JUDGMENT OF THE COURT (Fifth Chamber)
15 September 1994 *

In Case C-146/91,

Koinopraxia Enoseon Georgikon Synetairismon Diacheiriseos Enchorion Proionton (KYDEP), established in Athens, represented by Antonios Konstantopoulos, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen, Legal Adviser in the Legal Service, and Sofia Kyriakopoulou, also of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Director of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by Xenofon A. Yagatanas, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

* Language of the case: Greek.

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

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward, G. C. Rodríguez Iglesias, F. Grévisse and M. Zuleeg (Rapporteur), Judges,

Advocate General: W. Van Gerven,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 June 1993 at which KYDEP was represented by Antonios Constantopoulos and Philippos Spyropoulos, of the Athens Bar,

after hearing the Opinion of the Advocate General at the sitting on 15 September 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 May 1991, the Koinopraxia Enoseon Georgikon Synetairismon Diacheiriseos Enchorion Proionton Syn. PE (KYDEP) is seeking compensation from the Council of the European Union and

the Commission of the European Communities under Article 178 and the second paragraph of Article 215 of the EEC Treaty for damage suffered owing to the wrongful acts and omissions of the abovementioned institutions in the context of the Community rules adopted following the nuclear accident at Chernobyl.

2 KYDEP is a cooperative according to Greek law, established in Athens, comprising 93 unions of agricultural cooperatives. Each year it buys from Greek producers large quantities of cereals and vegetables which it stocks and sells.

3 From the 1986 harvest KYDEP bought 634 162 152 tonnes of durum wheat and 335 202 676 tonnes of common wheat with a view to either selling them in non-member countries or offering them for intervention.

4 Following the accident on 26 April 1986 at the Chernobyl nuclear power station, the Community progressively adopted rules concerning maximum radioactivity tolerances. Thus, as regards imports into the Community of certain groups of agricultural products from non-member countries, the Council adopted Regulation (EEC) No 1707/86 of 30 May 1986 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station (OJ 1986 L 146, p. 88, hereinafter referred to as 'Regulation No 1707/86'). As regards buying-in for intervention the Commission adopted Regulation (EEC) No 2751/88 of 2 September 1988 concerning a special

intervention measure in favour of durum wheat originating in Greece (OJ 1988 L 245, p. 13). As regards exports of certain groups of agricultural products originating in the Member States, the Commission adopted Regulation (EEC) No 3494/88 of 9 November 1988 amending Regulation (EEC) No 3665/87 laying down common rules for the application of the system of export refunds for agricultural products (OJ 1987 L 306, p. 24).

5 Accordingly, at the time of the 1986 harvest, only imports into the Community of certain groups of agricultural products such as wheat originating in non-member countries were governed by rules requiring the observance of certain radioactivity tolerances.

6 However, no Community rule of that kind had then been adopted for the intervention buying and exports of those products. That is why the Commission, on 24 July 1986, sent to the permanent representations of the Member States telex No VS-S-1/1187/86 D1/GG/G8. That telex, signed by the Director General for Agriculture, concerned the buying-in by the intervention agencies of products contaminated as a result of the Chernobyl accident and the grant of export refunds for those products. It was worded as follows:

'The attention of Member States is drawn to the fact that the Community rules relating to buying-in generally lay down that products offered must be of sound

and fair merchantable quality or not contain substances likely to damage human health. Furthermore, any agricultural product which is not merchantable owing to its characterisitics cannot be the subject of a buying-in contract.

Furthermore, as regards those products for which an export refund is applied for, it is pointed out, in accordance with the provisions of Article 15 of Regulation (EEC) No 2730/79 (OJ No L 317 of 12.12.1979), that the refund is granted for products of sound and fair merchantable quality and which cannot be excluded for the purposes of human consumption because of their characteristics or condition.

In view of the foregoing and in the light of Council Regulation (EEC) No 1707/86 (OJ No L 146 of 31.5. 1986), products which do not comply with the maximum tolerances of radioactivity laid down in Article 3 of the Regulation cannot be considered as fulfilling either the conditions laid down for intervention purchases or those governing entitlement to export refunds. Consequently, the financial costs involved will not be borne by the EAGGF.'

7 Regulation No 1707/86 subjected imports into the Community of certain groups of agricultural products, including durum wheat, originating in third countries, to the observance of certain maximum radioactivity tolerances. Under Article 3 of that Regulation:

'the accumulated maximum radioactive level in terms of caesium-134 and -137 shall be:

— 370 Bq/kg for milk falling within headings No 04.01 and No 04.02 of the Common Customs Tariff and for foodstuffs intended for the special feeding of infants during the first four to six months of life ...

— 600 Bq/kg for all other products concerned.'

8 The validity of Regulation No 1707/86, due to expire on 30 September 1986, was twice extended. On 22 December 1987 the Council adopted two regulations: Regulation (EEC) No 3955/87 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station (OJ 1987 L 371, p. 14), which essentially reproduces the provisions of Regulation No 1707/86, and whose period of validity is limited to two years; and Regulation (Euratom) No 3954/87 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (OJ 1987 L 371, p. 11). That regulation establishes a procedure for fixing maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs which may be marketed following a nuclear accident or any other radiological emergency and is likely to lead or has led to significant radioactive contamination of foodstuffs and feedingstuffs.

9 Moreover, the Commission imposed a co-responsibility levy on 2 367 000 tonnes of Greek cereals on the basis of Article 4(5) of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the markets in cereals (OJ 1975 L 281, p. 1), as amended by Council Regulation (EEC) No 1579/86 of 23 May 1986 (OJ 1986 L 139, p. 29).

10 KYDEP makes three series of allegations against the Council and the Commission.

11 First of all, KYDEP criticizes the Commission for sending the telex informing the national authorities that no agricultural product exceeding certain maximum radioactivity tolerances applicable to imports may be regarded as satisfying the conditions for intervention buying-in or for obtaining export refunds.

12 In that connection KYDEP argues that the telex in question constitutes an unlawful means of prohibiting the submission for intervention of agricultural products whose radioactivity level exceeds certain tolerances or the grant of export refunds for such products.

13 In the event that the telex does not constitute a binding legal instrument, KYDEP argues that the matters stated in the telex are inaccurate and likely to occasion loss to traders.

14 In that connection KYDEP relies on four different arguments:

— first, the telex is without any legal basis;

— secondly, the telex is *ultra vires* the Commission;

— thirdly, the telex reproduced the maximum radioactivity levels fixed unlawfully by the Council in Regulation No 1707/86, which are themselves unlawful. The alleged unlawfulness in this respect of the Regulation is based on an infringement of the principle of non-discrimination laid down in the second paragraph of Article 40(3) of the EEC Treaty, and on an infringement of the principle of

proportionality and an erroneous assessment of the factual basis underlying Regulation No 1707/86;

— fourthly, the telex constitutes an infringement of the principles of the free movement of goods and exports, as provided for in Articles 12 and 21 of Regulation No 2727/75 and Articles 9, 30, 34 and 110 of the EEC Treaty.

15 KYDEP goes on to criticize the Commission for imposing after the Chernobyl accident a co-responsibility levy on wheat produced in Greece although it was not merchantable.

16 Finally, KYDEP alleges various omissions by the Commission and the Council. The Council, it says, did not adopt, or delayed in adopting measures concerning intervention buying and export refunds, and made no provision for financial aid in favour of Greek cereals contaminated as a result of the Chernobyl accident. The Commission, it says, delayed for too long in proposing definitive rules concerning radioactive contamination of foodstuffs.

