# REPORT FOR THE HEARING
delivered in Case 278/84 *

## I — Facts and issues

1. The Community system of common prices for agricultural products was initially based on prices fixed for all Member States in units of account (replaced in 1979 by the ECU). The prices were converted into national currency on the basis of fixed parities notified to and accepted by the International Monetary Fund.

Since, however, other parities in the currencies of Member States applied in the economy in general, it proved necessary by means of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture (Official Journal, English Special Edition 1971 (I), p. 257) to introduce a system of monetary compensatory amounts which in commercial dealings was intended to compensate for the difference between the agricultural conversion rate and the actual rate of exchange by means of the payment or charging of appropriate amounts.

Although the system of monetary compensatory amounts in principle allowed support prices fixed in units of account to be maintained at the same amount for all Member States, the system led to price levels in national currency varying from one Member State to another. Any increase in prices in units of account without an adjustment of the fixed parities *per se* involved a corresponding increase in the difference already existing between the prices in national currency. Consequently, it was necessary to reduce the monetary compensatory amounts. To that end a 'representative' rate was introduced in 1975 for all the currencies of the Member States which was closer to economic reality in the agricultural sector and was intended to serve as a basis for the calculation of national agricultural prices.

2. In order to overcome the difficulties caused by monetary compensatory amounts and to reintegrate the agricultural sector into the general economy by aligning the representative rates on the actual rates (the 'central' rates), the Council adopted Regulation No 855/84 of 31 March 1984 on the calculation and the dismantlement of the monetary compensatory amounts applying to certain agricultural products (Official Journal 1984, L 90, p. 1). That regulation provides on the one hand for changes in the calculation of the monetary compensatory amounts (Article 1) and on the other for alteration of the representative rates and 'compensatory measures' (Articles 2 to 6).

(a) Article 2 provides that the annexes to Council Regulation No 1223/83 of 20 May 1983 on the exchange rates to be applied in agriculture (Official Journal 1983, L 132, p. 33) are to be replaced by the annexes to Regulation No 855/84. It follows that for cereals, sugar and potato starch the following changes have been made in the representative rates for the Federal Republic of Germany:

Value of the ECU

| | *Until 31 December 1984* | *From 1 January 1985* |
|---|---|---|
| Cereals | DM 2.52875 | DM 2.39792 |
| Sugar | DM 2.51457 | DM 2.38516 |
| Potato starch | DM 2.51457 | DM 2.38516 |

* Language of the Case: German.

(b) In the Federal Republic of Germany the new representative rates led to a reduction in the support prices, expressed in DM, of some 5.2% from 1 January 1985. That revaluation of the representative rates led to a reduction in agricultural income in Germany and as compensation the German Government was authorized under Article 3 of Regulation No 855/84 to grant special aid to German agricultural producers not exceeding 3% of the ex-VAT price paid by the purchaser for the agricultural product.

(c) Article 4 provides that the Community is to contribute to the financing of the aid referred to in Article 3 on a degressive basis at a rate of 120 million ECU in 1985 and 100 million ECU in 1986.

(d) Article 7 of Regulation No 855/84 provides that:

'Transitional measures necessary for:

(i) easing the passage from one system for calculating monetary amounts to the other,

(ii) avoiding disturbances following the revaluation of the representative rates of the German mark and the Dutch guilder as at 1 January 1985,

may be adopted according to the procedure provided for in Article 6 of Regulation (EEC) No 974/71.'

3. The detailed rules to which Article 6 of Regulation No 974/71 in turn refers are contained in Article 26 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1). The so-called Management Committee procedure involves referring the matter to a committee, composed of representatives of the Member States, presided over by a representative of the Commission; the committee then has to deliver an opinion on the draft measures submitted by the Commission. Article 26 (2) stipulates that the committee has to deliver its opinion 'within a time-limit set by the chairman according to the urgency of the matter'. If the committee does not deliver an opinion within the prescribed period the Commission may adopt the measures in question.

Those provisions are supplemented by the internal regulations of the Agricultural Management Committees. According to that regulation the chairman of the committee is to draft the agenda (Article 2). Article 3 of the internal regulation reads:

'The convening of the meeting, the agenda, the draft measures for which the opinion of the committee is requested and any other working papers shall be communicated by the chairman to the representatives of the Member States on the committee .... These documents must reach the permanent representations of the Member States no later than eight days before the date of the meeting.

In emergencies, at the request of a representative of a Member State or on his own initiative, the chairman may reduce the minimum period for communication referred to in the preceding paragraph to two clear days that are not public holidays before the date of the meeting ...

In cases of the greatest urgency, at the request of a representative of a Member State or on his own initiative, the chairman may include the matter on the agenda of a meeting in the course of that meeting.'

Article 4 reads:

'Where an opinion is requested, if an important amendment is made to the draft, or if a draft the subject of which is included on the agenda has been submitted during the meeting, or if a new matter is included on the agenda, the chairman, at the request of a representative of a Member State, shall postpone the vote to the end of the meeting; in the event of particular difficulties, he shall extend the meeting to the following day.'

The internal regulation was adopted at a joint meeting of the Agricultural Management Committees on 22 July 1965. The following declarations were included in the minutes of the meeting:

*'Article 3*

It is agreed that this provision should not allow either the Commission or the Member States to introduce matters that are not clearly of absolute necessity.

The chairman states that determination of the urgency of an issue to be included in the agenda shall ultimately be within the discretion of the chairman.

*Article 4*

It is agreed that the purpose of postponing the vote to the end of the meeting or of extending the meeting to the following day is to allow the delegations to obtain instructions.'

4. Regulation No 855/84 entered into force on 1 April 1984.

From May 1984 the German Government intervened several times to request the Commission to settle the problems connected with the application of the new conversion rate by providing compensation for the price reductions which were to take place on 1 January 1985 in the Federal Republic of Germany.

On the one hand, following a request from the German Government, the Council, by Decision 84/361 of 30 June 1984 concerning an aid granted to farmers in the Federal Republic of Germany (Official Journal 1984, L 185, p. 41), increased from 3 to 5% the maximum rate of special aid granted to German farmers pursuant to Article 3 of Regulation No 855/84 and authorized such aid to be granted from 1 July 1984.

