OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 30 MAY 1984 [1]

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Mr President,
Members of the Court,

A — On 30 December 1980, 2 January 1981 and 5 January 1981 the plaintiff in the proceedings in the Netherlands from which the present reference for a preliminary ruling has arisen received certificates for the export to non-member countries of butter in the form of food preparations of tariff headings Nos 21.07 G VII (a) and 21.07 G VIII (a) ("containing 45% or more but less than 85% by weight of milkfats"); the cer-

1 — Translated from the German.

tificates fixed the export refund in advance at the rate applicable on the day of issue of the certificates and were valid until 31 May 1981 and 30 June 1981 respectively. On 21 April 1981 the plaintiff applied to the defendant in the main action (the competent Netherlands authority) for cancellation of the certificates in so far as they had not then been used (the plaintiff had used the first two certificates only partly and had made no use of the third).

The following details are relevant.

1. The European monetary system was altered with effect from 23 March 1981. There was a devaluation of the central rate of the Italian lire and a revaluation of the notional central rate of the pound sterling which led to the devaluation of the currencies of other Member States (including the Netherlands) in relation to the ECU. The ECU is the unit of account introduced by Regulations Nos 3180/78 and 3181/78 (Official Journal L 379 of 30. 12. 1978, pp. 1 and 2) to replace as from 1979 the unit of account previously used in the agricultural sector (cf. Regulation No 652/79, Official Journal L 84 of 4. 4. 1979, p. 1).

Because as a result the central rate of the guilder almost coincided with the so-called representative rate (as you know, the representative rates fixed by the Council have replaced the official parities previously used for the purpose of currency conversion in the agricultural sector — cf. Regulation No 878/77, Official Journal L 106 of 29. 4. 1977, p. 27), the changes of March 1981 would have led pursuant to Regulation No 974/71 (Official Journal, English Special Edition 1971 (I), p. 257) to the disappearance of the Netherlands monetary compensatory amount, which had been used until then because the central rate of the guilder was higher than the representative rate. That was avoided, however, by means of Commission Regulation No 801/81 (Official Journal L 82 of 28. 3. 1981, p. 17), which provided that the monetary compensatory amounts applicable on 23 March 1981 should continue to apply until 5 April 1981, because in any event a change in the representative rate was imminent as part of the annual fixing of prices and artificial currents of trade and speculative transactions should not be set in motion by an adjustment of the monetary compensatory amounts.

The monetary compensatory amount ceased to apply in the Netherlands only after the representative rate of the guilder was fixed at the amount of the new central rate as part of the adjustment of the representative rates which took effect from 6 April 1981 (cf. Regulation No 850/81, Official Journal L 90 of 4. 4. 1981, p. 1 and Regulation No 902/81, Official Journal 94 of 6. 4. 1981, p. 3). At the same time a new, higher, intervention price for butter with effect from 6 April 1981 (Regulation No 851/81, Official Journal L 90 of 4. 4. 1981, p. 6) and new export refunds for certain dairy products, also with effect from 6 April 1981 (Regulation No 922/81, Official Journal L 93 of 6. 4. 1981, p. 10), were fixed.

2. The plaintiff considered that in view of that development, which after 21 April 1981 made it impossible for it to carry through the export transactions profitably with the refund which had been fixed in advance, it could claim cancellation of its certificates and thus even without carrying out the export

transactions avoid a forfeiture of the deposit.

(a) In so doing it relied primarily on Council Regulation No 1134/68 laying down rules for the implementation of Regulation No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy (Official Journal, English Special Edition 1968 (II), p. 396). The regulation was adopted when the units of account used for the purposes of the agricultural policy were based on the gold standard which gave the currencies of the Member States a fixed parity notified to the International Monetary Fund, and conversions from units of account into national currencies and between national currencies were made on the basis of their recognized parities (cf. Articles 1 and 2 of Council Regulation No 129 of 23. 10. 1962 (Official Journal, English Special Edition 1959-1962, p. 274)). On the ground that after the monetary events of 23 March 1981 the intervention price for butter was adjusted, the export refunds were fixed afresh and the refunds for milk and dairy products fixed in advance before 1 April 1981 were adjusted by Regulation No 1609/81 (Official Journal L 161 of 18. 6. 1981, p. 1), the plaintiff felt that there was a case for applying Article 1 of Regulation No 1134/68, which provides as follows:

"1. In the case of an alteration to the value of the unit of account or an adjustment of agricultural prices pursuant to the fourth paragraph of Article 3 of Regulation (EEC) No 653/68:

(a) the amounts which contain the elements determined on the basis of prices on international markets, listed in the Annex to this Regulation under items 1 to 5," (that includes export refunds) "shall where necessary be recalculated and refixed without delay by the Commission in accordance with the procedure applicable in each case, using the new value of the unit of account and, where appropriate, the new agricultural prices;"

"2. In cases where the provisions of paragraph 1 (a) apply, any amounts referred to therein which have been fixed in advance for a transaction still to be carried out after the alteration in the value of the unit of account or adjustment of agricultural prices shall where necessary be recalculated and refixed by the Commission in like manner as laid down in those provisions; however, any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within 30 days of the entry into force of the measures fixing the recalculated amounts, obtain cancellation of the advance fixing and of the relevant document or certificate."

(b) In the alternative it considered that in any event Article 4 of Regulation No 1134/68 applied. That provides as follows:

"1. In the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account, the Member State concerned, using the new parity relationship and without prejudice to the application of

Article 1 (2), shall adjust the following amounts, given in units of account, if they appear in national currency in the documents or certificates issued in pursuance of the common agricultural policy or the special trade system for goods processed from agricultural products:

(a) amounts which have been fixed in advance for a transaction or part of a transaction still to be carried out after the alteration of that parity relationship;

...

However, any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within 30 days of the entry into force of the measures fixing the altered amounts, obtain cancellation of the advance fixing and of the relevant document or certificate."

(c) In the further alternative it relied on Regulation No 878/77 on the exchange rates to be applied in agriculture (Official Journal L 106 of 29. 4. 1977, p. 27) which, as you know, replaced pursuant to Article 3 of Regulation No 129 allowing derogations therefrom in particular cases, the official parities in the agricultural sector by representative rates to be fixed by the Council (Article 1). Article 4 provides as follows:

"1. The provision of Regulation (EEC) No 1134/68 in respect of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account shall apply.

2. However, the second subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68 shall apply only if the application of the new representative rates is disadvantageous to the party concerned.

Before the date of application of the new rate it may be decided to offset this disadvantage by an appropriate measure. In this case, advance fixing and the certificate or document attesting thereto may not be cancelled.'

Moreover, in that respect Article 1 of Regulation No 1054/78 (Official Journal L 134 of 22 May 1978, p. 40, as amended by Regulation No 1509/78, Official Journal L 178 of 1 July 1978, p. 50) provides:

"1. For the purposes of Article 4 of Regulation (EEC) No 878/77, there shall be a disadvantage where, following the application of the new representative rate, the alteration in terms of national currency in the sum total, or where appropriate the balance, of the amounts applicable to a particular transaction results in:

the levying of a greater amount, or

the granting of a lesser amount

than that applicable before entry into force of the said rate.

The disadvantage shall be determined by comparing the situation of the interested party before and after the new rates and prices have taken effect.

...

2. Cancellation of an advance fixing and of the relevant document or certificate, provided for in the last subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68, may be requested only if

   (a) the representative rate of the currency concerned has been altered, and

   (b) if, in the case of simultaneous alteration of the representative rate and of the price level in units of account, the disadvantage resulting from the alteration in the representative rate outweighs any advantage afforded by the effect of the alteration in the price level on the amount to be granted or levied on the goods.

3. For certificates not including an advance fixing of a monetary compensatory amount, calculation of any disadvantage shall be made for the currency of the Member State in which the document or certificate has been issued.

   However, for certificates including an advance fixing of a monetary compensatory amount, the calculation shall be made for the currency of the Member State in which the certificate is valid."

In the plaintiff's view those provisions, at least, must apply because the alteration bay Regulation No 850/81 of the representative rates led to the disappearance of the monetary compensatory amounts in the Netherlands and therefore placed the plaintiff at a disadvantage; the increase in prices in the Community as a result of the fixing of a new intervention price, the revaluation of the ECU and the fixing of new representative rates also created a disadvantage.

3. The competent Netherlands authorities did not accept that view, however. In their opinion the situation in the spring of 1981 was not such as that described in Article 1 of Regulation No 1134/68, which can occur only if there is an adjustment of agricultural prices at a time other than the beginning of the marketing year. Direct application of Article 4 of Regulation No 1134/68 was out of the question, moreover, because since 1971 the terms "currency parities" and "value of the unit of account" were no longer relevant for the purposes of the agricultural policy of the Community. Nor could that provision apply by virtue of the reference to it Regulation No 878/77, for the plaintiff suffered no disadvantage as a result of the change in the representative rate, in particular by reason of the disappearance of the monetary compensatory amounts, which was not caused by the change in the representative rate; moreover, the plaintiff had not applied for advance fixing of those amounts. The Hoofdproduktschap therefore rejected the plaintiff's application.

4. The Netherlands court before which the matter was then brought took the view that the judgment it was required to give depended in various respects on the interpretation of Community law. By order of 25 February 1983, therefore, it stayed the proceedings pending before it and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. Article 1 (2) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and the relevant certificate to be obtained "in cases where the provisions of paragraph (1) (a) apply". Upon a proper construction of that paragraph, was there such a case when:

   The value of the ECU changed on 23 March 1981;

   The intervention prices for butter were refixed as from 6 April 1981 by Regulation (EEC) No 851/81; and

   New export refunds for milk and milk products were introduced by Regulation (EEC) No 922/81 as from 6 April 1981?

2. Article 4 (1) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and of the relevant certificate to be obtained "in the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account". Upon a proper construction of Article 4 (1), was there such a case when the value of the ECU changed on 23 March 1981?

3. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the monetary compensatory amounts not fixed in advance also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?

4. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the purchase price also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?

On the basis of all that we have heard, my view is as follows:

B — 1. First question

The plaintiff in the main proceedings maintains that the monetary events of 23 March 1981 and the fixing of new intervention prices and new export refunds with effect from 6 April 1981 fall within the scope of Article 1 of Regulation No 1134/68, whereas the Commission and the defendant contend that they do not.

I endorse the latter view.

(a) Of primary significance in that respect is the fact that Regulation No 1134/68 laid down rules for implementing Regulation No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy. Therefore it must be assumed that the interpretation of Regulation No 1134/68 is governed by the terms used in Regulation No 653/68. In that case, the plaintiff's view that the "unit of account" mentioned in Article 1 of Regulation No 1134/68 is a general term, cannot be accepted. On the contrary, references in that regulation to the unit of account and a change in its

value are references to terms and events within the meaning of Regulation No 653/68. That is apparent from both the title and the preamble of the regulation.

There is no doubt, however, that the value of the unit of account referred to in Article 1 of Regulation No 653/68 was expressed as a particular amount of gold and there is also no doubt that that value could be changed only in the cases referred to in Articles 2 and 3 and in accordance with the procedure laid down in those articles. Article 2 refers to the case where all the Member States alter the parities of their currencies simultaneously and in the same direction. That is obviously a reference to the fixed parities within the meaning of Article 2 of Regulation No 129, which were in use until 1971 and were notified to the International Monetary Fund. Article 3, by contrast, deals with the case where one or more Member States announce a change in the parity of their currencies (in the aforesaid sense) and it provides that the Council should meet within three days to decide whether the value of the unit of account should be altered.

In 1981, however, when the events relevant in the main proceedings took place, there was, as I already indicated when describing the facts, no such unit of account any more; the ECU, a value calculated on the sum of particular amounts of the currencies of the Member States, was in use. Fixed parities of the currencies of the Member States had also ceased to exist, to be replaced in some cases by floating rates and in some cases by central rates linked to the European Monetary Union and having a certain floating margin.

Thus despite the fact that the Bulletin of the European Communities (1981 No 3, p. 45) referred to a "revaluation of the ECU", the events of 23 March 1981 can certainly not be described as an alteration in the value of the unit of account (especially as it was nowhere stated, as it was in Regulation No 652/79 in respect of Regulation No 878/77, that the unit of account was to be replaced by the ECU in Regulation No 1134/68, too). It must therefore be concluded (without its being necessary to discuss whether in fact the Commission adopted measures at the time under Article 1 (1) (a) and (2) of Regulation No 1134/68, a suggestion rejected by it) that Article 1 of Regulation No 1134/68 is not applicable in such circumstances.

(b) It may further be said that there was no case for applying that article in the spring of 1981 with regard to an "adjustment of agricultural prices" which is also mentioned in Article 1 (the plaintiff obviously has in mind the refixing of the intervention prices on 6 April 1981). When Article 1 refers to an adjustment of agricultural prices, it is expressly stated that the adjustment is to be one pursuant to Article 3 of Regulation No 653/68. Such an event occurs after an alteration in the parity of the currency of one or more Member States if the Council considers it necessary at a conference which must take place not later than three days after the said monetary change, that is to say independently of the usual resolutions on prices adopted at the beginning of the

marketing year under the common rules on agriculture. Such an adjustment (which I shall discuss in a moment) was not necessary at all in connection with the events of 23 March 1981. The resolutions on prices of April 1981 were not adjustments within the meaning of Article 3 of Regulation No 653/68, but adjustments made in connection with the usual fixing of prices at the beginning of the marketing year. They obviously had nothing to do with the monetary changes of 23 March 1981, nor with the fixing of new refunds with effect from 6 April 1981. It is thus equally impossible to describe the latter as a measure adopted by the Commission within the meaning of Article 1 (1) (a) of Regulation No 1134/68.

(c) Finally, it has become clear in the course of the proceedings that there is also no ground for an application by analogy of Article 1 of Regulation No 1134/68 to a case such as that under consideration in the main action. The purpose and the *raison d'être* of the rule stem from the fact that an alteration in the value of the unit of account (within the meaning of Article 1 of Regulation No 653/68), or an alteration in the parity of the currency of one or more Member States (which were likewise expressed in terms of gold) directly affected prices in the Community. Under the new system, however, there is no question of that when there is an alteration in the central rate (which is all that happened on 23 March 1981). The conversion of the ECU into national currencies is based on the representative rates (which remained unaltered on 23 March 1981), and the difference between those and the central rates (or, in their absence, the current rates) is compensated for by means of monetary compensatory amounts which ensure that prices remain at a particular level so that there is no need to adjust prices if the central rates are altered.

Although Regulation No 1134/68 was not repealed after those alterations in the system (it is still applicable in so far as there is reference to it in Article 4 of Regulation No 878/77), and although after the introduction of the ECU the term "unit of account" was not systematically replaced in all the relevant provisions, nevertheless in the light of all the available information the first question must be answered in the negative.

2. Second question

Here too, with regard to the question whether the monetary changes of 23 March 1981 represent a case for the application of Article 4 (1) of Regulation No 1134/68, the plaintiff in the main action suggests an answer in the affirmative whereas the Commission and the defendant favour an answer in the negative.

In view of what was said in relation to the first question it is clear already that on this issue, too, it is not possible to agree with the plaintiff. Article 4 speaks of an alteration in the relationship between the parity of the currency of a Member State and the value of the unit of account. In the general context of the rules I have described, the provision was thus designed specifically for the case where the unit of account for the purposes of Article 1 of Regulation No 129 had a fixed value and the currency parities of the Member States were those notified to the International Monetary

Fund (Article 2 of Regulation No 129). That was no longer the case in 1981, however, for those two values were replaced in the agricultural sector by the ECU on the one hand, and the representative rates within the meaning of Article 1 of Regulation No 878/77 on the other. In that respect it is significant that Regulation No 878/77 refers expressly to Article 3 of Regulation No 129, where it is provided that in the event of monetary practices of an exceptional nature derogations may be made from Regulation No 129; in other words, it is possible to depart from the use of the unit of account with a particular gold value and from the conversion on the basis of the currency parities notified to the International Monetary Fund.

It cannot be reasonable still to apply directly Article 4 of Regulation No 1134/68 after the fundamental changes that have occurred in the currency and agricultural sectors; it was obviously meant to apply in circumstances in which the events outlined in it have a direct effect upon prices. While the representative rates continue to apply, however, changes in the central rates or the current rates (even for the pound sterling there is now no longer a parity notified to the International Monetary Fund) have no influence whatsoever on prices.