17 KYDEP therefore requests the Court to:

(i) declare the application admissible;

(ii) order the Council and the Commission jointly and severally to pay, for the acts and omissions for which they are liable and which are set out in detail in

the first part of the application, the amount of DRS 46 642 266 903, as stated in the second part of the application, together with interest at the rate applicable in Greece, namely 34%, with effect from the date of service of the application until the date of payment;

(iii) order the defendants to pay the costs.

8 The Council of the European Union and the Commission of the European Communities for their part contend that the action should be dismissed as unfounded and the applicant ordered to pay the costs.

The basic principles of non-contractual liability

9 It is settled case law that the Community's non-contractual liability under the second paragraph of Article 215 of the EEC Treaty is dependent on the coincidence of a series of conditions as regards the unlawfulness of the acts alleged against the Community institutions, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of (see, in particular, the judgment in Cases C-258/90 and C-259/90 *Pesquerias de Bermeo* and *Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42).

10 The Court's examination must therefore begin with the allegation that the institutions conducted themselves unlawfully.

The unlawful nature of the conduct alleged against the Council and the Commission

21 As already stated at paragraphs 10 to 16 hereof, KYDEP's arguments relate, first of all, to the Commission's telex, then to the imposition of the co-responsibility levy and finally to various omissions by the Council and the Commission.

I — *As regards the Commission's telex*

A. *The binding nature of the telex*

22 KYDEP argues that the telex in question constitutes a legal act which unlawfully compelled the Member States to refuse to accept for intervention agricultural products whose levels of radioactivity exceeded certain maximum limits or to refuse to grant export refunds for such products.

23 That argument cannot be upheld.

24 As the Court has already held in its judgment in Case C-371/92 *Elliniko Dimosio* v *Ellinika Dimitriaka* [1994] ECR I-2391, paragraph 17, the telex at issue is not an act binding on the Member States. It simply gives the Commission's interpretation

of the concept of a 'sound, fair and merchantable' product 'fit for human consumption' as provided for in accordance with the terms of Commission Regulation (EEC) No 1569/77 of 11 July 1977 fixing the procedure and conditions for the taking over of cereals by intervention agencies (OJ 1977 L 174, p. 15), and in Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1979 L 317, p. 1).

25 That interpretation does not have the force of law and can bind neither the competent authorities of the Member States nor, *a fortiori*, individuals. Therefore, the telex does not constitute a legal decision by the Commission prohibiting the delivery into intervention of agricultural products whose levels of radioactivity exceed certain maximum limits or the grant of export refunds for such products.

26 None the less, it must be acknowledged that although the telex at issue had no binding force it was likely to prompt the competent authorities of the Member States to refuse to buy in for intervention agricultural products whose radioactivity levels exceeded certain maximum limits or to grant export refunds for such products. The Member States were at risk, had they ignored the interpretation given by the Commission in the telex at issue, of having the reimbursement of their expenditure incurred for the agricultural products in question refused by the EAGGF.

27 It is therefore necessary to examine the alleged incompatibility of the Commission's telex with Community law.

B. *The alleged incompatibility of the content of the telex with Community law*

1. Legal basis of the telex

28 On this point KYDEP argues in the first place that the Commission's telex is without any legal basis, but that such a basis is indispensable having regard to the decisive impact which the telex had on the conduct of the Hellenic authorities.

29 That argument cannot be upheld.

30 As the guardian of Community law and managing authority of the EAGGF, the Commission has the power to remind the Member States of the Community rules which they are obliged to apply and in the context of its collaboration with the national authorities to give its own interpretation of those rules.

31 Secondly, KYDEP considers that in declaring applicable to intervention buying-in and the grant of export refunds the maximum levels of radioactivity laid down in Regulation No 1707/86 for imports into the Community of agricultural products originating in third countries the telex at issue is *ultra vires* the Commission.

32 That argument, challenging the interpretation given by the Commission in the telex, must also be rejected.

33 When the maximum levels of radioactive contamination permissible for buying-in and for the grant of export refunds have not yet been laid down in a regulation, it is appropriate for the purpose of describing an agricultural product as being of sound and fair merchantable quality within the meaning of Regulation No 1569/77 to apply existing levels for imports into the Community of those products. The risk that contaminated products pose to human health does not in fact depend on the manner in which trade in those products is carried on.

2. The validity of Regulation No 1707/86

34 Thirdly, KYDEP argues that the Commission reproduced in its telex the maximum levels of radioactivity laid down by the Council in Regulation No 1707/86 which are themselves unlawful.

35 Thus, KYDEP is by implication challenging the validity of Regulation No 1707/86. In that respect it puts forward three different arguments based, first, on an infringement of the principle of non-discrimination laid down in the second subparagraph of Article 49(3) of the EEC Treaty, secondly, on an infringement of the principle of proportionality and, thirdly, on an erroneous assessment of the facts underlying Regulation No 1707/86.

a. The alleged infringement of the principle of non-discrimination laid down in the second subparagraph of Article 40(3) of the EEC Treaty

6 According to KYDEP, the Council infringed the principle of non-discrimination laid down in the second subparagraph of Article 40(3), inasmuch as in Regulation (EEC) No 3955 of 22 December 1987 it fixed the maximum permissible levels of radioactive contamination at 370 Bq/kg for milk and 600 Bq/kg for all the other products in question, whereas in Regulation (Euratom) No 3954/87 of the same

date it allows higher maximum permissible levels for future accidents, namely 1 000 Bq/kg for milk products and 1 250 Bq/kg for other foodstuffs. That difference is said not to be objectively justified.

37 That argument is ill-founded. As the Council and the Commission have rightly argued, the two regulations of 22 December 1987 differ in content and objectives.

38 Whereas Regulation (EEC) No 3955/87 specifically concerned the consequences of the Chernobyl accident and laid down the maximum levels of radioactive contamination in order to deal with that specific situation, Regulation (Euratom) No 3954/87 established a permanent system enabling the Community to lay down maximum levels of radioactive contamination in the event of future nuclear accidents or other emergency situations. As is apparent from Article 2(1) and 3(4) of that regulation, the figures in the annex are merely of an ancillary nature and are only provisionally applicable, that is pending a decision laying down in actual cases precise maximum levels of radioactive contamination.

39 Since the two regulations of 22 December 1987 relate to different situations, the ancillary maximum levels contained in Regulation (Euratom) No 3954/87 could properly be fixed at a higher level than the specific maximum levels of Regulation (EEC) No 3955/87 without infringing the second subparagraph of Article 40(3).

b. The alleged infringement of the principle of proportionality

40 KYDEP considers that the principle of proportionality was infringed inasmuch as the maximum permissible levels of radioactive contamination laid down in

Regulation No 1707/86, namely 370 Bq/kg for milk and 600 Bq/kg for all the other products concerned, including cereals, went further than was necessary in order to attain the objective of that regulation, namely the protection of the health of the consumer in the Community.

41 The Council admits that scientific thinking on minimum reference levels of contamination permissible in relation to the health of consumers was not yet fully developed at the time when Regulation No 1707/86 was adopted. However, it argues that the adoption of that regulation and the establishment of provisional maximum limits were necessary as a matter of urgency in order to confront the serious threat to the health of the population in the Community posed by imports of foodstuffs originating in non-member countries.

42 Moreover, it stresses that, in the absence of international norms determining the maximum levels of radioactive contamination of foodstuffs, the maximum limits laid down in Regulation No 1707/86 took account of all information available at the time, in particular the opinions of national experts on radioactivity and foodstuffs, the recommendations of the International Commission on Radiological Protection (ICRP) and the instructions of the US Food and Drug Administration. For its part the Commission stresses that the maximum tolerances put forward by it and reproduced in Regulation No 1707/86 were also established on the basis of all available scientific information having regard to the reactions of public opinion and public bodies in both the Member States and non-Member States. These tolerance levels were moreover subsequently accepted by all the Member States in intracommunity trade and by twenty non-member countries.

43 KYDEP has adduced no evidence to establish that the maximum levels laid down by Regulation No 1707/86 were in fact more restrictive than the protection of the

health of consumers required. On the contrary, its arguments are of a general nature and contain nothing, whether scientific or of any other nature, capable of refuting the assertion by the Council and the Commission that those tolerances entirely accorded with the factual and scientific information available at the time of the Chernobyl nuclear disaster.

44 Under those circumstances no infringement of the principle of proportionality has been proven and the argument in that connection must likewise be rejected.

c. The argument based on a manifestly erroneous assessment of the facts

45 Finally, KYDEP maintains that the maximum tolerances laid down in Article 3 of Regulation No 1707/86 arise from a manifestly erroneous assessment of the facts; that is said to be for two reasons. First, they concern only the retail selling of milk, and not cereals and other products. Secondly, although wheat is not directly intended for human consumption but must first be processed into flour, radioactivity is measured on the pericarp, that is the part of the fruit enveloping the grain. The level of radioactivity inside the grain is less by half than that measured on the outside surface. That being the case, flour evidently enjoys much more favourable treatment than wheat.

46 The Commission and the Council both refute this argument. The Commission explains that in the case of milk products the maximum tolerances must be fixed at one of the final stages of marketing, in view of the fact that the milk is subject in processing to concentration and dehydration which has the effect of increasing the rate of contamination for the same product mass. Foodstuffs intended for babies also need to be subject to stricter rules. For products other than milk products, the

methods of processing and the intended purposes are so many that it is not possible to determine in advance the permissible level of radioactivity of the final product on the basis of the raw material. The Commission underlines that in any event the limit of 600 Bq/kg applied only to the basic products. Other measures were adopted later for processed products which were merchantable to the extent to which their rate of radioactive contamination diminished.

KYDEP adduces no argument to invalidate the factual information provided by the Commission but merely expresses its disagreement in general terms. That line of argument does not suffice to demonstrate that the Community institutions misdirected themselves in the assessment of the facts underlying Regulation No 1707/86. The third argument must therefore also be rejected.

Since none of the arguments put forward to contest the validity of Regulation No 1707/86 is well founded, the Commission's telex is not vitiated by a legal defect as a result of the fact that it reproduces those maximum levels of radioactivity.

C. *The alleged infringement of the principles of the free movement of goods and the freedom to export*

Fourthly, KYDEP submits that the sending of the telex by the Commission constitutes an infringement of the principles governing the free movement of goods and the freedom to export, as provided for in Articles 12 and 21 of Regulation No 2727/75 and Articles 9, 30, 34 and 110 of the EEC Treaty.

50 As to that, the principles of the free movement of goods and the freedom to export may be made subject to restrictions relating to the protection of public health.

51 That is so in the case of the telex in question. The maximum radioactivity tolerances for foodstuffs for human consumption laid down in Regulation No 1707/86 to which the contested telex refers are in fact intended to protect the health of consumers. Moreover, it is clear from the above analysis that those maximum tolerances were set at a level which is indispensible in order to attain that objective.

52 It follows from all the foregoing that the arguments relied on by KYDEP to counter the interpretation given in the contested telex are ill-founded.

II — *The imposition of a co-responsibility levy*

53 KYDEP criticizes the fact that following the Chernobyl disaster the Commission imposed a co-responsibility levy on 2 367 000 tonnes of Greek cereals which however were not merchantable. According to KYDEP, that levy had the effect of discriminating against Greece as opposed to other Member States in the cereals sector.

54 In accordance with Article 4(5) of Regulation No 2727/75, as amended by Regulation (EEC) No 1579/86, a co-responsibility levy is to be collected on cereals

which undergo initial processing, which are bought in for intervention or are exported in the form of grain.

According to the Commission, the whole of the Greek cereal production for 1986 and 1987, the years in which the problem of radioactivity arose, was either processed and consumed on the internal market or exported in the form of grain to non-member countries. The Commission stresses that those operations were made possible by the fact that the level of radioactivity diminishes considerably on the processing of contaminated cereals or their admixture to other cereals.

KYDEP has not rebutted or even challenged these factual statements by the Commission. The Greek cereals must therefore be regarded as having entered the channels of trade, thus satisfying the condition for the imposition of the co-responsibility levy.

In those circumstances the submission based on the collection of the co-responsibility levy must be rejected.

III — *The alleged omissions by the Council and the Commission*

As a preliminary point it should be remembered that omissions by the Community institutions give rise to liability on the part of the Community only when the institutions have infringed a legal obligation to act under a provision of Community law.

A. *The Council's alleged omissions*

59 KYDEP maintains first of all that, under Article 39(1)(b) and (c) and the second subparagraph of Article 40(3) of the EEC Treaty in conjunction with Article 8 of Regulation No 2727/75, as amended by Regulation No 1579/86, the Council was under an obligation at the time of the Chernobyl disaster to adopt measures concerning intervention buying-in and export refunds and to make provision for financial aid in favour of Greek cereals contaminated as a result of the Chernobyl accident. By declining to adopt or by delaying over the adoption of such measures, the Council, KYDEP says, infringed those provisions and misdirected itself in such a way as to found the Community's non-contractual liability.

1. The alleged infringement of Article 39(1)(b) and (c) of the Treaty

60 KYDEP argues that, by not adopting the abovementioned measures at the time of the Chernobyl accident, the Council impeded the attainment of two objectives of the common agricultural policy in the cereals sector which are mentioned in Article 39(1)(b) and (c) of the EEC Treaty, namely the securing of a fair standard of living for the agricultural community and market stabilization.

61 The Court has consistently held that the Council enjoys a wide margin of discretion in the attainment of the various objectives set out in Article 39 (see judgment in Case 106/81 *Kind* v *Council* [1982] ECR 2885). In the exercise of that power, the Council cannot, however, disregard requirements relating to the public interest

such as the protection of consumers or of the health and life of humans (see judgment in Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, paragraph 12).

62 In view of the particular circumstances prevailing following the Chernobyl accident which were typified both by the novelty and gravity of the threat hanging over the health of consumers and by the lack of scientific knowledge which might have enabled the consequences of such an accident to be accurately assessed, the Council could do no more in the framework of the common agricultural policy than proceed on a step-by-step basis as and when the requisite information for determining the maximum levels of radioactivity permissible in the marketing of the contaminated agricultural products became available.

63 Under those circumstances Article 39 cannot form the basis of a legal requirement on the part of the Council immediately after the Chernobyl accident to bring the rules on intervention buying and export refunds into line with the actual situation.

64 This allegation cannot therefore be upheld.

2. The alleged infringement of Article 40(3), second subparagraph, of the Treaty

65 KYDEP maintains that, by not adopting special measures in favour of the cereals sector in Greece, the Council discriminated against Greek territory which was affected by the consequences of the Chernobyl accident much more than the rest

of the Community. The principle laid down in the second paragraph of Article 40(3) was therefore infringed.

66 The Court has consistently held that discrimination consists in treating differently situations which are identical, or in treating in the same way situations which are different (see judgments in Case 8/82 *Wagner* v *BALM* [1983] ECR 371, paragraph 18, and in Case 58/86 *Coopérative Agricole d'Approvisionnement des Avirons* v *Receveur des Douanes* [1987] ECR 1525, paragraph 15).

67 In the present case KYDEP claims that the cereals sector in Greece was in a different situation but was treated in the same way as the rest of the Community.

68 That argument cannot be upheld. In fact Greece was not the only region to have been seriously affected by the Chernobyl accident. As is apparent from the statistics supplied by the Commission to the Court, two regions of the Community, namely the south of Germany and the north of Italy were subjected to even greater radioactivity than Greece. KYDEP has supplied no figure or other information to show that the level of contamination of agricultural products, in particular wheat, was higher in Greece than in the rest of the Community. In those circumstances KYDEP has not established the existence of a special situation requiring the Community institutions to adopt specific measures.

69 In those circumstances the allegation based on the infringement of the principle of non-discrimination contained in the second paragraph of Article 40(3) of the Treaty must be rejected.

3. The alleged infringement of Article 8 of Regulation No 2727/75

70 Finally, KYDEP argues that in view of the special problems of Greek producers and traders, the Council was obliged to adopt specific intervention measures in pursuance of Article 8 of Regulation No 2727/75, as amended by Regulation No 1579/86, and to grant special financial aid in order to neutralize the consequences of the Chernobyl accident.

71 That allegation must also be rejected.

72 Article 8(1) of Regulation No 2727/75, as amended by Regulation No 1579/86 provides:

'1. Particular intervention measures may be adopted whenever the market situation in certain regions of the Community so requires.'

....

73 The possibility afforded by Article 8 of Regulation No 2727/75 was in fact availed of by the Commission in Regulation No 2751/88 mentioned above which specifically contains special intervention measures for durum wheat in Greece.

74 As to the grant of special financial aid, suffice it to state, as the Council rightly contended, that neither the Treaty nor Regulation No 2727/75 require the Council to adopt financial measures in direct compensation of the losses suffered by the producers following natural catastrophes or other exceptional occurrences.

75 It follows from these considerations that the three claims made by KYDEP concerning the Council's alleged failure to adopt measures on intervention buying-in, export refunds and financial aid in favour of Greek cereals contaminated as a result of the Chernobyl accident must be rejected.

B. *The Commission's alleged omissions*

76 In parallel, KYDEP alleges that the Commission delayed for too long in submitting a proposal for a definitive regulation concerning the radioactive contamination of foodstuffs. It emphasizes that at its meeting of 30 May 1986 at which Regulation (EEC) No 1707/86 was adopted the Council requested the Commission to submit without delay a proposal for a regulation concerning, in particular, the radioactive contamination of foodstuffs. It was not until thirteen months later, on 2 July 1987, that the Commission submitted a proposal which became Regulation (Euratom) No 3954/87.

77 The Commission does not contest these facts but considers that in view of the complexity of the subject-matter and the divergent views of the experts, thirteen months constitute in the circumstances a reasonable period for submitting a proposal. It recalls that during that period it organized an international symposium comprising 100 experts from 27 countries and representatives of the competent international organizations in order to gather the scientific data necessary for determining national permissible levels of radioactive contamination.

In view of the complex and technical nature of the subject-matter and the paucity of scientific knowledge available to the Commission at the time of the Chernobyl accident with regard to permissible levels of radioactivity in foodstuffs, difficulties which KYDEP does not contest, a period of thirteen months to submit a proposal for definitive Community rules cannot be regarded as excessive. Accordingly, the Community cannot incur liability as a result of the manner in which this situation was addressed.

Accordingly, the allegations made by KYDEP as to an omission on the part of the Commission must also be rejected.

It follows from all the foregoing considerations that in the present case there was no act or omission by the Council or the Commission of an unlawful nature.

Since the first condition governing the Community's non-contractual liability under the second paragraph of Article 215 of the Treaty is not satisfied the application must be dismissed in its entirety without its being necessary to examine the other preconditions for such liability, namely the fact of damage and the existence of a causal link between the conduct of the institutions and the damage complained of.

Costs

Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. 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 as inadmissible;

2. Orders the applicant to pay the costs.

Moitinho de Almeida Edward

Rodríguez Iglesias Grévisse Zuleeg

Delivered in open court in Luxembourg on 15 September 1994.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber