JUDGMENT OF THE COURT (Sixth Chamber)
23 October 1997 *

In Case C-150/95,

Portuguese Republic, represented by Professor João Mota de Campos, acting as Counsel, and Luís Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

applicant,

v

Commission of the European Communities, represented by António Caeiro and Gérard Rozet, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Council of the European Union, represented by Jan-Peter Hix and Paulo Borges, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

intervener,

* Language of the case: Portuguese.

APPLICATION for the annulment of Commission Regulation (EC) No 307/95 of 14 February 1995 establishing corrected final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1994/95 marketing year (OJ 1995 L 36, p. 2), in so far as it reduces by 20% the final regional reference amounts for sunflower seeds produced in Portugal,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen, G. F. Mancini, P. J. G. Kapteyn (Rapporteur) and G. Hirsch, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 25 February 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 April 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 May 1995, the Portuguese Republic brought an action under the first paragraph of Article 173 of the EC Treaty for the annulment of Commission Regulation (EC) No 307/95 of 14 February 1995 establishing corrected final regional reference amounts for

producers of soya beans, rape seed, colza seed and sunflower seed for the 1994/95 marketing year (OJ 1995 L 36, p. 2; 'the contested regulation'), in so far as it reduces by 20% the final regional reference amounts and, therefore, the compensatory payments for producers of sunflower seeds in Portugal.

2 The reduction at issue was imposed because, as is apparent from paragraph II.1 of Annex I to the contested regulation, the Commission found that the maximum guaranteed area set for the production of sunflower seeds in Portugal had been exceeded by 20% in the 1994/95 marketing year.

3 The maximum guaranteed area laid down for Portugal, to which Annex I to the contested regulation refers, derives, first, from the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23; 'the Act of Accession') and, secondly, from an agreement concluded between the European Community and the United States of America under the General Agreement on Tariffs and Trade (GATT), which was approved by Council Decision 93/355/EEC of 8 June 1993 concerning the conclusion of a memorandum of understanding on certain oil seeds between the European Economic Community and the United States of America within the framework of the GATT (OJ 1993 L 147, p. 25; 'the Blair House Agreement').

4 The Act of Accession lays down transitional measures concerning the application to Portugal of the support system for Community oil seed producers. At the time, that system was based on the establishment of maximum quantities qualifying for support, known as 'maximum guaranteed quantities'. In view of the special importance of sunflower cultivation in Portugal, the Act of Accession laid down, in particular, specific guarantee thresholds for Portuguese sunflower seed producers.

5 Article 294 of the Act of Accession thus provides:

'During the 1986/87 to 1994/95 marketing years, specific guarantee thresholds shall be fixed for colza and rape seeds and for sunflower seeds produced in Portugal.

For the 1986/87 marketing year these thresholds shall be fixed at:

— 1 000 tonnes for colza and rape seeds,

— 48 000 tonnes for sunflower seeds.

For the following marketing years these specific guarantee thresholds shall be determined according to criteria comparable to those adopted for fixing the guarantee thresholds in the Community as at present constituted.

When a specific guarantee threshold is exceeded, the co-responsibility penalties shall be applied according to procedures which are similar to those applied in the Community as at present constituted and with the same ceiling.'

6 Pursuant to that provision, the thresholds fixed for Portuguese sunflower seed producers were increased to 90 000 tonnes for the 1990/91 and 1991/92 marketing years.

7 Subsequently, under the reform of the common agricultural policy, Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12) provided for the guarantee thresholds no longer to be established by reference to quantity, but by reference to area.

8 Under Article 2(1) and (2) of that regulation, the producers in question may apply for a compensatory payment which is fixed on a per hectare basis and by region, and is granted for the area which is down to arable crops or subject to set-aside in accordance with Article 7, in so far as that area does not exceed a regional base area. The regional base area for sunflower seed cultivation in Portugal was set at 122 000 hectares.

9 Under Article 2(5) of the same regulation the compensatory payment is made by two different methods: a general scheme open to all producers and a simplified scheme open to small producers. Producers applying for the compensatory payment under the general scheme are subject to an obligation to set aside part of their holding from production and are to receive compensation in return.

10 Furthermore, by virtue of Article 2(6) of that regulation, when the sum of the individual areas for which aid has been claimed exceeds the regional base area, the eligible area per farmer is reduced proportionately during the same marketing year. In addition, in the following marketing year producers in the general scheme are required to make, without compensation, a special set-aside whose percentage rate is to be equal to the percentage by which the regional base area was exceeded.

11 That measure is separate from the general set-aside requirement in return for which producers other than small producers receive compensation. Under Article 7 of Regulation No 1765/92 the set-aside requirement is applicable to every producer applying for compensatory payments under the general scheme. From the sowings for the 1993/94 marketing year onwards, the set-aside requirement was fixed at 15% and the set-aside had to be rotational.

12 Finally, Article 5 of that regulation sets out in detail the method of calculating compensatory payments. Special arrangements are made in that regard for Spain and Portugal. Article 5(2) provides:

'For Spain and Portugal a national projected reference amount for producers of sunflower seed will be set as the point of departure for regionalization within those Member States. The amount for Portugal will be set at ECU 272 per hectare ...

Until the end of the 1994/95 marketing year, the compensation payment for non-professional producers of sunflower seed in Spain and Portugal will be fixed by the Commission in such a way as to avoid any distortion which might arise from transitional arrangements for sunflower seed producers in these Member States.'

13 The Blair House Agreement was entered into after a GATT panel had concluded that the Community support system for oil seeds resulted in a reduction of the value of the tariff concessions granted by the Community to the United States of America in 1962.

14 Paragraph 4 of the Blair House Agreement states:

'The Community shall introduce a separate base area (SBA) for producers benefiting from the crop-specific oil seeds payments system which shall respect the following principles:

— progressive implementation to affect those crops planted for harvest in 1994 and subsequent years,

— in recognition of the Treaties of Accession, full implementation for Spain and Portugal will commence in 1995/96.'

15 In paragraph 5, the separate base area is defined as follows:

'— A Community oil seed base area shall be established for which crop-specific oil seeds payments are made (the figures for EC-12 are set out in the Annex);

— for a particular marketing year the applicable EC-12 oil seeds base area shall be reduced to reflect the annual set-aside rate for arable crops fixed by the Council. In no year, however, shall the reduction be less than 10% of the base.'

16 Paragraph 6 of the Blair House Agreement makes crop-specific oil seed payments subject to a discipline additional to that provided for by Article 2(5) and (6) of Regulation No 1765/92. It states:

'...

— for every 1% of area planted benefiting from crop-specific oil seeds payments in excess of the Community oil seed base area (after reduction in conformity with paragraph 5) the compensatory payments to such oil seed producers shall be reduced by 1%;

— any such decreases in compensatory payments applied to area planted above the SBA shall be applied in the same marketing year;

— in addition, the percentage decrease in the adjusted compensatory payment shall be carried forward to the following marketing year;

— however, in any year in which there is no decrease required in the compensatory payment (i. e. area planted is equal to or below the SBA (after reduction in conformity with paragraph 5)) the compensatory payment in that year may return to the level of the base reference amount,

— subsequent adjustments in the compensatory payment shall be applied in the manner described above.'

17 The Annex to the Blair House Agreement sets, for the 1995/96 marketing year, a single base area of 5 128 000 hectares for oil seeds throughout the Community. For the 1994/95 marketing year, on the other hand, it set separate base areas for sunflower seed cultivation in Spain (1 411 000 hectares), sunflower seed cultivation in Portugal (122 000 hectares) and oil seed crops in the Community of 12, other than sunflower seeds in Spain and Portugal (3 966 000 hectares). Note 1 at the foot of the annex states that those figures are to be reduced to reflect the annual set-aside rate for arable crops.

18 The Blair House Agreement was implemented in the Community by Council Regulation (EC) No 232/94 of 24 January 1994 amending Regulation (EEC) No 1765/92 (OJ 1994 L 30, p. 7). By virtue of that regulation, the following subparagraphs were added at the end of Article 5(1) of Regulation No 1765/92:

'(e) from the 1994/95 marketing year, maximum guaranteed areas (MGA) shall be established for the crop-specific oilseed payments. They shall be equal in size to the areas of land set out in Annex IV, reduced by the rate of rotational set-aside applicable for that marketing year, or by 10% if that rate is less than 10%. If after the application of Article 2(6) first indent those maximum guaranteed areas are exceeded, the Commission shall reduce the final regional reference amounts for oilseeds in accordance with the provisions of subparagraphs (f) and (g);

(f) if the area of oilseeds already determined as eligible for compensatory payments in any year exceeds such maximum guaranteed areas, the Commission shall reduce, by 1% for each percentage point by which the maximum guaranteed area is exceeded, the relevant final regional reference amounts for that year. With effect from the 1994/95 marketing year, if the maximum guaranteed area is exceeded by more than a threshold percentage, special rules shall apply. Up to the threshold percentage, the reduction of the final regional reference amounts shall be uniform in all Member States. Beyond the threshold percentage, appropriate additional reductions shall apply in those Member States which have exceeded the national reference areas set out in Annex V, reduced by the rate referred to in subparagraph (e). The Commission shall, in accordance with the procedure laid down in Article 38 of Regulation 136/66/EEC, establish the size and distribution of the appropriate reductions to be applied and shall, in particular, ensure that the weighted average reduction for the Community as a whole is equal to the percentage by which the maximum guaranteed area has been exceeded;

(g) the threshold percentage provided for in subparagraph (f) shall be 0% ...'

19 The text of Annex IV to Regulation No 1765/92, as amended by Regulation No 232/94, is as follows:

Areas to be taken into account for the calculation of oilseeds maximum guaranteed areas

Member State/oilseed area in hectare	1994/95	1995/96 and subsequent years
Spain, sunflower	1 411 000	—
Portugal, sunflower	122 000	—
EC 12, other	3 966 000	—
Total	—	5 128 000

That annex adopts the figures in the Annex to the Blair House Agreement and likewise sets at 122 000 hectares the area for sunflower seed cultivation in Portugal for the 1994/95 marketing year.

20 Finally, Annex V to the same regulation, headed 'National reference area', sets at 122 000 hectares the national reference area for sunflower seed cultivation in Portugal for the 1994/95 marketing year.

21 As paragraph II.1 of Annex I to the contested regulation indicates, it became apparent, after application of Article 2(6) of Regulation No 1765/92, that the areas of land for which crop-specific oil seed payments had been made were such that the maximum guaranteed areas had been exceeded by the following percentages:

— the Community of 12, other than sunflower cultivation in Spain and Portugal: 9%;

— Spain, sunflower: 4%;

— Portugal, sunflower: 20%.

22 Consequently, as paragraph II.2 indicates, the Commission reduced the final regional reference amounts for sunflower seed producers by 4% in Spain and 20% in Portugal. It also reduced by 9% the support for producers of oil seed in the 12 Member States excluding sunflower crops in Spain and Portugal. At the same time, however, it made, in paragraph II.3, a temporary transfer to the national reference areas of Spain and Ireland of part of the unutilized areas of land within the

maximum guaranteed area relating to production in the Community of 12 other than of sunflower seeds in Spain and Portugal, in order to reduce the contribution of Spain and Ireland to the total overshoot of the maximum guaranteed area. Spanish and Portuguese sunflower seed producers did not benefit from such compensatory adjustment using the unutilized areas of land in the other Member States.

23 The Portuguese Government submits in support of its application that the contested regulation infringes Regulation No 1765/92, as amended by Regulation No 232/94, because, first, the calculation of the amount by which the maximum guaranteed area allocated to Portuguese sunflower seed farmers is exceeded is incorrect and, secondly, it wrongly excludes sunflower seed cultivation in Portugal from the compensatory adjustments for the overshoot of the national reference areas made by transferring unutilized areas of land in the other Member States. Also, should the Court take the view that the contested regulation merely applies Regulations No 1765/92 and No 232/94, the Portuguese Government, relying on Article 184 of the EC Treaty, pleads that the two latter regulations are unlawful.

Calculation of the overshoot of the maximum guaranteed area

24 The Portuguese Republic submits, first, that, in the contested regulation, the calculation of the amount by which the maximum guaranteed area allocated to Portuguese sunflower seed farmers for the 1994/95 marketing year is exceeded does not accord with the special arrangements which, by virtue of the Act of Accession and the Blair House Agreement, were made for Portugal by Regulation No 1765/92, as amended by Regulation No 232/94. In its view, that calculation contains three errors.

Reduction of the area allocated to Portugal

25 According to the Portuguese Government, the first error in calculation which vitiates the contested regulation is that, in determining the amount by which the maximum guaranteed area may have been exceeded, the area of 122 000 hectares fixed in Annex IV to Regulation No 1765/92, as amended by Regulation No 232/94, was reduced by 15%, corresponding to the set-aside rate laid down by the second subparagraph of Article 7(1) of Regulation No 1765/92. In its view, the area of 122 000 hectares was not affected by set-aside.

26 It points out that the special arrangements laid down by the Act of Accession, which, in particular, provides for specific guarantee thresholds, were intended to ensure that Portuguese sunflower seed producers enjoyed some security of income, irrespective of developments recorded in the other Member States. In its view, those special arrangements were inviolable until the expiry of the transitional period at the end of the 1994/95 marketing year. They were respected by Regulation No 1765/92, adopted as part of the reform of the common agricultural policy, as well as by the Blair House Agreement and, when the latter was implemented, by Regulation No 232/94.

27 It points out that the second indent of paragraph 4 of the Blair House Agreement provides that, in recognition of the Treaties of Accession, the separate base area is not to be applied in full in Portugal until 1995/96. Furthermore, Annex IV to Regulation No 1765/92, as amended by Regulation No 232/94, which transposes the Annex to the Blair House Agreement, provides for a special status for Portugal until the end of the transitional period, inasmuch as it lays down a specific area, of 122 000 hectares, for sunflower seeds in the 1994/95 marketing year. Finally, it follows from Annex IV that the reduction in the set-aside rate, referred to in Article 5(1)(e) of that regulation, which transposes the second indent of paragraph 5 of the Blair House Agreement, affects only the area appearing in the column for 'EC 12, other', namely 3 966 000 hectares, to the exclusion of the separate area of 122 000 hectares allocated solely to Portugal for sunflower seed cultivation.

28 In that regard, the Court finds that it is clear from the wording of Article 5(1)(e) of Regulation No 1765/92, as amended by Regulation No 232/94, that the reduction imposed therein applies equally to the area of 122 000 hectares allocated to Portugal for sunflower seed cultivation. Under that provision the maximum guaranteed areas are to be equal in size to the areas of land set out in Annex IV to the same regulation, reduced by the rate of rotational set-aside applicable to the marketing year in question. No exception is made for the area of 122 000 hectares specified in Annex IV for Portuguese sunflower seed producers.

29 Furthermore, that outcome accords with both Article 294 of the Act of Accession and the Blair House Agreement. While Article 294 of the Act of Accession makes provision for specific guarantee thresholds, it does not prevent those thresholds from being altered in so far as such alteration is carried out 'according to criteria comparable to those adopted for fixing the guarantee thresholds in the Community as at present constituted'. Furthermore, the wording of the second indent of paragraph 5 of the Blair House Agreement, read in conjunction with the heading of the Annex to that agreement and Note 1 amplifying that heading, shows that the area of 122 000 hectares allocated to Portugal in the 1994/95 marketing year for sunflower seeds was included within the areas which were to be subject to the reduction to reflect the set-aside rate. Contrary to the submissions of the Portuguese Government, such an interpretation would not mean that the Blair House Agreement would have been applied in full in the 1994/95 marketing year because, until the end of that marketing year, Portuguese sunflower seed producers continued, in accordance with Article 294 of the Act of Accession, to benefit from special arrangements, consisting in the establishment of a specific area.

30 Accordingly, the Portuguese Government's argument that the area of 122 000 hectares should not have been reduced by 15% when calculating the maximum guaranteed area for sunflower seed cultivation in Portugal must be rejected.

Inclusion of the area farmed by small producers within the area farmed in Portugal

31 According to the Portuguese Government, the second error in calculation contained in the contested regulation is that, in determining the amount by which the maximum guaranteed area was exceeded, the area planted by small Portuguese producers was included within the total area farmed in Portugal.

32 The Portuguese Government refers to the distinction drawn in Article 2(5) of Regulation No 1765/92 between small producers, who are covered by a simplified scheme, and all other producers, who are subject to a general scheme involving a set-aside requirement. The effect of Article 8(3) is that small producers under the simplified scheme are exempt from the set-aside obligation but, in return, receive lower compensatory payments. Therefore, the Portuguese Government concludes, the area farmed by small producers should not be taken into account when calculating the amount by which the maximum guaranteed area is exceeded.

33 The Court observes that under Article 5(1)(e) of Regulation No 1765/92, as amended by Regulation No 232/94, which accurately transposed the Blair House Agreement in that respect, maximum guaranteed areas, which are equal in size to the areas of land set out in Annex IV, reduced by the set-aside rate or by 10% if that rate is less than 10%, are established 'for the crop-specific oilseed payments'. Small producers covered by the simplified scheme receive such payment, even though it is set at a different level from that paid to the other producers and they are not subject to the set-aside obligation.

34 It follows that small producers covered by the simplified scheme are also subject to the discipline of maximum guaranteed areas. The areas of land which they farmed in return for compensatory payments therefore had to be included within the total area farmed in Portugal when determining the extent to which the maximum

guaranteed area was exceeded. Moreover, as the Advocate General has rightly pointed out in point 37 of his Opinion, if that were not so, the area specified in the Blair House Agreement could be exceeded, with the result that the purpose of that agreement, which is to reduce oil seed subsidies in the Community in order to compensate for a reduction in the value of tariff concessions granted to the United States of America, would not be achieved.

35 Accordingly, the argument of the Portuguese Government that it was wrong to take account of the area farmed by small producers when determining the amount by which the maximum guaranteed area was exceeded must be rejected.

Reduction of the area farmed by small producers

36 According to the Portuguese Government, the third error in calculation in the contested regulation is that the 15% reduction was applied to the entire 122 000 hectares allocated to Portugal for sunflower seed cultivation, and therefore also to the area farmed by small producers when, under Regulation No 1765/92, small producers were exempt from the set-aside obligation.

37 In that regard, the Court notes that the reduction which is made in the areas set out in Annex IV to Regulation No 1765/92, as amended by Regulation No 232/94, in order to determine the maximum guaranteed areas, and which is imposed in accordance with Article 5(1)(e) of the same regulation, does not represent a set-aside requirement. It follows that the exemption from that requirement, which small producers covered by the simplified scheme enjoy under Article 8(3) of Regulation No 1765/92, is irrelevant to the calculation of the maximum guaranteed area for Portuguese sunflower seed producers.

38 Moreover, as stated in paragraph 28 of this judgment, it is clear from the wording of Article 5(1)(e) of Regulation No 1765/92, as amended by Regulation No 232/94, that the maximum guaranteed areas are equal in size to the areas of land set out in Annex IV to the same regulation — 122 000 hectares for sunflower seed cultivation in Portugal — reduced by the rate of rotational set-aside applicable to the marketing year in question. The Blair House Agreement does not draw any distinction between the areas of land farmed by small producers who are covered by the simplified scheme and those farmed by producers falling within the general scheme.

39 Accordingly, the argument put forward by the Portuguese Government, to the effect that the area farmed by small producers was wrongly taken into account when the entire 122 000 hectares allocated to Portugal for sunflower seed cultivation was reduced by 15%, must be rejected.

Exclusion of Portugal from the compensatory adjustments for the overshoot of the maximum guaranteed area

40 By virtue of the final sentence of Article 5(1)(f) of Regulation No 1765/92, as amended by Regulation No 232/94, the Commission, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221), is to establish the size and distribution of the reductions to be applied if the maximum guaranteed area has been exceeded and, in particular, is to ensure that the weighted average reduction for the Community as a whole is equal to the percentage by which the maximum guaranteed area has been exceeded.

41 The way in which that distribution was carried out in this case and the reasoning underlying it are explained in the third recital in the preamble to the contested regulation. According to that recital, where, within the maximum guaranteed area

covering production other than of sunflower seed in Spain and Portugal, Member States had large percentage overshoots of very small national reference areas and those overshoots represented few hectares, the reductions in support to be applied in those Member States were not to be excessive; in such circumstances, some of the non-allocated area of land within that maximum guaranteed area could be transferred temporarily to the national reference areas of those Member States in order to reduce their contributions towards the total overshoot of the maximum guaranteed area.

42 Thus, in paragraph II.3 of Annex I to the contested regulation, a transfer of unutilized areas of land was made, as regards production other than of sunflower seed in Spain and Portugal, to the national reference areas of Spain and Ireland (as well as to the United Kingdom in order to avoid an increase in the reduction of support as a result of the transfers to Spain and Ireland).

43 In its second plea the Portuguese Republic alleges that, in the contested regulation, the Commission wrongly excluded Portuguese sunflower seed cultivation from the compensatory adjustments for the overshoot of the national reference areas specified in Annex V to Regulation No 1765/92, as amended by Regulation No 232/94, which were made, after deduction of the set-aside rate, by transferring unutilized areas of land within the maximum guaranteed area in the other Member States.

44 According to the Portuguese Government, the contested regulation thus infringes not only Article 5(1)(f) of Regulation No 1765/92, as amended by Regulation No 232/94, but also the principle of non-discrimination.

Infringement of Article 5(1)(f) of Regulation No 1765/92

45 Article 5(1)(f) of Regulation No 1765/92, as amended by Regulation No 232/94, leaves it to the Commission to establish the size and distribution of the reductions to the compensatory payments provided that, in particular, the weighted average reduction for the Community as a whole is equal to the percentage by which the maximum guaranteed area has been exceeded.

46 Since the Annex to the Blair House Agreement and Annex IV to Regulation No 1765/92, as amended by Regulation No 232/94, set, in accordance with the transitional arrangements laid down in Article 294 of the Act of Accession, separate maximum guaranteed areas for, respectively, Spain (sunflowers), Portugal (sunflowers) and the Community (others) for the 1994/95 marketing year, the Commission was entitled to use a method of compensatory adjustment, such as that set out in the contested regulation, which ensured equality between the weighted average reduction for each of those three categories and the percentage by which their respective maximum guaranteed areas were exceeded.

47 The argument that paragraph II.3 of Annex I to the contested regulation infringed Article 5(1)(f) of Regulation No 1765/92, as amended by Regulation No 232/94, must therefore be rejected.

Breach of the principle of non-discrimination

48 Unequal treatment of Portuguese sunflower seed producers in relation to other Community producers can be regarded as discriminatory only if all the producers in the Community were in a comparable position. Portuguese sunflower seed producers were not in a position comparable to that of the other producers in the

Community, because, under the Act of Accession, they continued to benefit from special arrangements involving the setting of a specific maximum guaranteed area.

49 Those transitional arrangements were intended to ensure that Portuguese sunflower seed producers enjoyed some security of income, irrespective of developments recorded in the other Member States. Thus, the establishment of a specific guarantee threshold made it possible, under the system prior to the adoption of Regulation No 1765/92, for the amount of aid granted to Portuguese sunflower seed producers not to be affected when the maximum quantity laid down for the Community was exceeded. That aid could have been reduced only if Portugal had exceeded its own guarantee threshold. By contrast, the amount of aid paid to the other Community producers was in principle affected if the maximum guaranteed quantity fixed for the Community was exceeded, so that overproduction in the other Member States affected all producers (Article 1(4) of Council Regulation (EEC) No 1454/86 of 13 May 1986 amending Regulation No 136/66/EEC (OJ 1986 L 133, p. 8) and Article 1(8) of Council Regulation (EEC) No 1915/87 of 2 July 1987 amending Regulation No 136/66/EEC (OJ 1987 L 183, p. 7)).

50 As the Advocate General has correctly pointed out in point 59 of his Opinion, the Commission was entitled, once the guarantee thresholds had been separated in that way, to maintain that separation not only when it proved advantageous to Portugal but also if Portugal exceeded its own specific guarantee threshold. The Commission was accordingly entitled, when implementing the transitional arrangements, to restrict the transfer of unutilized areas of land to land falling within each of the three special base areas laid down, for the 1994/95 marketing year, in Annex V to Regulation No 1765/92, as amended by Regulation No 232/94.

51 It follows that Portuguese sunflower seed producers were not in a comparable position to that of the other producers in the Community, so that their exclusion from the system of compensatory adjustments cannot be regarded as discriminatory.

52 As regards the plea of illegality under Article 184 of the Treaty which the Portuguese Government puts forward, it is sufficient to state that examination of the legality of the contested regulation has disclosed nothing in Regulation No 1765/62, as amended by Regulation No 232/94, that would constitute an infringement of the Act of Accession or of the Blair House Agreement.

53 The application must be dismissed.

Costs

54 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Portuguese Republic has been unsuccessful, the Portuguese Republic must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4), the Council of the European Union, which intervened in the proceedings, is to bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the application;

2. Orders the Portuguese Republic to pay the costs;

3. Orders the Council of the European Union to bear its own costs.

Ragnemalm Schintgen Mancini

Kapteyn Hirsch

Delivered in open court in Luxembourg on 23 October 1997.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber