

Community measure in dispute to the Court of Justice. However, the existence of such a means of redress will be capable of ensuring the effective protection of the individuals concerned only if it may result in making good the alleged damage.

Consequently, an action for damages brought against the Community institutions may not be declared inadmissible on the ground that the applicant has not made use of the legal remedies available in national law when it is not disputed that these remedies were not capable of guaranteeing him effective protection.

2. Although Article 3 of Regulation No 974/71 requires the Commission to modify the monetary compensatory amounts when the monetary difference serving as a basis for their calculation changes by at least one point from the percentage taken as a basis for the preceding determination; that provision does, however, leave it a certain discretion in choosing the time at which to implement the alterations. The alteration of the monetary compensatory amounts need not be immediate, since the Commission has a reasonable period allowing it to take its decisions on the basis of the most reliable information.
3. The establishment of compensatory amounts was intended to maintain the single-price system, the basis of the present organization of the markets, thus avoiding a disorganization of the system of intervention prices and maintaining normal patterns of trade in agricultural products both between the Member States and with non-member countries. The compensatory amounts can be applied therefore only in so far as the monetary measures referred to involve disturbances in trade in agricultural products.
4. A trader cannot legitimately expect that the monetary compensatory amounts will be modified while negotiations within the Council, of which traders are necessarily aware and the very purpose of which is to avoid an increase in those amounts by means of an adjustment of the representative rates, are still in progress.
5. The prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law. That principle means that like situations should not be treated differently unless such different treatment is objectively justified.

In Case 281/82

SOCIÉTÉ À RESPONSABILITÉ LIMITÉE UNIFREX (a limited liability company), whose registered office is at 580 Rue des Vignes-Dardelain, 21160 Marsannay-la-Côte, France, represented by G. Benar, advocate at the Cour d'Appel, Dijon, and P. F. Ryziger, advocate at the Conseil d'État and the Cour de Cassation, with an address for service in Luxembourg at the Chambers of E. Arendt, President of the Bar, 34 B IV Rue Philippe-II,

applicant,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by François Lamoureux, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

and

COUNCIL OF THE COMMUNITIES, represented by its Legal Adviser Bernard Schloh and Arthur Brautigam, a member of its Legal Department, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendants,

APPLICATION for damages under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

THE COURT (Fifth Chamber)

composed of: Lord Mackenzie Stuart, President, Y. Galmot (President of Chamber), O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini

Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. The applicant, Unifrex, a limited liability company, is a French undertaking exporting agricultural products

and particularly cereals to Italy amongst other places. In the contracts concluded with Italian importers, the monetary compensatory amounts granted when the goods are imported into Italy and which are actually paid by the competent French body (ONIC) are incorporated into the purchase price, expressed in lire, of the goods to be delivered and therefore benefit the applicant.

2. Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition, 1971 (I), p. 257), as amended by Regulation No 1112/73 of the Council of 30 April 1973 (Official Journal, L 114, p. 4), provides in Article 2 (1):

“The compensatory amounts for the products covered by intervention arrangements shall be equal to the amounts obtained by applying to the prices:

- (a) in respect of those Member States the currencies of which are maintained among themselves within a spread at any given moment of 2.25%, the percentage difference between:

The conversion rate used under the common agricultural policy, and

The conversion rates resulting from the central rate;

- (b) in respect of Member States other than those referred to in (a), the average of the percentage differences between:

The relationship between the conversion rate used under the common agricultural policy for the currency of the Member State concerned and the official parity, or, where this parity is not observed, the central rate of each of the currencies of the Member States referred to in (a), and

The spot market rate for the currency of the Member State in question in relation to each of the currencies of the Member States

referred to in (a), as recorded over a period to be determined.”

Article 3 of the same regulation provides as follows:

“If the difference referred to in Article 2 (1) changes by at least 1 point from the percentage taken as a basis for the preceding determination, the compensatory amount shall be altered by the Commission in line with the change in the difference.”

However, Article 6 provides that the detailed rules for the application of the regulation are to be adopted in accordance with the so-called “management committee” procedure and that, subject to the provisions of Article 3, the detailed rules for application are to cover in particular the fixing of the compensatory amounts.

The creation of the European Monetary System has not fundamentally changed the system of monetary compensatory amounts. However, Council Regulation No 652/79 of 29 March 1979 on the impact of the European Monetary System on the common agricultural policy (Official Journal, L 84, p. 1) replaced the unit of account by the European currency unit (ECU) for the calculation, among other things, of the monetary compensatory amounts. That regulation also carried over a system of franchises which, in various forms, had been applied since 1974 and which consisted of a certain reduction in the percentage difference used to calculate such amounts.

Under the terms of the abovementioned system, in respect of those Member States the currencies of which are maintained among themselves within a spread of any given moment of 2.25%, the monetary compensatory amounts are as a rule invariable, that is to say they are

modified only if there is a change in the central rate (devaluation or revaluation) or in the representative rate (green rate). On the other hand, in respect of Member States whose currencies are not maintained within the spread of 2.25%, such as the Italian lira, the amounts are modified in accordance with the changes in the daily rates on the foreign currency markets.

Article 2 of Commission Regulation No 1380/75 of the Commission of 29 May 1975, laying down detailed rules for the application of monetary compensatory amounts (Official Journal, L 139, p. 37) determines, for the latter currencies, the reference period over which the fluctuations of those currencies against currencies maintained within the 2.25% spread are to be recorded. It provides:

"The period referred to in ... the second indent of Article 2 (1) (b) ... of Regulation (EEC) No 974/71 shall run from a Wednesday to the following Tuesday."

On 22 March 1981, the Ministers and the Governors of the Central Banks of the Member States decided to carry out an adjustment of the central rates within the European Monetary System. That adjustment resulted, with effect from 23 March 1981, in a 6% devaluation of the Italian lira as against all the other currencies within the system, the bilateral central rates between the other currencies remaining unchanged.

By means of Regulation No 801/81 of 27 March 1981, concerning monetary compensatory amounts and differential amounts (Official Journal, L 82, p. 17), which came into force on 30 March 1981 the Commission "froze" the monetary compensatory amounts applicable for the week of 30 March to 5 April 1981. Article 1 of that regulation provides as follows:

"Unless contrary decisions are taken in consequence of possible decisions by the Council, the monetary compensatory amounts and differential amounts applicable for the week 30 March to 5 April 1981 shall be identical to those applicable on 23 March 1981."

In the preamble to the said regulation, the Commission stated that the adjustments to the central rates should bring about an alteration in the monetary compensatory amounts, but that the "freeze" was justified, as a precautionary measure, by the imminence of a Council decision to alter the representative rates:

"... in view of these provisions and of the adjustments to the central rates made within the European Monetary System, the monetary compensatory amounts and the differential amounts should be altered;

... however, pending an imminent Council decision to alter the representative rates in order to avoid increasing or introducing monetary compensatory amounts, the monetary compensatory amounts and differential amounts should, as a precautionary measure, be maintained at their 23 March 1981 level."

Council Regulation No 850/81 of 1 April 1981, amending Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture (Official Journal, L 90, p. 1), which came into force on 6 April 1981, in fact altered the representative rates by bringing into line the green rates and the central rates for the currencies of the Benelux countries, France, Denmark and Ireland and by partly bringing the green rate into line with the central rate for the Italian lira. On the basis of those new representative rates, the Commission, by Regulation

No 902/81 of 3 April 1981 (Official Journal, L 94, p. 3), which also came into force on 6 April 1981, fixed the monetary compensatory amounts on the basis of the exchange rates during the reference period from 25 to 31 March 1981. For the Italian lira, the amounts were fixed at -1, after deduction of the franchise.

3. Considering that the fixing, without any equitable compensation, of the monetary compensatory amounts applicable during the week of 30 March to 5 April 1981 at the level applicable on 23 March 1981 had been carried out in breach of superior rules of law for the protection of the individual and had caused it to suffer loss, the applicant, by an application lodged at the Court Registry on 21 October 1982, brought the present claim for damages, under Article 178 and the second paragraph of Article 215 of the EEC Treaty.

Upon hearing the report of the Judge-*Rapporteur* and the views of the Advocate General, the Court, by order of 21 September 1983, decided to assign this case to the Fifth Chamber, pursuant to Article 95 of the Rules of Procedure, and to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Grant it damages in the amount of FF 2 957 276.77 or such greater or lesser sum as the Court may think fit.

The *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

The *Council* contends that the Court should:

Dismiss the application as inadmissible, in so far as it is directed against the Council;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. Admissibility

(a) *Unifrex* states that according to an established body of case-law, the application for damages is an independent remedy which may be claimed independently of all other remedies based on national or Community law.

The Court has affirmed the independence of the action for damages, in relation to both proceedings for failure to act and proceedings for a declaration of nullity, in its judgment of 28 April 1971 (Case 4/69 *Lütticke* [1971] ECR 325) and of 2 December 1971 (Case 5/71 *Schöppenstedt* [1971] ECR 975).

The independence of the action for damages in relation to the means of redress available in national law has been recognized in the judgment of 24 October 1973 (Case 43/72 *Merkur* [1973] ECR 1055). The effect of that judgment is that the admissibility of an action for damages cannot be made subject to the exhaustion of national remedies. In the present case, *Unifrex* has no national remedy likely to give it satisfaction, in view of the fact that the

court with jurisdiction regards any *ultra vires* acts would be empowered solely to declare void the decision of the competent French body (ONIC) awarding the monetary compensatory amounts but not to substitute itself for the administration and order ONIC to pay the amounts at a different rate.

Thus, the present action is available without its being necessary to seek first a declaration that the measure is illegal or that the Community institution has failed to act.

(b) The *Commission*, without formally putting forward an objection of inadmissibility, none the less expresses doubts about the admissibility of the action because the national means of redress have not been exhausted.

It is clear from an established body of case-law that the parties concerned should contest before the national courts, which may, if necessary, apply to the Court for a preliminary ruling, the decisions taken by the intervention bodies, in application of Community rules (judgments of 5 December 1979 in Joined Cases 116 and 124/77 *Amylum* [1979] ECR 3497; of 12 December 1979 in Case 12/79 *Wagner* [1979] ECR 3657; and of 10 June 1982 in Case 217/81 *Interagra* [1982] ECR 2233).

That principle received support in particular in the judgment of 17 December 1981 (Joined Cases 197 to 200, 243, 245 and 247/80 *Ludwigshafener Walzmühle* [1981] ECR 3211) in which the Court, adjudicating upon an objection of inadmissibility founded on the failure to use national means of redress, did not follow the reasoning of the *Merkur* case, but rejected the objection because, in those cases, such a means of redress was not available. On the other hand Unifrex, the Commission claims, had the opportunity of applying

to the French administrative courts for an order annulling the decision of ONIC by which the latter had applied to it the monetary compensatory amounts in dispute.

(c) The Council, without raising a formal objection within the meaning of Article 91 of the Rules of Procedure, raises the inadmissibility of the application. In this respect it relies on Article 38 (1) of the Rules of Procedure, which requires the application to state with a sufficient degree of clarity "the subject-matter of the dispute and the grounds on which the application is based". The applicant must "set out the precise facts relied on in support of his claim and must present his conclusions in an unequivocal manner" (judgment of 14 September 1962 in Joined Cases 46 and 47/59 *Meroni* [1962] ECR 411). In the present case, the applicant should have indicated with the necessary precision in particular the infringements allegedly committed by the institution.

The Council admits in this context that the Court put a more restrictive interpretation on this requirement in its judgment of 15 May 1975 (Case 74/74 *CNTA* [1975] ECR 533). It was held in that case that defects in the originating application could not make the application inadmissible unless they were such as to prevent the other party from effectively defending its interests or hinder the Court in the exercise of its judicial review. However, these are precisely the conditions which are not satisfied in this case, since it is impossible for the Council to see clearly what the applicant alleges against it.

2. Substance

The liability of the Community

(a) *Unifrex* observes that an established body of case-law, in particular the afore-

mentioned *Schöppenstedt* case, shows that the Community is liable for the consequences of a legislative act of its institutions where a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred. In this case, the Community is liable both because of the illegality of Regulation No 801/81 and because of a breach of the principles of the protection of legitimate expectation and non-discrimination.

In the first place, Unifrex claims that Regulation No 801/81 is illegal because the Commission should have immediately adapted the monetary compensatory amounts to the monetary situation resulting from the devaluation on 23 March 1981 of the central rate for the Italian lira. By intervening only on 27 March 1981 and by fixing the compensatory amounts applicable for the week of 30 March to 5 April 1981 at the level applicable on 23 March 1981, the Commission has infringed the basic Regulation No 974/71.

The applicant admits in this context that Community rules do not lay down at what moment the compensatory amounts, which the Commission must introduce or adapt by virtue of Article 3 of Regulation No 974/71, must come into force. It considers however that the Commission must introduce or alter the amounts immediately when the monetary difference envisaged by that provision results not from the floating of a currency but from its devaluation.

In the second place, it would appear, in the light of the aforementioned *CNTA* case, that the principle of the protection of legitimate expectation is breached.

Though, in that decision, the Court denied that the monetary compensatory amounts might be regarded as a guarantee against the risk of changes in the exchange rates, it did however recognize that the application of such amounts excludes in practice the risk of such a change, so that a trader may legitimately expect that, for transactions already concluded, no change will occur which will cause him unforeseeable loss.

As a result, the risk normally carried by traders is that of the spread of fluctuation of currencies within the European Monetary System. On the other hand, legitimate expectation would be frustrated and traders ought to be compensated, if the risk goes beyond that spread without any compensatory measure being adopted.

In the third place, there is a breach of the principle of non-discrimination laid down in the second subparagraph of Article 40 (3) of the Treaty in so far as the applicant can avail itself of neither the "equity clause", nor the advance fixing of the compensatory amounts.

The "equity clause" was instituted by Commission Regulation No 926/80 of 15 April 1980 on exemption from the application of monetary compensatory amounts in certain cases (Official Journal, L 99, p. 15). Under the terms of that regulation, a Member State the value of whose currency has been altered is allowed, on the application of an interested party, not to collect the monetary compensatory amounts or that part of them corresponding to the increase, on imports or exports covered by contracts firmly concluded before the adoption of the monetary measure. The discrimination is that Community rules

contain no comparable clause for cases in which the amounts are abolished or reduced because of a devaluation of the central rate for the currency of payment.

The same reasoning holds good for the advance fixing of compensatory amounts which, contrary to the principle of Community preference, is allowed only in the case trade with non-member countries, pursuant to Regulation No 243/78 of 1 February 1978 (Official Journal, L 37, p. 5), but is not allowed in trade between the Member States.

(b) The *Commission* replies in the first place that Regulation No 801/80 is valid, since Community rules do not lay down when the compensatory amounts which the Commission must introduce or alter pursuant to Article 3 of Regulation No 974/71 must come into force. In practice, the Commission most frequently fixes the amounts with effect from the Monday of the week following the one in which the difference has been observed, whatever the reason for the alteration. This deferment is justified because it allows the Commission, with the help of the Management Committee, to have the most reliable information at its disposal.

However, where there is a danger of speculative movements, in particular following changes in the central rates, the Commission may decide to bring the amounts into force without waiting for the following Monday. That was not the case however when the Italian lira was devalued on 23 March 1981. Thus, even if the Commission had not frozen the compensatory amounts they would have

been increased only from 30 March 1981.

What is more, the Court has accepted, within certain limits, the "freezing" of the amounts by the Commission in its judgment of 13 June 1978 (Case 146/77 *British Beef Company* [1978] ECR 1347) and of 14 December 1978 (Case 35/78 *Schouten* [1978] ECR 2543). In the latter case, it upheld a regulation under which the Commission had frozen the compensatory amounts in spite of a drop in the rate of the British and Irish pounds, recognizing that Article 3 of Regulation No 974/71 "may be interpreted as meaning that the exchange rates taken into account in order to establish the difference referred to is to be assessed on the basis of economically justified criteria, and that consequently it was open to the Commission to leave out of account rates which it considered to be unrepresentative" (paragraph 36).

The Court has thus accepted a fairly wide interpretation of the provisions relating to the fixing of the compensatory amounts where the reason for the contested measure was to respect as far as possible the real objectives of the rules and to avoid applying amounts which were economically unjustified.

In the light of that case-law, the disputed measure effecting the freezing should be considered justified and necessary having regard to the purpose of Regulation No 974/71. The preamble to that regulation makes clear that the compensatory amounts to be created should be limited to the amounts strictly necessary to compensate for the incidence of the Community measures on prices and that

they should be applied only in cases where such incidence would lead to difficulties. In the present case, however, it is doubtful whether a temporary monetary difference, corrected several days later, causes difficulties of such a nature as to justify an increase in the amounts for only a few days. That increase, far from maintaining the flow of trade, would on the contrary have been likely to stimulate disturbances artificially.