On the other hand the German Minister for Food, Agriculture and Forests, Mr Kiechle, *inter alia* in a letter dated 20 July 1984, drew the Commission's attention to the fact that the reduction in prices would also affect wholesale and retail traders and the processing industry. In the Minister's view the Commission should act before the end of that month by virtue of the power given it by Article 7 of Regulation No 855/84 to fix Community-financed compensation for the reduction in prices; it was urgently necessary to resolve the problem for, with the harvest imminent, considerable difficulties on the German market might be expected if there were no statement about possible compensation.

In a letter dated 29 August 1984 the Secretary for State, Mr Rohr, informed the Commission that in view of the unexpected

size of the harvest and the fact that the Commission had still not taken a decision on compensation for the fall in prices, the economy was in a state of complete uncertainty. Moreover, the markets were so disturbed that the circles were more and more inclined to seek protection by recourse to intervention. In view of the Community's clear responsibility for the problems the German Government was not able to finance compensation out of the national budget. In the German Government's opinion only speedy intervention by the Commission could limit the damage which threatened the markets and finances of the Community.

5. On 14 September 1984 the Commission published the following notice in Official Journal L 244, p. 45:

'Interested parties are hereby informed of the Commission's intention to adopt in the cereals sector measures under Article 7 of Regulation (EEC) No 855/84, in order to avoid abnormally high intervention purchases due to the modification of the representative rate for the Deutschmark ... on 1 January 1985. These measures may be applied to quantities offered to an intervention agency from the day of publication of this notice.'

6. By a telex message of 18 September 1984, received by the competent authorities of the Federal Republic of Germany at 12.36 p.m. the same day, the members of the Agri-monetary Management Committee (cereals and sugar sectors) were invited to a meeting to be held at 10 a.m. on 20 September 1984. According to the notice of meeting the first matter on the agenda was an 'opinion on a proposal for a Commission regulation on transitional measures in view of the revaluation of the representative rate of the Deutschmark ... on 1 January 1985'. The draft was not included with the notice of meeting.

At the meeting of the Management Committees on 20 September 1984 the draft Commission regulation was distributed as a meeting document. The meeting of the Management Committees was adjourned at 12.30 p.m. and was not resumed until 3 p.m. The final vote was taken at 4 p.m. without an opinion being delivered. The summary minutes of the meeting states that the German delegation 'on principle strongly opposed the measures proposed by the Commission and referred to declarations made by its Minister to the Council', that in relation to the 'adjustment of the minimum prices (Article 3): ... the German delegation pointed out that it would be appropriate to fix different average rates depending on whether beet or potatoes were involved and having regard to the various representative rates in the sugar and cereals sectors and further [it would like] it to be expressly stated whether the average rate contemplated would also apply to potatoes already delivered for starch manufacture ... The German delegation [challenged] the measures themselves and the validity of Article 7 of Regulation No 855/84 as a basis for measures adversely affecting German traders'.

7. On 20 September 1984 the Commission adopted Regulation No 2677/84 on transitional measures in readiness for the revaluation of the representative rate for the German mark on 1 January 1985, which was published in the Official Journal of 21 September 1984 (L 253, p. 31) and entered into force the same day. The regulation contains certain transitional provisions

specific to the cereals, sugar and potato starch sectors.

(a) With regard to cereals the Commission fixed a limit on the quantities which might be delivered to the intervention agencies before 1 January 1985 at the old rate of the German mark. Article 1 of Regulation No 2677/84 reads:

'1. The German intervention agency shall purchase the quantities of common wheat, barley and rye offered to it during the period 14 September to 31 December 1984 on the following terms:

(a) the buying-in price converted into national currency on the basis of the representative rate valid until 31 December 1984 shall apply to:

(i) common wheat, barley and rye harvested in Germany, and

(ii) a maximum quantity of 2 500 000 tonnes less any quantities offered to and accepted by the German intervention agency during the period 1 August to 13 September 1984;

(b) the buying-in price converted into national currency on the basis of the representative rate valid with effect from 1 January 1985 shall apply to all the other quantities of common wheat, barley and rye offered to the German intervention agency.

2. Paragraph 1 shall not apply to quantities of common wheat of bread-making quality bought in by the intervention agency concerned under Regulation (EEC) No 1810/84.

3. The German authorities shall adopt the procedures required for the implementation of this article by applying, should the quantity referred to in paragraph 1 (a) be exceeded, a *pro rata* distribution of the quantities offered. They shall, moreover, be free to determine the breakdown of the quantity referred to in paragraph 1 (a) among the cereals concerned as well as by period.'

(b) With regard to sugar the Commission decided on the one hand to bring forward the application of the new revalued rate for intervention purchases to 21 September 1984 and on the other to apply for the whole of the 1984/85 marketing year (1 July 1984 to 30 June 1985) a weighted rate for the conversion into national currency of the minimum prices for sugarbeet which would have to be paid by sugar manufacturers under Council Regulation No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal 1981, L 177, p. 4). Articles 2 and 3 (1) of Regulation No 2677/84 provide:

*'Article 2*

As regards offers of sugar accepted by the German intervention agency as from the date on which this regulation enters into force, the buying-in prices for white sugar and raw sugar shall be converted into national currency on the basis of the representative rate valid with effect from 1 January 1985.

*Article 3*

1. As regards the minimum prices for A and B sugarbeet referred to in Article 3 of Regulation (EEC) No 1106/84 to be paid in the

Federal Republic by sugar manufacturers to sugarbeet producers for the entire 1984/85 marketing year, these shall be converted into national currency at the following rate: 1 ECU = DM 2.41751.'

(c) Finally, as regards potato starch Regulation No 2677/84 provides, as in the case of the minimum prices of beet, for an adjustment for the whole of the 1984/85 marketing year of the minimum price payable to potato producers at the delivered-to-factory stage under Article 3(1) of Regulation No 2742/75 of the Council of 29 October 1975 on production refunds in the cereals and rice sectors (Official Journal 1975, L 281, p. 57) in order to ensure that potato producers receive a fair income. Article 3 (2) of Regulation No 2677/84 reads:

'As regards the minimum amount of 266.81 ECU referred to in Article 3 (1) of Regulation (EEC) No 2742/75 as a component of the price to be paid in Germany by starch manufacturers to potato producers for the entire 1984/85 marketing year, this amount shall be converted into national currency at the following rate: 1 ECU = DM 2.43063.'

(d) The following reasons are given for those transitional measures in the recitals in the preamble to Regulation No 2677/84:

'1. . . .

2. Whereas, where cereals are concerned, abnormally high deliveries into intervention before 1 January 1985 may lead to disturbances on the market and a disruption of the intervention system in the Federal Republic of Germany; whereas a maximum limit should therefore be fixed for the quantity of cereals produced in the Federal Republic which may still be sold to the intervention agency of that Member State until 31 December 1984 at buying-in prices converted into national currency on the basis of the representative rate currently in force, the buying-in prices payable in respect of any other quantities offered to the German intervention agency being subject to the new rate; whereas the said limit must be determined on the basis of the quantity — estimated at 2 500 000 tonnes — which would have been offered for intervention in normal circumstances, i. e. by discounting the size of the 1984 harvest and the quantities of common wheat of bread-making quality offered for intervention under Commission Regulation (EEC) No 1810/84; whereas, to be effective, this measure should apply to quantities offered to the German intervention agency from 14 September 1984, the Commission having published on the same date a notice warning interested parties of its intention to introduce such a measure;

3. Whereas, where sugar is concerned, the application, with effect from 1 January 1985, of a new representative rate for the German mark and therefore of a reduction in the buying-in price for sugar expressed in national currency as from that date in the Federal Republic may impel manufacturers to deliver into intervention quantities of sugar normally marketed after that date; whereas a measure identical to that adopted in the cereals sector cannot be applied to sugar owing to the non-existence in practice of deliveries into intervention in normal market circumstances; whereas provision should therefore be made for the application, as from the entry into force of this regulation, of the new representative rate for the German mark solely in respect of buying-in operations in the Federal Republic;

4. Whereas, under the terms of Article 6 of Council Regulation (EEC) No 1785/81 of

30 June 1981 on the common organization of the markets in the sugar sector, as last amended by Regulation (EEC) No 606/82, sugar manufacturers are obliged to pay beet producers the minimum prices for A and B sugarbeet; whereas, owing to the modification of the representative rate for the German mark on 1 January 1985, these minimum prices expressed in national currency would, in the ordinary course of events, have to change in the Federal Republic on that date; whereas, however, the sugarbeet harvesting and processing season begins in the said Member State in early October and continues until the end of December while the sugar obtained is marketed continuously until the next harvest; whereas, in order to avoid obliging the sugar manufacturers to bear the entire burden resulting from a fall in prices expressed in national currency as from 1 January 1985, the conversion rate used in the calculation of the minimum prices should be adapted for the entire marketing year; whereas, in order to ensure fair treatment for sugar manufacturers and sugarbeet producers, an average conversion rate should be used for these minimum prices, which should be obtained by weighting, on the one hand, the old representative rate for a period of three months, during which, with the exception of buying-in operations, the mechanisms of the common organization of the market would remain unchanged and, on the other, the new representative rate for a period of nine months;

5. Whereas a similar problem arises in the Federal Republic as regards potato starch; whereas Article 3 (1) of Council Regulation (EEC) No 2742/75, as last amended by Regulation (EEC) No 1026/84, requires manufacturers of this product to pay a minimum price to the producers of the potatoes in question; whereas, by virtue of the Community provisions, the price of potato starch remains in balance with that of starch produced from other sources, particularly maize starch; whereas cereal starch is produced throughout the marketing year while potato starch production is limited to the early months of the year; whereas there is therefore a danger of large quantities of potato starch being placed in storage at the end of 1984, the ensuing fall in value of which, caused by the fall in prices of rival products, would have to be borne entirely by the manufacturers; whereas arrangements should be made whereby this risk is shared fairly between starch manufacturers and potato producers and the minimum Community price referred to above expressed in German marks should be adjusted accordingly for the entire marketing year on the same principle as that applied to the minimum prices for sugarbeet.'

## II — Written procedure and conclusions of the parties

1. By an application received at the Court Registry on 23 November 1984 the Government of the Federal Republic of Germany brought an action for a declaration that Articles 1, 2 and 3 of Regulation No 2677/84 were void.

2. By a separate document received at the Court Registry on the same day the applicant applied under the second paragraph of Article 185 of the Treaty and Article 83 of the Rules of Procedure for a suspension of the operation of the said articles of Regulation No 2677/84.

3. After hearing the parties on 10 December 1984 the President of the Court, by order of 13 December 1984, dismissed the application for interim measures.

4. Upon 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. The parties were invited to answer in writing certain questions. They replied within the prescribed period.

5. The *Federal Republic of Germany* claims that the Court should:

(i) Declare void Articles 1, 2 and 3 of Commission Regulation No 2677/84;

(ii) Order the defendant to pay the costs.

6. The *Commission* contends that the Court should:

(i) Dismiss the application as unfounded;

(ii) Order the applicant to pay the costs including the costs of the application for interim measures.

**III — Submissions and arguments of the parties**

In support of its application the *Federal Republic of Germany* makes the following submissions:

(i) Infringement of essential procedural requirements;

(ii) Lack of an enabling basis and breach of the principle of Community financing of monetary compensatory amounts;

(iii) Infringement of Council Regulation No 855/84 by reason of the alteration of the period laid down therein for the application of the new representative rates for the German mark;

(iv) Breach of the principle of non-discrimination;

(v) Breach of the rule against the adoption of contradictory provisions; and

(vi) Breach of the principle of the protection of legitimate expectation.

(i) *Infringement of essential procedural requirements (fourth subparagraph of Article 155 of the Treaty in conjunction with Article 6 of Regulation No 974/71 and Article 26 of Regulation No 2727/75 in the preparation of Regulation No 2677/84)*

1. In the opinion of the *German Government* the members of the Management Committees and in particular the German members were not given a sufficient opportunity prior to the adoption of Regulation No 2677/84 to prepare themselves properly in relation to the draft regulation and its adoption. Regulation No 2677/84, which was adopted under the procedure referred to in Article 6 of Regulation No 974/71 and Article 26 of Regulation No 2727/75, was therefore adopted in infringement of essential procedural requirements.

In that respect the German Government states that a Management Committee can duly carry out its responsibilities only if its members are given sufficient time to examine measures contemplated by the Commission. Pursuant to the provisions of Article 26 (2) of Regulation No 2727/75 the time needed by a Management Committee for preparation depends *inter alia* on the importance and difficulties of the measures to be adopted. In the present case those principles were disregarded. For such important and difficult questions as those at issue a minimum period for preparation of a week should be available. There were not

even two clear working days to prepare the meeting and it was only during the meeting that the Commission submitted its draft as a meeting document to the members of the committees who were thereupon asked to give their final opinion during the course of the meeting.

To justify the procedure before the Management Committees the Commission claims that it was a case of extreme urgency and accordingly refers to the provisions of the third paragraph of Article 3 of the Rules of Procedure of Management Committees, but the German Government considers that there was no urgency in the present case. Since May 1984 the German Government had been inviting the Commission to introduce a scheme pursuant to Article 7 of Regulation No 855/84 to compensate for the price reductions. In spite of those efforts the Commission had taken no action for months. Consequently, the Commission had had sufficient time to draw up the necessary measures. The fact that between 17 and 20 September 1984 it had been found that 43 000 tonnes had been offered to intervention agencies in the sugar sector does not make it a matter of urgency; on the one hand, 43 000 tonnes of sugar is not a large amount and, on the other, intervention of that kind had been foreseeable since March 1984. The fact that the notice of 14 September 1984 gave rise to much disquiet among those concerned is no justification for urgency since the Commission itself was responsible for it.

The German Government states that the German members of the Management Committees did not expressly approve the course of the procedure. They expressly challenged the regulation at issue and drew attention to the position of the Federal Minister for Food, Agriculture and Forests made clear in previous correspondence with the Commission.

2. The *Commission* denies that the procedure at the meeting of the Management Committees was vitiated for irregularity.

With regard to the facts the Commission says that the German Government was by no means unaware of the problems which had to be considered and to which the Commission had drawn the attention of the Member States one and a half days before the meeting of the Management Committees on 20 September 1984. After the Commission's notice of 14 September 1984 the German Minister, Mr Kiechle, raised the problems once again during the session of the Council on 17 and 18 November 1984. Consequently, the representatives of the German Government were neither ill-informed nor ill-prepared for the meeting of 20 September 1984 during which, moreover, they had sufficient time to consider the draft which had been submitted to them and to take instructions from their superiors before the final vote.

The Commission puts forward two objections to the legal argument of the German Government. The adoption of Regulation No 2677/84 was a case of 'greatest urgency' within the meaning of the third paragraph of Article 3 of the internal regulation of the Management Committees. Further, since the German representatives took part, without making any reservations, in the meeting of the committees on 20 September 1984, the Federal Republic of Germany had lost any right to complain that the procedure was irregular.

As regards the question of urgency the Commission explains that it had been found that in the sugar sector between 17 and 20 September 1984 there had been sales of 43 000 tonnes to the intervention agencies.

In absolute terms that quantity may not appear very much but since large quantities had been offered by special delivery the very day of the meeting of the committee, further and much larger quantities were to be expected. The disquiet which existed in the cereals sector, in particular by reason of the exceptionally abundant harvest, was considerably increased by the notice of 14 September 1984. On publication of that notice a large number of dealers and cooperatives had tried to offer cereals to the German intervention agency which temporarily refused to accept them because it wished to see what solution would be adopted by the Community authorities. In that respect the question whether the urgency was the result of the previous conduct of the Commission or of other circumstances is irrelevant. The sole criterion was whether the decision needed to be taken expeditiously. The Commission refers to the extremely precarious budgetary situation facing the Community in September 1984. The Community's difficulty at the time was to meet its obligations in the agricultural sector with the available means. The Commission therefore had to do everything possible to spare the European Agricultural Guidance and Guarantee Fund additional financial losses.

As for the conduct of the German delegation at the meeting on 20 September 1984 the Commission states that the applicant admits that it did not raise any objection to the procedure or to the presumption of special urgency on which the procedure was based. The Commission therefore had to infer from that silence that there was no objection to the procedure and that all the participants understood that it was a case of greatest urgency.

(ii) *Lack of an enabling basis (infringement of the fourth indent of Article 155 of the EEC Treaty in conjunction with Article 7 of Council Regulation No 855/84) and breach of the principle that monetary compensatory amounts are to be financed by the Community*

1. The *German Government* states that under the terms of the fourth indent of Article 155 of the Treaty the Commission may adopt transitional provisions only in so far as it is empowered to do so by the Council. In adopting the provisions at issue the Commission did not avail itself of the power under Article 7 of Regulation No 855/84 under which it was obliged to provide compensation to the marketing and processing industry for a fall in prices.

In the view of the German Government the scope of Article 7 of Regulation No 855/84 is not completely apparent from the terms thereof. The terms of the power must be inferred from the history of that provision and objectives pursued by the regulation by means of that power. Article 7 was inserted into the draft regulation submitted by the Commission only during discussions after the German delegation had drawn attention to the problems caused for the marketing and processing industry by the reduction in prices, and therefore the need for compensation. As a result of those requests the Commission finally submitted a draft which specially provided that measures might be taken for easing the passage from one method of calculation to another. The principle was thus established of compensation for the price reductions which had been discussed at the meetings of the Council.

The objective of Article 7 of Regulation No 855/84 is moreover implicitly confirmed by the subsequent course of events and discussions with the Commission. The Commission has conceded that it had proposed rules such as those adopted at the time of the revaluation of the German mark in October 1969. At that time the Community alone financed compensation for the fall in prices in the cereals sector. There is no justification for the Commission's attempt to link the system of aids for German agriculture to compensation for the fall in prices. Following the increase in the rate of aids from 3 to 5% and the bringing forward of that measure to 1 July 1984 the applicant had not given up the idea of providing for adequate compensation; the aforementioned Council Decision 84/361 clearly showed that the measures were intended solely to compensate for the special difficulties encountered by German agriculture and those facing the marketing and processing industry.

It is necessary to interpret Article 7 of Regulation No 855/84 in the light of the Community's financial responsibility for the effects of Community monetary decisions in the agricultural sector. It is clear from Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) and from Regulation No 974/71 that the Community must finance all costs connected with monetary compensatory amounts which are regarded as from 1 January 1973 as being part of intervention intended to normalize the agricultural markets. Although the present case is not directly concerned with the financing of intervention and monetary compensatory amounts, it is nevertheless concerned with the financing of their direct effects arising from the abolition of the positive monetary compensatory amounts and the calculation of intervention costs on the basis of the representative rates. The connection is so close that it necessarily covers the Community financing of costs connected with losses due to the fall in prices.

2. The *Commission* denies the applicant's claim that Article 7 of Regulation No 855/84 was intended to provide compensation for the fall in prices as the applicant requested. The applicant's claim is incompatible both with the background to and the actual wording of Article 7.

There is no mention of any compensation for traders or processors anywhere in the preparatory documents for the regulation and the possibility of any such compensation was never mentioned in the Council. On the other hand it is true that the question of compensation gave rise several times to bilateral contacts between the German Government and the Commission. During those meetings the Commission never undertook to submit a proposal for compensation for German traders and processors. There was simply mention of the possibility of once again having recourse, if necessary, to a system such as had been implemented for their benefit at the time of the revaluation of the German mark in 1969, but that system had been financed out of national funds. It is true that during internal discussions which were continued until mid-June 1984 consideration was given to financing the compensation at least partly out of Community funds. The fact that the Commission subsequently decided not to compensate for the fall in prices was because the German Government had stated at the end of August 1984 that it did not intend to finance compensation out of

national funds and the increase from 3 to 5% of the rate of aid to German farmers and the bringing forward of such aid had led the Commission to reconsider the need for such compensation. Finally, the budgetary situation at the time scarcely allowed the adoption of machinery for compensation out of Community funds.

The Commission does not deny that, by way of a legal fiction, monetary compensatory amounts have been treated by the Council since 1973 *inter alia* as intervention measures within the meaning of Regulation No 729/70. Nevertheless so far no such fiction has been applied for the purposes of the financial consequences of an alteration in the green rates decided by the Council.

(iii) *Unlawful amendment of Council Regulation No 855/84 (fourth indent of Article 155 of the Treaty and Article 7 of Regulation No 855/84)*

1. The *German Government* is of the opinion that Regulation No 2677/84 amends the meaning and scope of Regulation No 855/84 in breach of the general principle of Community law that the Commission, in exercising the powers conferred on it under the fourth indent of Article 155 of the Treaty for the implementation of the rules laid down by the Council, may not supplement, restrict or alter them (see Case 37/85 *Bagusat KG* v *Hauptzollamt Berlin-Packhof* [1975] ECR 1339).

It is clear from the combined provisions of Article 2 and the annexes to Regulation No 855/84 that as regards the Federal Republic of Germany the amended conversion rates for cereal products, sugar and potato starch were not to enter into effect until 1 January 1985. Nevertheless Articles 1, 2 and 3 of Regulation No 2677/84 in part brought forward the amendment of the representative rates for the Federal Republic of Germany by three months although there was no power to do so under Article 7 of Regulation No 855/84 and in spite of the fact that the date from which the amended rates were to be applicable was one of the most hotly debated issues in the agricultural negotiations of March 1984.

2. In the *Commission's* view it is essential to determine whether the contested rules are within the limits of the powers conferred by Article 7 of Regulation No 855/84. The Commision thinks they are.

The powers which the Council gives the Commission under Article 7 of Regulation No 855/84 are extremely wide and authorize the Commission, without any restriction, to adopt transitional measures. The provisions contained in Regulation No 2677/84 are transitional measures and are restricted to what is strictly necessary. The regulation makes exceptions for quantities of cereals equal to the quantities offered to the intervention agencies under normal circumstances. In that respect the Commission draws attention to the fact that of the 2.5 million tonnes which the Commission accepted for intervention at the old prices for barley, rye and common wheat, some 200 000 tonnes have not been used. Experience shows that there are never any sales to intervention agencies under normal conditions on the sugar market. Consequently, it was not necessary to provide for a similar exception for that sector.

In the Commission's view there is therefore no question of altering the date of application laid down by the Council for the entry into force of the new conversion rate and dismantling the positive monetary compensatory amounts relating thereto, but

it is simply a matter of partially bringing forward one of the many factors in the Community rules in three sectors by way of transitional measures.

In so far as the Commission contends that the 2.5 million tonnes made available was not determined and allocated until the end of November 1984, it disregards the fact that the discrimination relates to the quantities above 2.5 million tonnes.

(iv) *Breach of the principle of non-discrimination (second subparagraph of Article 40 (3) of the EEC Treaty)*

2. The *Commission* contends that the applicant's claim is unfounded because the quota allocated by the Commission for intervention at the previous price in the Federal Republic was not fully used. The German Government did not say that the quantity of cereals from areas where the harvest was late exceeded the unused amount of 200 000 tonnes and was all intended for intervention. A large part of the cereals was of such poor quality that it did not satisfy the conditions for intervention.

(a) *Invalidity of Article 1 (1) of Regulation No 2677/84*

1. The *German Government* claims that the transitional measures laid down for the cereals sector by Article 1 (1) of Regulation No 2677/84 take no account of distinctions which should be drawn between the various parts of the marketing and processing industry in Germany. It thus infringes the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty which *inter alia* prohibits any discrimination between producers or consumers within any Member State of the Community (see Case 139/77 *Denkavit* v *Finanzamt Warendorf* [1978] ECR 1317).

Even after 14 September any farmer or trader could have offered cereals to intervention since the German authorities had allowed sufficient time for the submission of offers in relation to the quota for intervention at the old price (mid-October 1984 for barley and rye, end of November for wheat, although the harvest was over in the Federal Republic by the end of September at the latest).

Article 1 (1) of Regulation No 2677/84 disregards the fact that at harvest time the effect of regional differences, and primarily climatic factors, in the Federal Republic favoured traders who had already bought cereals from farmers and sold them to the intervention agencies before Regulation No 2677/84 entered into force; that disturbed the balance of competition among the traders concerned at the stage of the marketing of the cereals.

(b) *Invalidity of Article 3 (2) of Regulation No 2677/84*

1. The *German Government* alleges that the transitional provision of Article 3 (2) of Regulation No 2677/84 discriminates against manufacturers of potato starch in relation to manufacturers of other starches, in particular maize or cereal starch, and thus infringes the second subparagraph of

Article 40 (3) of the Treaty. Potato starch competes with maize and cereal starch on the Community market and under the rules applicable until the entry into force of Regulation No 2677/84 there was a balanced relationship between the prices of those various products. Following the alteration of the representative rate and the dismantling of the monetary compensatory amounts that balance was disturbed and the transitional provision of Article 3 (2) of Regulation No 2677/84 is not sufficient to overcome that disturbance.

2. The *Commission* contends that the claim that there is discrimination against potato starch in comparison with maize and cereal starch is not substantiated. It has not been shown that during the last months of 1984 German potato starch manufacturers could obtain only a 5% lower price for their products than the prices obtainable until then.

Where starch manufacturers used German cereals they were able, after the operation of the scheme for aid to German farmers was brought forward to 1 July 1984, to obtain supplies during the second half of 1984 at prices close to those chargeable on 1 January 1985. Since, in adjusting the minimum prices payable by potato starch manufacturers to potato farmers, a mixed formula, 3: 9 (3 months of the old prices and 9 months of the new prices) was taken as a basis, the position between the two groups should be roughly the same as regards supplies of the basic product.

(v) *Invalidity of Article 3 (1) of Regulation No 2677/84 as being self-contradictory*

1. The *German Government* considers that there are inconsistencies in the rule laid down by Article 3 (1) of Regulation No 2677/84 which is thus in breach of the principle that provisions should not be self-contradictory.

In that respect the German Government states that according to the fourth recital in the preamble to Regulation No 2677/84 the minimum price for sugarbeet provided for in Article 3 (1) was fixed on the basis of an average conversion rate obtained by weighting the old representative rate for a period of three months, during which the mechanisms of the common organization of the market would remain unchanged, and the new representative rate for a period of nine months. That provision overlooks the fact that as a result of Article 2 the original market price, determined by the purchase price, would no longer be obtained on the market. A reduction in the representative rate applicable in the calculation of the purchase price of sugar would automatically involve a corresponding reduction in the market price. That means that the average weighted rate as calculated by the Commission is based on erroneous facts.

2. The *Commission* argues that the applicant's claim is unjustified if the actual position is borne in mind. The new rate adopted applies only to the calculation of the purchase price for the purposes of intervention. Intervention as a means for regulating the market in the sugar sector has not been used for some years. There was therefore no fear of an automatic reduction in the market price in the sugar sector. According to the Commission's information the German price of sugar could have been maintained until 31 December 1981 at a higher level than the old intervention price.

(vi) *Invalidity of the rules contained in Article 3 (1) and (2) of Regulation No 2677/84 as being in breach of the principle of the protection of legitimate expectation*

The *German Government* claims that the transitional provisions of Article 3 (1) and (2) of Regulation No 2677/84, which reduced the minimum prices for sugarbeet and potatoes respectively, are contrary to the principle of the protection of legitimate expectation. The provisions apply retroactively to contracts already made and to some extent already performed.

The German Government says that sugarbeet and potato farmers had arranged their affairs in the spring of 1984 on the basis of decisions taken in relation to prices by the Agricultural Ministers who always fix minimum prices one year in advance. As far as the German Government knows, the contracts provide for fixed rates expressed in German marks and not, as the Commission wrongly claims, in ECU.

The judgments of the Court cited by the Commission are no justification for the retroactive involvement of contracts already made. In view of the fact that minimum prices are fixed in the spring and apply throughout the whole marketing year, it is not correct to settle the problem of the price reduction as the Commission has done. There should have been transitional measures exempting firm contracts already made so that legitimate expectations should not be disappointed.

2. The *Commission* states that the price in contracts between the German sugar and potato starch industries and beet and potato farmers are expressed only in ECU. The equivalent value in German marks is mentioned only as a guide. Since prices expressed in ECU have not been altered, the claim that existing contracts have been affected is unfounded.

Contractual obligations already discharged were not affected since when Regulation No 2677/84 entered into force the sugarbeet harvest in the Federal Republic had not yet begun and under existing contracts the first payments were not due until December 1984. As regards potatoes, it is possible that in certain special cases deliveries had taken place before Regulation No 2677/84 entered into force, but, according to the Commission's information, payment was not due before 21 September 1984.

Even if in certain rare cases contracts were made in German marks, Article 3 of Regulation No 2677/84 was still valid according to the case-law of the Court (see Case 74/74 *CNTA* v *Commission* [1975] ECR 533, Case 98/78 *Firma A. Racke* v *Hauptzollamt Mainz* [1979] ECR 69, and Case 84/81 *Staple Dairy Products Ltd* v *Intervention Board for Agricultural Produce* [1982] ECR 1763). According to that case-law, Community rules may have retroactive effect if the purpose to be achieved so demands and the legitimate expectations of those concerned are duly respected. Those two conditions are satisfied in the present case. Since compensation for the reduction in prices had been definitely rejected, an objective solution to the problem of the price reduction could be found only if the minimum prices fixed by the common organizations of the market in the sugar and potato sectors were altered in a similar manner for all those concerned and according to a uniform system. Moreover, as regards the legitimate expectations of

sugarbeet or potato farmers, as a result of the rules which the German Government has succeeded in having adopted in the Council for all agricultural products sold from 1 July 1984, such farmers are entitled to special compensation of 5%. In those circumstances their interests ought not to receive special attention.

## IV — Questions put to the parties

The Court requested the following information and documents from the parties.

I. 1. The *German Government* was invited to produce a summary of

(a) the trend in German market prices and intervention prices in DM for cereals and sugar,

(b) the trend in German market prices and minimum prices in DM for sugarbeet and potatoes, and

(c) the trend in German market prices for starch from maize and other cereals and for potato starch

for the period from 1 January 1984 to 31 December 1985.

The German Government was also invited to document the 'procedures' which it had adopted pursuant to Article 1 (3) of Regulation No 2677/84 to implement Article 1 (1) (a) thereof. It was further asked to state the quantities of cereals offered to intervention pursuant to such 'procedures' in relation to the maximum quantity fixed by the aforesaid transitional measures and any additional quantities which in its opinion would have been offered to intervention had a maximum quantity not been fixed, with supporting documents for the latter.

2. The German Government was also asked to answer the following questions:

(a) In its rejoinder the Commission alleges that 'it is not known whether the applicant still intends as a matter of principle to challenge the Commission's right to restrict, supplement or amend a Council regulation empowering it to adopt implementing measures or whether it is confining itself henceforth to denying that there was any such power in the present case'. What is the position of the German Government in that respect?

(b) In its application the German Government claims that 'at the time of the entry into force of Regulation No 2677/84 (on 21 September 1984) very large quantities of feed-grain had already been purchased and paid for at that price'. What approximately were those quantities?

II. The *Commission* was invited to produce the minutes of the meetings of 20 September 1984 of the Agri-monetary Management Committee and the Cereals and Sugar Management Committees.

The German Government gave the Court its answers to the above questions in a letter dated 17 April 1986 which may be summarized as follows:

*Question I.1*

1. Summary of market price trends and intervention prices of cereals in the Federal Republic of Germany in 1984/85 in DM/100 kg (excluding value-added tax)

| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *1. Market price of wheat of bread-making quality* | | | | | | | | | | | |
| 1984 | 54.11 | 54.27 | 54.80 | 55.42 | 55.91 | 57.20 | 58.29 | 46.52 | 46.05 | 45.53 | 46.15 | 46.81 |
| 1985 | 47.28 | 47.59 | 48.80 | 50.48 | 51.81 | 51.54 | 49.86 | 47.24 | 43.42 | 44.75 | 45.81 | 46.42 |
| | *2. Intervention price of wheat of bread-making quality* (reduced intervention price in brackets) | | | | | | | | | | | |
| 1984 | 49.93 | 50.58 | 51.23 | 51.88 | 52.53 | 52.53 | 52.53 | 46.21 (43.81) | 46.86 (44.43) | 47.51 (45.04) | 48.16 (45.66) | 48.81 (46.28) |
| 1985 | 46.90 | 47.51 | 48.13 | 48.75 | 49.36 | 49.36 | 49.36 | 43.03 | 43.64 | 44.26 | 44.88 | 45.49 |
| | *3. Market price of fodder wheat* | | | | | | | | | | | |
| 1984 | 54.32 | 54.09 | 54.50 | 55.46 | 56.50 | 57.13 | 58.81 | 46.89 | 44.39 | 43.75 | 45.33 | 46.24 |
| 1985 | 46.74 | 47.02 | 48.11 | 50.29 | 52.42 | 50.70 | 50.25 | 42.62 | 42.86 | 44.36 | 45.67 | 46.34 |
| | *4. Market price of rye* | | | | | | | | | | | |
| 1984 | 54.45 | 54.40 | 54.55 | 54.76 | 54.89 | 54.10 | 54.87 | 48.41 | 47.74 | 47.48 | 47.94 | 48.32 |
| 1985 | 48.81 | 49.04 | 49.43 | 50.40 | 50.72 | 50.40 | 47.36 | 44.11 | 45.82 | 46.93 | 47.86 | 48.25 |
| | *5. Intervention price of rye of bread-making quality* (reduced intervention price in brackets) | | | | | | | | | | | |
| 1984 | 51.81 | 52.46 | 53.11 | 53.76 | 54.41 | 54.41 | 54.41 | 48.56 (46.05) | 49.21 (46.67) | 49.86 (47.28) | 50.51 (47.90) | 51.16 (48.52) |
| 1985 | 49.13 | 49.74 | 50.36 | 50.97 | 51.59 | 51.59 | 51.59 | 45.24 | 45.86 | 46.47 | 47.09 | 47.71 |
| | *6. Market price of fodder barley* | | | | | | | | | | | |
| 1984 | 50.60 | 50.66 | 51.15 | 51.94 | 53.14 | 53.22 | 47.06 | 43.76 | 44.20 | 43.96 | 44.52 | 45.12 |
| 1985 | 45.73 | 45.70 | 45.80 | 46.72 | 47.28 | 45.24 | 41.56 | 40.60 | 41.57 | 42.65 | 43.51 | 44.02 |
| | *7. Intervention price of barley* (reduced intervention price in brackets) | | | | | | | | | | | |
| 1984 | 49.93 | 50.58 | 51.23 | 51.88 | 52.53 | 52.53 | 52.53 | 46.21 (43.81) | 46.86 (44.43) | 47.51 (45.04) | 48.16 (45.66) | 48.81 (46.28) |
| 1985 | 46.90 | 47.51 | 48.13 | 48.75 | 49.36 | 49.36 | 49.36 | 43.03 | 43.64 | 44.26 | 44.88 | 45.49 |

2. Summary of market price trends and intervention prices of sugar [1] and the production prices [2] and minimum prices [3] of sugarbeet in the Federal Republic of Germany in 1984/85 in DM/100 kg (excluding value-added tax)

| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *1. Market price of white sugar* (excluding tax, second category, gross) | | | | | | | | | | | |
| 1984 | 147.72 | 147.71 | 147.65 | 147.60 | 147.62 | 147.58 | 147.54 | 147.58 | 147.48 | 146.65 | 146.53 | 146.25 |
| 1985 | 140.83 | 140.08 | 139.52 | 139.52 | 139.52 | 139.52 | 141.26 | 141.55 | 141.99 | 140.94 | 140.88 | 140.87 |
| | *2. Intervention price of white sugar* (second category, gross) (including storage charges in brackets) | | | | | | | | | | | |
| 1984 | 134.45/ (145.14) | id. | id. | id. | id. | id. | id. | id. | id. | id. | id. | id. |
| 1985 | 127.53/ (137.67) | id. | id. | id. | id. | id. | 129.23/ (139.37) | id. | id. | id. | id. | id. |
| | *3. Production price of A/B sugarbeet* | | | | | | | | | | | |
| 1984 | 11.10/ 6.29 | id. | id. | id. | id. | id. | id. | id. | id. | 9.90/ 6.03 | id. | id. |
| 1985 | 9.90/ 6.03 | id. | id. | id. | id. | id. | id. | id. | id. | 10.67/ 6.58 | id. | id. |
| | *4. Minimum price of A/B sugarbeet* (sugar content 16%, free delivery) | | | | | | | | | | | |
| 1984 | 10.08/ 6.22 | id. | id. | id. | id. | id. | 9.69/ 5.98 | id. | id. | id. | id. | id. |
| 1985 | 9.69/ 5.98 | id. | id. | id. | id. | id. | 9.56/ 5.90 | id. | id. | id. | id. | id. |

[1] The market and intervention prices given for sugar relate solely to white sugar since unrefined sugar was not the subject of any commercial dealings in the Federal Republic of Germany. The market price of white sugar includes the charge for storage costs payable by the seller. Besides the intervention price the table thus also shows in brackets the intervention price increased by the said charge.

[2] There is no market price for sugarbeet sold to sugar refineries at a price fixed before the harvest.

[3] The minimum prices of A and B sugarbeet are average prices obtained by weighting the various conversion rates in force.

3. Summary of production price trends for edible potatoes [4] in the Federal Republic of Germany in 1984/85 in DM/100 kg (excluding value-added tax)

| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1984 | 37.90 | 44.95 | 50.45 | 58.80 | 53.80 | 53.15 | 45.80 | 29.45 | 21.75 | 27.00 | 18.25 | 16.90 |
| 1985 | 16.80 | 17.65 | 17.00 | 17.35 | 14.95 | 29.80 | 31.00 | 19.65 | 15.50 | 15.30 | 14.35 | 13.10 |

[4] Since the market prices of potatoes are not part of official statistics only the production prices can be shown.

4. Summary of minimum price trends for potatoes intended for starch production [5] in the Federal Republic of Germany for 1983/84, 1984/85 and 1985/86 in DM/100 kg (excluding value-added tax)

| Year | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1984 | 13.63 | id. | id. | id. | id. | id. | id. | 12.97 | id. | id. | id. | id. |
| 1985 | 12.97 | id. | id. | id. | id. | id. | id. | 12.59 | id. | id. | id. | id. |

[5] There are no minimum prices for potatoes other than for those intended for starch production. The production prices for potatoes do not differ from the minimum prices plus the production refunds provided for in Article 3 of Regulation No 2742/75. The minimum prices for the 1984/85 marketing year are average prices obtained by weighting the various conversion rates in force during that year.

5. There are no official statistics of market prices for starch from maize and other cereals or for potato starch.

6. Pursuant to Article 1 (3) of Regulation No 2677/84 the following provisions were adopted for the purpose of implementing Article 1 (1) (a) thereof:

(i) Regulation of 3 October 1984 on the implementation of intervention in respect of cereals pursuant to Regulation (EEC) No 2677/84 (*Bundesanzeiger* No 190 of 6 October 1984, p. 11393);

(ii) First regulation of 9 November 1984 amending the regulation on the implementation of intervention in respect of cereals pursuant to Regulation (EEC) No 2677/84 (*Bundesanzeiger* No 215 of 14 November 1984, p. 12672);

(iii) Notice No 6/84/21 of 19 November 1984 issued by the Bundesanstalt für landwirtschaftliche Marktordnung on the implementation of intervention in respect of cereals pursuant to Regulation (EEC) No 2677/84;

(iv) Notice No 7/84/21 of 14 December 1984 issued by the Bundesanstalt für landwirtschaftliche Marktordnung on the implementation of intervention in respect of cereals pursuant to Regulation (EEC) No 2677/84.

7. In the period from 14 September 1984 to 30 November 1984 the total quantity of cereals offered to the Bundesanstalt für

landwirtschaftliche Marktordnung under the conditions laid down by Regulation No 2677/84 was 3 739 529 tonnes not including wheat of bread-making quality (1 467 133 tonnes of barley and rye between 14 September and 15 October 1984 and 2 272 396 tonnes of common wheat between 14 September and 30 November 1984).

Since the quantities offered in each case exceeded the maximum quantities authorized by paragraph 2 of the amended regulation on the implementation of intervention in respect of cereals pursuant to Regulation No 2677/84, the intervention related solely to a percentage of the quantities offered; the percentage is apparent from the abovementioned notices of the Bundesanstalt für landwirtschaftliche Marktordnung of 19 November and 14 December 1984.

The additional quantities which in the absence of the abovementioned limit would most probably have been offered to intervention were estimated at 3.8 million tonnes, a figure determined on the basis of the experience of past years and taking into account the record harvest in the Federal Republic of Germany (3.5 million tonnes more than that of the previous year) and in the rest of the Community, especially France.

*Question I.2*

(a) The German Government takes the view that according to the general principle of law underlying the fourth indent of Article 155 of the Treaty the Commission has no power to restrict or amend the substance of legal measures of the Council authorizing it to issue implementing rules. It can add provisions only within the framework of what is provided by the Council. On grounds of principle the German Government submits that the answer to the question whether the Commission has such a power without express authorization by the Council is in the negative. In the present case the Commission received no such authorization and there is nothing to show moreover that it might have been authorized to amend Article 7 of Regulation No 855/84. In consequence the German Government considers that the answer to the question whether the Commission was authorized to restrict or amend Regulation No 855/84 is in the negative.

(b) The German Government states that the price mentioned in this question is the single intervention price provided for in the first indent of Article 3 (1) of Regulation No 2727/75 constituting the support price fixed for all cereals not falling within the scope of the provisions applicable to wheat of bread-making quality.

The quantity of wheat which was the subject of intervention as wheat of bread-making quality was some 700 000 tonnes.

The total quantity of cereals sold between the start of the harvest and 20 September 1984, after deducting the quantity of wheat of bread-making quality as above, may be estimated as follows (tonnes):

Wheat:
3 133 000 = 30.6% of the 1984 harvest
Rye: 902 000 = 46.0% of the 1984 harvest
Barley:
3 035 000 = 29.5% of the 1984 harvest
Oats: 209 000 = 7.0% of the 1984 harvest

Total:
7 279 000 = 28.6% of the 1984 harvest

## V — Oral procedure

At the hearing the *German Government* stated that the Commission could amend a Council regulation only if it was expressly empowered to do so. In contrast to Article 6 of Regulation No 974/71, the basic regulation on monetary compensatory amounts,

Article 7 of Regulation No 855/84 conferred no such power.

The *Commission* pointed out in particular that Article 6 of Regulation No 974/71 was concerned with implementing rules, which were something quite different from the transitional measures referred to in Article 7 of Regulation No 855/84. Furthermore, the Commission recalled that the German Government itself, at the European Council meeting of 25 and 26 June 1984 at Fontainebleau, had stated that in the second half of 1984 the market would already largely discount the 5% reduction in prices envisaged for 1 January 1985. In those circumstances there was no particular reason to provide compensation for traders and processors since the processing industry had already adapted to that situation or had been able to buy at lower prices.

O. Due
Judge-Rapporteur