz have succeeded, at the cost of heavy losses, in retaining their

traditional market more or less effectively according to the regions.

In their opinion the compensation in respect of the refund could not depend on variations in the volume of production and sales which they have attained. Indeed, the general principles common to the laws of the Member States to which Article 215 of the Treaty refers, make the award of damages dependent upon a wrongful act on the part of the institutions, the suffering of damage and a direct causal link between that wrongful act and that damage.

According to the applicants, the adoption of discriminatory measures constitutes a wrongful act, for the Council cannot claim to have complied with the judgment of the Court of 19 October 1977.

The damage is equally undeniable, since if the principle of equality had been observed, they could have drawn the same refunds as those paid for starch. The applicants recall that the general principles to which Article 215 of the Treaty refers lead to the view that full compensation must be paid for all damage, whether it consists of an actual loss *(damnum emergens)*, or whether it takes the form of lost profit *(lucrum cessans)*. They add that during the period in question the maize industry was operating at a loss, even as regards the undertakings which may have appeared to be expanding or profitable, either by virtue of external injections of capital or the realization of assets, or by virtue of profits achieved in other branches of activity.

Finally, the applicants point out that the causal link cannot be contested further, since it was the measures adopted, and they alone, which prevented them from drawing the refunds.

They add that the statistics relied on by the Council could be relevant only with regard to the applicant companies which have claimed compensation for additional commercial damage distinct from the loss of the refund.

As regards their situation on the gritz market, the applicants observe that if the brewer's choice is dictated by his financial interest and if none the less the use of gritz in French breweries remains stable in spite of the abolition of the refund, that stability can be explained only by the scale of the sacrifices assumed by the maize industry in an attempt to retain, or increase, its market, pending the restoration of the refund. Therefore the applicants will not strive to dispute the table showing the total consumption of gritz, which the Council produced, although the statistics drawn up by the Union des Semouliers de Maïs [Association of Maize Meal Producers] show considerably different results.

The applicants dispute the Council's figures as regards the purchase prices to breweries of maize gritz and add that even if they were to be considered accurate, they would be devoid of any probative value: a number of facts could explain the development of prices, which need not be regarded as a reflection of the abolition of the refund; the increase in the price of gritz between the second and third quarter of 1975 is not appreciably greater as a percentage than the increase between the first and the second quarter, in spite of the retention of the refund at that time; thus the increase in gritz prices between the first quarter of 1974 and the third quarter of 1975 merely reflects the increase in the

costs of raw materials and manufacture; the development of starch prices during the same period would certainly have been such as to confirm that, if particulars of it had been supplied; it emerges from those figures that as from the second quarter of 1976 the price of gritz fell, whilst the price of starch rose appreciably; thus a comparison of the two sets of figures seems to suggest that in order to retain its markets the maize industry was compelled to lower its prices, whilst the starch industry was able to increase its profit margin; the same figures reveal that the price of gritz remained relatively stable after the restoration of the refund, as the maize industry was not able to pass on the effects of that restoration when it had not passed on the effects of the abolition.

The applicants add that it is possible that during the period in dispute the starch producers sought to increase their profit margin rather than the volume of their sales to the brewing industry: that explains why the competition from starch was in truth felt severely only by the maize industry of the north of France.

The applicants then consider the problem of the regional situation of the gritz producers in France. In this regard they find that in the northern region certain brewers actually switched to starch. Letters from brewers, submitted by the applicants, corroborate that finding. It is wrong to state that the production of beer in the north of France is declining to an extent: it is changing somewhat on account of the fact that a large number of small breweries have disappeared. It is true that the cost of transport between the Rhine region and the northern region is relatively high, but it is not higher in one direction than in the other. It cannot seriously be claimed that the maize industry in the north is the victim of its geographical situation, when the brewing industry in its region remains very important and deliveries to the Paris region in particular are not too onerous.

The applicant in Case 27/79 then declares that it is not true that its decision to close its factory at Valenciennes had been taken even before the abolition of the production refund. It could not even benefit from a switch on the part of customers to another factory since the cost of transporting gritz between the northern region and Alsace was too high.

The applicant in Case 45/79 states that, although its structures were weak owing to the undertaking's relatively recent formation, they were normal and the fact that at a time when the gritz market was expanding its managers had formed a new and modern undertaking with recourse to ordinary borrowing could not be regarded as an error on their part. The company did not experience any financial difficulty until 1975, but it did not possess sufficient reserves to enable it to sell its production at a loss during a

period of almost three years. Besides, it is one of only three French undertakings devoted exclusively to processing maize.

The applicant in Case 167/78 observes that the alleged obsolescence of its plant was not such as to prevent it from operating profitably as long as the normal conditions of competition were not distorted. Its average lost production cannot be assessed at more than 2 %, which was perfectly tolerable in normal conditions of competition. Until 1975 it was achieving a considerable operating profit, whilst heavy operating losses were sustained as from 1976. As for the accounting results, the company was profitable until 1973, it sustained a very slight loss in 1974, that accounting loss doubled in 1975 and became extremely heavy in the following two years. The total losses sustained were lower than the total amount of the refunds which it was denied.

According to the applicant in Case 113/76, the Council is mistaken when it claims to see in the take-over of the applicants in Cases 167/78 and 45/79 proof of a certain level of prosperity. Although the applicant's balance sheet for 1976 shows an accounting profit, that is actually due to the receipt of a substantial sum of compensation for compulsory purchase and to the carrying forward of profit from previous years, but the general operating account shows an operating loss of FF 367 000. In 1976 the operating loss exceeded 1 million francs with an accounting loss on the balance sheet of more than FF 869 000.

The applicants further declare that the French market represents only a very small proportion of German exports of gritz. In 1974 those exports still comprised only about 10% of the total of German exports. Thereafter the share of German exports taken by the French market declined and during the period concerned in the present dispute the pressure brought to bear on the French brewing market by the German maize industry has not increased noticeably. As for imports of gritz from other countries, they never exceeded 3 500 tonnes a year during the same period.

Finally, the applicants point out that the question of compensatory amounts can arise only in the context of competition between the French maize industry and German maize industry, as it has been demonstrated above that although imports of German gritz into France rose appreciably between 1970 and 1974, they remained stationary thereafter.

4. In its rejoinder in Cases 27, 28 and 45/79, the *Council* adds to its previous observations, in particular, that even if gritz and starch were technically interchangeable for the brewing of beer, no such substitution took place commercially.

The Council also states that the French brewing industry used approximately 15 000 tonnes of maize starch in 1970, but only 9 000 in 1978. It recalls that 110 000 tonnes of gritz are consumed on average each year. Thus, in its opinion, the competition between the two products is purely theoretical and does not seem to have come into play on the occasion of the abolition of the refund save in the exceptional cases of two or three breweries in the north of France

situated close to the two French starch factories.

Moreover, the effect of the refund seems infinitely less important as a component of the price than the fluctuations in the price of one or other of the ingredients.

By adding together the figures for the average monthly production of gritz for each applicant in 1975/1976 and in 1977/1978, the Council obtains a figure of 7 004 tonnes for 1975/1976 and 7 232 tonnes for 1977/1978.

The Council admits that it is necessary to make sacrifices in order to retain one's customers, but denies that it is necessary to do so to the point of tripling the amount of one's deliveries and thus tripling the loss.

The Council considers that it has complied with the judgment of the Court of 19 October 1977 by restoring the refund on the day on which the Court delivered judgment, but it denies that in doing so it recognized the need for refunds at the same rate, particularly as regards the period from 1975 to 1977. What the Court said, emphasizes the Council, is that after allowing the two products to enjoy equal treatment during a long period, the Council could not in the absence of objective factors terminate that equality. On the other hand, the Court did not express a view on the intrinsic need for equal treatment of the two products.

The Council recalls that in its judgment in Cases 5, 7 and 13 to 24/66 *Kampffmeyer*, the Court accepted that damages could be recovered for *lucrum cessans* only subject to very strict conditions.

The Council further observes that the argument that there is no relationship of cause and effect between the abolition of the refund and the damage may be invoked against all the applicants, as regards all their claims, because they have not sought to prove conclusively a connexion between their alleged losses and the Council's action within the meaning of the judgment of the Court of 15 June 1976 in Case 74/74 *CNTA* v *Commission* [1976] ECR 797.

The additional damage claimed by certain applicants is, according to the Council, a question of fact. Such damage was not caused by the abolition of the refund, but by other factors: The situation of certain maize processors which makes them more sensitive to competition either from the starch producers situated near to the brewers who are their customers or from other maize processors in France or abroad who are less handicapped by the cost of transport than are the applicants concerned and, further, the obsolescent plant of certain maize processors which makes them less competitive than others.

IV — Replies by the parties to written questions put by the Court

The Court invited the applicants to supply in writing information on the development of the prices of the gritz sold by them during the period from 1974 to 1978 and also on the factors other than the abolition of the refunds which affected that development.

In that regard, the applicants submitted information concerning the development of the delivered price for gritz charged by each of them since 1974, in relation to the development of the price of raw materials and their operating costs during the same period. They consider that that information proves the lack of foundation for the Council's argument to the effect that they passed on in their selling prices to the breweries the greater

part of the increases caused by the abolition of the refund.

The information shows that: the threshold price of maize rose by over 40 % during the period under consideration; the selling prices of gritz to the brewing industry vary only in proportions which do not stand in a common relationship to those of the raw material used, the increase in the selling price of gritz for the applicant in Case 64/76, for example, amounting to 4.58 % only; the manufacturing costs for the applicants increased substantially during the same period; consequently, the gross profit margin of each of the applicants fell dramatically, leading to losses for a large number of them.

V — Oral procedure

At the hearing on 10 July 1979 the parties presented oral argument.

The Advocate General delivered his opinion at the sitting on 12 September 1979.

Decision

1 The applicants in these cases request that the European Economic Community, represented by the Council, be ordered, pursuant to the second paragraph of Article 215 of the EEC Treaty, to compensate them for the loss which they claim to have suffered on account of the abolition of the production refunds for maize groats and meal ("gritz") intended for the brewing of beer as a result of Regulation No 665/75 of the Council of 4 March 1975 amending Regulation No 120/67 on the common organization of the market in cereals (Official Journal 1975 L 72 of 20 March 1975, p. 14).

2 The cases were joined for the purpose of the procedure and it is appropriate to maintain the joinder for the purpose of the judgment.

3 In its judgment of 19 October 1977 delivered pursuant to references for preliminary rulings from two French administrative courts in Joined Cases 124/76 and 20/77 *S. A. Moulins et Huileries de Pont-à-Mousson and Société Coopérative "Providence Agricole de la Champagne"* v *Office National Interprofessionnel des Céréales* [1977] ECR 1795, the Court ruled that the disputed provisions of the Council regulations were incompatible with the principle of equality in so far as they provided for maize groats and meal for the brewing

industry and maize starch to receive different treatment in respect of production refunds. The Court said further that it was for the institutions competent in matters of common agricultural policy to adopt the measures necessary to correct that incompatibility.

4 Following that judgment production refunds for maize gritz used by the brewing industry were re-introduced by Council Regulation No 1125/78 of 22 May 1978 amending Regulation No 2727/75 on the common organization of the market in cereals (Official Journal 1978 L 142 of 30 May 1978, p. 21). The amount of the refunds was fixed by Council Regulation No 1127/78 adopted and published on the same date as Regulation No 1125/78 (Official Journal 1978, L 142, p. 24). Both regulations entered into force on the third day following their publication in the Official Journal of the European Communities. However, pursuant to the last paragraph of Article 1 of Regulation No 1125/78 and Article 6 of Regulation No 1127/78, the refunds were granted at the request of the interested party as from 19 October 1977, that is to say with retroactive effect from the date of the judgment of the Court in the above-mentioned preliminary rulings.

5 Thus the object of the applicants' claims is to obtain compensation for the damage which they claim to have suffered as a result of the absence of refunds during the period between 1 August 1975, on which date Regulation No 665/75 was first applied, and 19 October 1977. The alleged damage consists, as regards all the applicants, in the loss of receipts equal to the amounts of the refunds which would have been paid to them if maize gritz had benefited from the same refunds as starch, and as regards some of the applicants, in additional losses caused in particular by a fall in sales and operating deficits.

Admissibility

6 The Council, the defendant, objects that in order to obtain the refunds claimed the applicants should have brought an action for payment of the refunds against the competent national bodies in the national administrative courts. However, that objection cannot be upheld. Although it is true that an action for the payment of amounts due under Community regulations may not be brought under Article 178 and the second paragraph of Article 215 of

the EEC Treaty, the claims submitted by the applicants in this case cannot be classed as claims for the payment of amounts due, but rather as claims for compensation for the alleged damage resulting from the unlawfulness established by the judgment of the Court of 19 October 1977. Moreover, according to the applicants, that damage is not measured solely by reference to the unpaid refunds. Besides, in the circumstances of the case it is clear that, pursuant to the said judgment of the Court, a national court could not have upheld such an action in the absence of any provision of Community law authorizing the national bodies to pay the amounts claimed.

7 The same considerations apply to a plea of *lis alibi pendens* raised by the Council. The actions pending before the French administrative courts are actions for the annulment of the competent national body's refusal to pay refunds. Those national courts have no jurisdiction to rule on the non-contractual liability of the Community. Thus, as the subject-matter and the legal basis of the actions brought before the national courts and before the Court of Justice are different, the principles applicable to concurrency of proceedings, recognized in the national systems of legal procedure, may not be relied on in order to contest the admissibility of the actions brought before the Court of Justice in this case.

Substance

8 Since by its judgment of 19 October 1977, the Court has already established that the abolition of the refunds for maize gritz for the brewing industry, together with the retention of the refunds for maize starch, was incompatible with the principle of equality, the first problem which arises in these cases is whether the unlawfulness thus established is of such a nature as to render the Community liable under the second paragraph of Article 215 of the EEC Treaty.

9 The finding that a legal situation resulting from the legislative measures of the Community is unlawful is not sufficient in itself to give rise to such liability. The Court has already expressed that view in its judgment of 25 May 1978 in Joined Cases 83/76 and others *Bayerische HNL Vermehrungsbetriebe and Others* v *Council and Commission* [1978] ECR 1209. In this regard, the Court recalled its settled case-law, according to which the

Community does not incur liability on account of a legislative measure which involves choices of economic policy unless a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred. Taking into consideration the principles in the legal systems of the Member States governing the liability of public authorities for damage caused to individuals by legislative measures, the Court said that in the context of Community provisions in which one of the chief features was the exercise of a wide discretion essential for the implementation of the Common Agricultural Policy, the Community did not incur liability unless the institution concerned manifestly and gravely disregarded the limits on the exercise of its powers.

10 In the circumstances of these cases, the Court is led to the conclusion that there was on the part of the Council such a grave and manifest disregard of the limits on the exercise of its discretionary powers in matters of the Common Agricultural Policy. In this regard the Court notes the following findings in particular.

11 In the first place it is necessary to take into consideration that the principle of equality, embodied in particular in the second subparagraph of Article 40 (3) of the EEC Treaty, which prohibits any discrimination in the common organization of the agricultural markets, occupies a particularly important place among the rules of Community law intended to protect the interests of the individual. Secondly, the disregard of that principle in this case affected a limited and clearly defined group of commercial operators. It seems, in fact, that the applicants in these cases and in the related Cases 241/78 and others *Deutsche Getreideverwertung und Rheinische Kraftfutterwerk GmbH and Others* v *Council and Commission* comprise the entire maize gritz industry of the Community. Further, the damage alleged by the applicants goes beyond the bounds of the economic risks inherent in the activities in the sector concerned. Finally, equality of treatment with the producers of maize starch, which had been observed from the beginning of the common organization of the market in cereals, was ended by the Council in 1975 without sufficient justification.