The Commission indicates that the level of Italian compensatory amounts on imports went from -1.7, the level applicable on 23 March, to -7.2 as from 30 March, which represents an increase of 324%. On 6 April, following the partial alignment of the Italian green rate on the central rate, the amounts would have been fixed at -1, which represents a drop of 86%.

In those conditions, the “mechanical” effect of Article 3 of Regulation No 974/71 would have caused, within a period of two weeks, two successive adjustments in opposite directions. This would have created, on the one hand, a risk of speculative practices and deflections of trade and, on the other hand, an insecurity in commercial relations more damaging to traders and to the smooth functioning of the common organizations than would have been the maintenance of the compensatory amounts at their previous rate.

It should also be noted that the freeze took place in the context of the policy of progressive dismantling or at very least, of strict limitation of the monetary compensatory amounts. That policy is closely linked to the creation of the European Monetary System, to the

alignment of the green rates on the central rates and to the widening of the franchises so as to diminish the monetary differences.

In the second place, the Commission points out that the applicant has established neither the existence of a “sufficiently serious breach” of the principles of the protection of legitimate expectation and non-discrimination, nor a “manifest and grave” disregard of the limits on the exercise of the powers of the Community (judgment of 25. 5. 1978 in Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL* [1978] ECR 1209; judgment of 5. 12. 1979, *Amylum*, cited above).

As regards the protection of legitimate expectation, the Commission claims that the applicant had no right to an immediate adaptation of the compensatory amounts and that, what is more, the disputed measure was not unforeseeable, in view of the established practice of the Commission where there is to be imminent alteration of the representative rates. The Court has recognized, in the *CNTA* case, cited above, that the system of compensatory amounts does not give traders a guarantee of the continuous operation of the system, nor does it constitute an exchange shortfall guarantee. Furthermore, compelling reasons of public interest, namely the smooth functioning of the machinery of the common organizations of the market, would in this case have opposed the taking into consideration of possible legitimate rights or expectations.

There is also no breach of the principle of non-discrimination. The so-called “equity” regulation, No 926/80, affects only traders for whom the monetary

event means an increased import or export charge, and thus is not aimed at the case of a simple loss of profit resulting from the frustration of the hope that a compensatory amount would be increased. On the other hand, the system of advance fixing of the compensatory amounts applicable in trade with non-member countries (Regulation No 243/78) cannot be extended to intra-Community trade, since if it were, traders might abuse the system of advance fixing for purely monetary reasons.

(c) The *Council* points out that the incomplete nature of the application does not allow it to make submissions as to the substance. It limits itself therefore to a few additional remarks on that subject.

As regards the complaint in the application that the Council did not adopt any equitable compensatory measure, it is for the Commission to adopt *ad hoc* transitional measures for the application of Regulation No 974/71. Furthermore, the applicant does not say on what basis the Council had a duty towards it to adopt a general measure. Finally, no consideration either of law or of logic requires the Council to make an instant alteration in the representative rates applicable in the field of agriculture there and then, as soon as a modification of the central rates takes place in the context of the European Monetary System.

Even supposing that the Council's action was contrary to Community law, that circumstance would not of itself be sufficient to give a right to damages. On the contrary, the effect of the *Bayerische HNL* judgment, cited above, is that, even

in the case of a legislative measure declared invalid, the individual may be required to accept certain harmful effects, in so far as the institution concerned has not manifestly and gravely disregarded the limits on the exercise of its powers.

The damage

(a) *Unifrex* alleges that the contested behaviour of the Community authorities has caused it damage amounting in all to FF 2 957 276.77. This figure consists of losses incurred on contracts concluded before the devaluation of the lira and carried out during the two months following that devaluation (23 March to the end of May 1981). It is equal to the difference, less the exchange risk, between the theoretical compensatory amounts which would have had to be granted if the freeze had not been decided upon and if an equity clause had been established, and the amounts which were in fact granted. The exchange risk results from the fact the amounts are modified only when the monetary difference referred to in Article 3 of Regulation No 974/71 changes by at least one point from the percentage used to fix the rate for the preceding week.

The claim for damages has been limited to two months, regard being had to the Commission's practice of not taking account of a period longer than two months for the application of the "equity clause".

(b) The *Commission* contests first of all the special nature of the damage. It also objects that the applicant has not established a relationship of cause and

effect between the damage pleaded and the conduct of the Commission and that, in any event, the effects of the "freeze" of the compensatory amounts could be felt only during the period of the "freeze", that is to say between 30 March and 5 April 1981.

IV — Oral procedure

The parties presented oral argument at the sitting on 1 February 1984.

The Advocate General delivered his opinion at the sitting on 14 March 1984.

Decision

- 1 By application lodged at the Court Registry on 21 October 1982, Unifrex, a limited liability company, of Marsannay-la-Côte (France), instituted proceedings against the Council and the Commission, under Article 178 and the second paragraph of Article 215 of the EEC Treaty, for damages for the loss which it claims to have suffered by virtue of the fact that the monetary compensatory amounts had not, during the period from 23 March to 5 April 1981, been adjusted to take account of the alterations in the relationships between currencies, and that no equitable compensation had been provided.
- 2 The applicant exports agricultural products and in particular cereals to Italy. In the contracts which it concludes with Italian traders, the prices of those goods are agreed in lire, account being taken of the compensatory amounts to be granted upon importation into Italy.
- 3 On 23 March 1981, in the context of an adjustment of the central rates within the European Monetary System, the Italian lira was devalued by 6% against the other currencies in the system. However, it was only with effect from 6 April 1981 that the Council, by Regulation No 850/81 of 1 April 1981 amending Regulation No 878/77 on the exchange rates to be applied in agriculture (Official Journal, L 90, p. 1), adjusted the representative rates used in the context of the common agricultural policy.
- 4 It is not contested between the parties that the monetary situation so created between 23 March and 6 April 1981 should normally have brought about a

modification of the monetary compensatory amounts pursuant to Article 3 of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition, 1971 (I), p. 257). Under the terms of that provision, if the difference between the rates serving as a basis for the calculation of the monetary amounts, within the meaning of Article 2 (1) of that regulation, changes by at least one point from the percentage taken as a basis for the preceding determination, the amounts are altered by the Commission in line with the change in the difference.

- 5 The Commission, however, left the compensatory amounts unchanged for the said period. By Regulation No 801/81 of 27 March 1981 concerning monetary compensatory amounts and differential amounts (Official Journal, L 82, p. 17), it even expressly provided that the amounts applicable for the week of 30 March to 5 April 1981 were identical to those applicable on 23 March 1981. According to the preamble to that regulation, the freeze in question was justified, as a precautionary measure, by the imminence of a Council decision to alter the representative rates.
- 6 It was only with effect from 6 April, the date of the adjustment of the representative rates, that the Commission, by Regulation No 902/81 of 3 April 1981 (Official Journal, L 94, p. 3), recalculated the compensatory amounts taking account of the alterations in both the central rates and the representative rates. As regards Italy, the amounts were fixed at -1.
- 7 Considering that that procedure infringed Community law and caused it damage, the applicant instituted the present application claiming damages in the amount of FF 2 957 276.77.

Admissibility

- 8 Both the Commission and the Council have raised objections with regard to the admissibility of the application.

- 9 The Commission contends that the application is inadmissible inasmuch as the applicant could have obtained compensation for the alleged damage in the national courts. It could have applied to the French administrative courts for an order annulling the decision of the ONIC by which the latter applied to it the disputed compensatory amounts. Such an action could have given rise to a reference for a preliminary ruling under Article 177 of the Treaty and thus allowed the Court to examine the validity of the provisions of the regulations in question.
- 10 On the other hand, the applicant claims that the action for damages is a means of redress independent of those available in national law. Moreover, no national means of redress likely to give it satisfaction is available in this case, since an action for annulment cannot lead to larger compensatory amounts being granted.
- 11 An established body of the case-law of the Court of Justice shows that the action for damages, pursuant to Articles 178 and 215 of the Treaty, was set up as an independent action, having its own particular place in the system of means of redress and subject to conditions for its use formulated in the light of its specific purpose. It must nevertheless be viewed in the context of the entire system established by the Treaty for the judicial protection of the individual. Where an individual considers that he has been injured by the application of a Community legislative measure that he considers illegal, he may, when the implementation of the measure is left to the national authorities, contest the validity of the measure, when it is implemented, before a national court in an action against the national authorities. That court may, or even must, as provided for in Article 177, refer the question of the validity of the Community measure in dispute to the Court of Justice. However, the existence of such a means of redress will be capable of ensuring the effective protection of the individuals concerned only if it may result in making good the alleged damage.
- 12 That is not so in this case. The applicant has shown, without being contradicted by the Commission, that proceedings for annulment in the national administrative courts could not, in this case, have effectively protected the applicant. Even if the disputed Community rules were declared invalid by a preliminary ruling of the Court given in the context of such proceedings and the national decision were annulled, that annulment could

not have required the national authorities to pay higher monetary compensatory amounts to the applicant, without the prior intervention of the Community legislature.

- 13 In those conditions, the Commission's objection cannot be accepted.
- 14 The Council, for its part, considers that the application is inadmissible because the originating application, contrary to Article 38 (1) (c) of the Rules of Procedure, does not state with sufficient clarity the subject-matter of the dispute nor does it state, even summarily, the grounds on which the application is based as regards the infringement allegedly committed by the Council.
- 15 However, the statement of the facts contained in the application as well as the details added in the course of the proceedings show clearly that the applicant complains that the Council did not immediately adopt appropriate measures to compensate for the monetary changes which took place on 23 March 1981. In those circumstances the Council was in fact enabled to adopt a position on the substance of the case, which it in fact did in its observations, and the Court is enabled to exercise its power of review.
- 16 Therefore, the Council's objection must also be rejected.

The substance

- 17 According to the applicant, the non-contractual liability of the Community derives from the fact that the Commission did not modify the monetary compensatory amounts for the period from 23 March to 5 April 1981 whilst the Council amended the representative rates only with effect from 6 April 1981. That procedure is contrary to the basic Regulation No 974/71, cited above, and breaches the principles of the protection of legitimate expectation and non-discrimination.
- 18 The applicant claims, in the first place, that the failure to adapt the compensatory amounts immediately to the monetary situation resulting from the adjustment of the central rates on 23 March 1981 infringed Article 3 of Regulation No 974/71, pursuant to which such amounts are altered in line

with the change in the monetary difference serving as a basis for the calculation of the compensatory amounts, if that difference changes by at least one point from the percentage taken as a basis for the preceding determination.

- 19 It should be stated in this respect that, although the said provision requires the Commission to alter the compensatory amounts once the conditions have been met, it does however leave it a certain discretion in choosing the time at which to implement the alterations.
- 20 That follows both from the terms and from the purpose of Regulation No 974/71. Article 3 of that regulation mentions no period within which the alteration of the monetary compensatory amounts must be effected, which implies that the alteration need not be immediate but that the Commission has a reasonable period allowing it to take its decision on the basis of the most reliable information. In practice, as the Commission points out in its observations, it has as a rule brought the new compensatory amounts into effect from the Monday of the week following that in which the monetary event in question took place. In this case, that date would be 30 March 1983.
- 21 It must also be added in this case that a Council decision adjusting the representative rates was imminent and that a regulation to that effect came into force on 6 April 1981, that is to say two weeks after the alteration of the central rates.
- 22 As the Court has recognized in an established body of case-law, starting with the judgment of 24 October 1973 (Case 5/73 *Balkan* [1973] ECR 1091), the establishment of compensatory amounts was intended to maintain the single-price system, the basis of the present organization of the markets, thus avoiding a disorganization of the system of intervention prices and maintaining normal patterns of trade in agricultural products both between the Member States and with non-member countries. The compensatory amounts can be applied therefore only in so far as the monetary measures referred to involve disturbances in trade in agricultural products.

- 23 That purpose would have been compromised and the effectiveness of the Council rules would have been set at naught if the Commission had adjusted the compensatory amounts during the brief period between the alteration of the central rates and the adaptation of the representative rates. In that case, as the Commission has pointed out in its observations, the level of compensatory amounts on imports into Italy would have gone from -1.7, the level applicable on 23 March, to -7.2 from that date, only to return to -1 from 6 April 1981, following the partial alignment of the representative rates of the lira on its central rate. However, such a development would not have been likely to maintain the patterns of trade, but, on the contrary, might well have artificially created disturbances by giving rise to speculative movements and, hence, distortions in patterns of trade.
- 24 Under those conditions, the submission alleging the infringement of Regulation No 974/71 must be rejected.
- 25 The applicant also alleges an infringement of the principle of the protection of legitimate expectation, a general principle of Community law. That principle is infringed in this case, it is claimed, because, contrary to established practice, the compensatory amounts were not adapted in good time to the change in the parities of the lira.
- 26 In this context, it should be emphasized in the first place, as the Court has already stated in its judgment of 15 May 1975, cited above, that the system of monetary compensatory amounts cannot be considered as guaranteeing traders against the risk of changes in the rates of exchange. To that must be added that in the present case, as the traders concerned could not have been unaware, negotiations were in progress at Council level with a view to an adjustment of the representative rates so as to avoid an increase in the compensatory amounts, and it was precisely because an imminent decision of the Council to that effect was awaited that Commission Regulation No 801/81, freezing the compensatory amounts during the week of 30 March to 5 April 1981, was introduced, as may be seen moreover from the preamble thereto.

- 27 Under those conditions, the applicant could not legitimately expect that the compensatory amounts would be modified before the Council had adjusted the representative rates. This submission must therefore also be rejected.
- 28 Finally, the applicant alleges a breach of the principle of non-discrimination, laid down in the second subparagraph of Article 40 (3) of the Treaty, inasmuch as the Community legislature has not laid down an "equity clause" for situations like those in the present case and has not allowed for advance fixing of compensatory amounts in intra-Community trade.
- 29 It points out in this context that where a monetary measure brings about an increase in the compensatory amounts, the Member State involved is authorized not to collect the compensatory amounts or that part of them corresponding to the increase, on imports or exports carried out pursuant to contracts firmly concluded before the monetary measure was introduced pursuant to Commission Regulation No 926/80 of 15 April 1980 on exemption from the application of monetary compensation amounts in certain cases (Official Journal, L 99, p. 15). On the other hand, no comparable equity clause is provided for cases in which the compensatory amounts are reduced or abolished by virtue of a devaluation of the currency of payment. Furthermore, if advance fixing of the amounts is allowed in trade with non-member countries, pursuant to Commission Regulation No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts (Official Journal, L 37, p. 5), such a possibility is not available in trade between the Member States.
- 30 As the Court has pointed out on many occasions, most recently in the judgment of 15 July 1982 (Case 245/81 *Edeka* [1982] ECR 2745), the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law. That principle means that like situations should not be treated differently unless such different treatment is objectively justified.
- 31 The Commission has alleged in that respect that the equity clause had been introduced, on an exceptional basis, to reduce the effect of the additional financial burden borne by traders on import or export. That cannot be

assimilated to a simple loss of profit resulting from the frustration of hopes for an increase in the compensatory amounts. On the other hand, the system of advance fixing of compensatory amounts applicable to trade with non-member countries, which also implies the advance fixing of refunds, could not be extended to intra-Community trade without running the risk that traders might abuse the advance fixing for purely monetary considerations.

- 32 In those circumstances, the Commission cannot be accused of acting arbitrarily in applying different treatment to the situations in question.
- 33 This submission must therefore also be rejected.
- 34 As the applicant has been unsuccessful in all its submissions, this application must be dismissed.

Costs

- 35 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading.
- 36 Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Mackenzie Stuart

Galmot

Due

Everling

Kakouris

Delivered in open court in Luxembourg on 12 April 1984.

For the Registrar

H. A. Rühl

Principal Administrator

Y. Galmot

President of the Fifth Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 14 MARCH 1984¹

*Mr President,
Members of the Court,*

1. The Court is called upon to adjudicate on a claim for damages brought against the Council and the Commission by a French undertaking operating in the international cereals market. The origin of the dispute is a Commission regulation temporarily freezing the monetary compensatory amounts in spite of the fact that the lira had been devalued. According to the applicant, that freeze caused it financial loss because no proportional increase in the compensatory amounts accompanied the reduction in prices brought about by the devaluation. The question before the Court therefore is to decide whether, or

within what limits the Commission may freeze the compensatory amounts when the exchange rates are subjected to variations which, normally, involve a more or less immediate adjustment.

Unifrex, a limited liability company, whose registered office is in France, exports agricultural products and in particular cereals to Italy. In the contracts concluded with Italian traders, the prices of those goods are agreed in lire. The compensatory amounts are paid direct to Unifrex by ONIC, the competent French body. It is in fact provided (Article 2a of Regulation No 974/71 of 12. 5. 1971, as amended by Regulation No 1112/73 of 30. 4. 1973)

¹ — Translated from the Italian.