12 The Council's disregard of the limits imposed upon its discretionary power is rendered all the more manifest by the fact that, as the Court pointed out in its judgment of 19 October 1977, the Council has not acted upon a proposal

made by the Commission in June 1975 to re-introduce the refunds for maize gritz on the ground that the absence of such refunds could foreseeably upset the balance between the breweries' raw materials costs in maize gritz and maize starch.

13 For those reasons the Court arrives at the conclusion that the Community incurs liability for the abolition of the refunds for maize gritz under Regulation No 665/75 of the Council.

14 This said, it is necessary to go on to examine the damage resulting from the discrimination to which the gritz producers were subjected. The origin of the damage complained of by the applicants lies in the abolition by the Council of the refunds which would have been paid to the gritz producers if equality of treatment with the producers of maize starch had been observed. Hence, the amount of those refunds must provide a yardstick for the assessment of the damage suffered.

15 The Council objected to that method of calculating the damage on the ground that the gritz producers eliminated the damage by passing on the loss resulting from the abolition of the refunds in their selling prices. In principle, in the context of an action for damages, such an objection may not be dismissed as unfounded. In fact, it must be admitted that if the loss from the abolition of the refunds has actually been passed on in the prices the damage may not be measured by reference to the refunds not paid. In that case the price increase would take the place of the refunds, thus compensating the producer.

16 For their part, the applicants dispute that the loss was passed on in the way alleged by the Council, except for a brief initial period during the 1975/1976 marketing year. They state that, faced with the competition from the starch producers benefiting from refunds, they chose, as a matter of commercial policy, to sell gritz at a loss in order to retain their markets, rather than raise the prices at the risk of losing those markets. The price increases referred to by the Council are, in the applicants' submission, due to the rise in the threshold price of maize and to the increase in production costs.

17 The parties have put forward statistics and other data in support of their respective submissions. Those data do not permit the conclusion advanced by the Council to be accepted. The conclusion which emerges is rather that during the period in dispute the prices of gritz and starch developed along similar lines without reflecting the absence of refunds for gritz. The only exception concerns the period covering the last months of 1975 and the beginning of 1976, during which the prices of gritz were increased by amounts corresponding to the unpaid refunds. However, the applicants have explained that those increases were accepted by the breweries provisionally on condition that a clause was inserted in the contracts of sale guaranteeing the buyer the benefit, retroactively in the appropriate case, of any new refund granted by the Community.

18 It follows that the loss for which the applicants must be compensated has to be calculated on the basis of its being equivalent to the refunds which would have been paid to them if, during the period from 1 August 1975 to 19 October 1977 the use of maize for the manufacture of gritz used by the brewing industry had conferred a right to the same refunds as the use of maize for the manufacture of starch; an exception will have to be made for the quantities of maize used for the manufacture of gritz which was sold at prices increased by the amount of the unpaid refunds under contracts guaranteeing the buyer the benefit of any re-introduction of the refunds.

19 Some of the applicants have also submitted claims for compensation for certain additional items of damage which they claim to have suffered.

20 In the case of the two maize processors established in the north of France, the further damage lies particularly in a substantial fall in their sales to breweries. Although it is beyond dispute that the figures submitted by the applicants clearly show such a fall, that fact can hardly be ascribed to the absence of refunds. In fact, as has already been said, the applicants have insisted on the fact that the selling prices of gritz were not increased on account of the abolition of the refunds. On the contrary, as the Court recognized when examining the development of the prices, the gritz

producers chose to sell at a loss in order to retain their markets, and not to increase their prices at the risk of losing those markets. Thus the inequality which existed between gritz and starch as regards the granting of refunds was not reflected in the selling prices. If in spite of that commercial policy the gritz producers' sales fell, the reason for this must be sought in something other than the inequality caused by the abolition of the refunds.

21 In the case of certain other applicants the further damage alleged is of a different nature. Two undertakings were forced to close their factories and a third had to commence insolvency proceedings. The Council argued that the origin of the difficulties experienced by those undertakings is to be found in the circumstances peculiar to each of them, such as the obsolescence of their plant and managerial or financial problem. The data supplied by the parties on that question in the course of the proceedings are not such as to establish the true causes of the further damage alleged. However, it is sufficient to state that even if it were assumed that the abolition of the refunds exacerbated the difficulties encountered by those applicants, those difficulties would not be a sufficiently direct consequence of the unlawful conduct of the Council to render the Community liable to make good the damage. In the field of non-contractual liability of public authorities for legislative measures, the principles common to the laws of the Member States to which the second paragraph of Article 215 of the EEC Treaty refers cannot be relied on to deduce an obligation to make good every harmful consequence, even a remote one, of unlawful legislation.

22 It follows that the claims for compensation for the further damage alleged cannot be upheld.

23 The applicants submitted a number of documents to the Court as proof of the quantities of gritz for which they claim to be entitled to compensation and of the amounts of the refunds not paid in respect of those quantities. However, the Court is not in a position at this stage of the procedure to give a decision on the accuracy of those data. Therefore, it is necessary to lay down by interlocutory judgment the criteria whereby the Court considers that the applicants must be compensated, leaving the amount of the compensation to be determined either by agreement between the parties or by the Court in the absence of such agreement.

The claim for interest

24 The applicants further claim that the Council should be ordered to pay interest at the French legal rate from the dates on which the payment of the refunds became due each month.

25 As it is a question of a claim made in relation to the non-contractual liability of the Community, pursuant to the second paragraph of Article 215, it must be considered in the light of the principles common to the legal systems of the Member States, to which that provision refers. It follows that a claim for interest is in general admissible. Taking into account the criteria for the assessment of damages laid down by the Court, the obligation to pay interest arises on the date of this judgment, in that it establishes the obligation to make good the damage. The rate of interest which it is proper to apply is 6 %.

On those grounds,

THE COURT,

as an interlocutory decision, hereby:

1. Orders the European Economic Community to pay to

   1) P. Dumortier Frères S.A., Tourcoing;

   2) Maïseries du Nord, S.A., Marquette-lez-Lille;

   3) Moulins et Huileries de Pont-à-Mousson, S.A., Pont-à-Mousson;

   4) Les Maïseries de Beauce, S.àr.l., Marboué;

   5) Costimex, S.A., Strasbourg;

   6) "La Providence Agricole de la Champagne", Société Coopérative Agricole, Rheims;

   7) Maïseries Alsaciennes S.A., Colmar,

   the amounts equivalent to the production refunds on maize gritz used by the brewing industry which each of those undertakings would have been entitled to receive if, during the period from 1 August 1975 to 19 October 1977, the use of maize for the production of gritz had conferred an entitlement to the same refunds as the use of maize for the manufacture of starch; an exception shall be made for the

quantities of gritz sold at prices increased by amounts equivalent to the unpaid refunds under contracts guaranteeing the buyer the benefit of any re-introduction of the refunds;

2. Orders that interest at 6 % shall be paid on the above-mentioned amounts as from the date of this judgment;

3. Orders the parties to inform the Court within twelve months from the delivery of this judgment of the amounts of compensation arrived at by agreement;

4. Orders that in the absence of agreement the parties shall transmit to the Court within the same period a statement of their views, with supporting figures;

5. Reserves the costs.

Kutscher Mertens de Wilmars Mackenzie Stuart Pescatore Sørensen

O'Keeffe Bosco Touffait Koopmans

Delivered in open court in Luxembourg on 4 October 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
(see [1977] ECR 1773)

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
(see Case 238/78, p. 2976)