Even an alteration in the value of the guilder in relation to the ECU after 23 March 1981 would not have justified applying Article 4 of Regulation No 1134/68, on a reasonable construction of that article. The plaintiff's references to certain phrases in the preamble to Regulation No 878/77 provide no positive indication to the contrary, any more than does the reference to the Commission's proposal for a regulation on the value of the unit of account (Official Journal 1980, C 57, p. 11). Application of Article 4 could be considered only after an alteration in the representative rates, on the basis of the express reference to be found in Article 4 of Regulation No 878/77 which, as is apparent from the preamble to Regulation No 976/78 (Official Journal 1978, L 125, p. 32), was considered necessary because Article 4 of Regulation No 1134/68 was drafted "to cover changes in the parity of a currency, and not changes in the representative rates". Of course, it was necessary to bear in mind the additional condition that there should be a disadvantage as a result of the application of the new representative conversion rates and no measures to compensate such disadvantages, a point which I shall examine shortly.

3. Third question

This question concerns the interpretation of Article 1 (1) of Regulation No 1054/78 (as amended by Regulation No 1509/78) where the disadvantage within the meaning of Article 4 of Regulation No 878/77 to which I have just referred is defined, that is to say, the criterion to be applied when a cancellation of the certificates of advance fixing is requested following an alteration in the representative rates. In asking that question the national court is not, therefore, concerned with the monetary changes on 23 March 1981 (when the representative rate of the guilder — 1 ECU = HFL 2.80821 — remained unchanged and the only result was that the central rate of the guilder came very close to the represen-

tative rate, namely from HFL 2.74362 to HFL 2.81318 to the ECU). The question concerns rather the adjustment of the green rates with effect from 6 April 1981, which in relation to the Netherlands guilder had the result that from 6 April 1981 1 ECU equalled HFL 2.81318. The reference in the question to monetary compensatory amounts not fixed in advance stems from the argument put forward by the plaintiff in the main proceedings that the disappearance of the monetary compensatory amounts for dairy products in the Netherlands made export more difficult, creating a disadvantage for it which should be taken into account in considering its application for cancellation of its export certificates.

(a) The first observation to be made in that connection is that according to Article 4 (2) of Regulation No 878/77 the application of new representative rates must entail a disadvantage. In view of the extent of the alteration of the green rate of the guilder at the beginning of April 1981, one must ask whether such a small change (HFL 0.01927, or between 0.05% and 0.06%) is capable of creating any disadvantage worth mentioning. The plaintiff considers that the disappearance of the monetary compensatory amounts was significant. It was not really attributable to the alteration of the representative rates, however, but had in fact already (on 31 March 1981) become necessary as a result of the change in the central rate of the guilder on 23 March 1981. The Commission delayed that result by means of Regulation No 801/81 (to which I referred earlier) only by way of exception in order to prevent speculative transactions.

Apart from that, however, an examination of the request for an interpretation reveals that here, too, it is necessary to agree with the Commission and the defendant in the main proceedings, who consider that the answer should be in the negative. The arguments of the plaintiff based on the wording of Article 1 of Regulation No 1054/78 and on another regulation adopted at the time, Commission Regulation No 908/81 on the advance fixing of monetary compensatory amounts in the tender system for the export of sugar (Official Journal L 91 of 4. 4. 1981, p. 9), by contrast, do not appear to be valid.

(b) It is important to construe the Commission regulation in the light of the Council regulation on which it is based; that is to say, it must remain within the scope of the latter because it cannot be assumed that in adopting the implementing provisions the Commission intended, or indeed could, alter or add to the Council's provisions in any material respect. Council Regulation No 1134/68, the basic regulation, makes it clear, however, that its subject-matter is the adjustment of amounts fixed in advance as a result of which certificate-holders are entitled to have the certificates cancelled. Since that was extended by Council Regulation No 878/77 to the case of a change in the green rates, with the requirement that the certificate-holder must have been placed at a disadvantage, it is only reasonable to assume that the disadvantage in question must arise from the adjustment of amounts fixed in advance. Although Regulation No 1054/78 (as amended by Regulation No 1509/78) refers to an "alteration in terms of national currency in the sum total ... of the amounts applicable to a particular transaction" as constituting a disadvantage, therefore, it is wrong to infer solely from the use of the words "sum total" that amounts not fixed in advance must also be taken into account. The

Commission rightly pointed out that the possibility of having monetary compensatory amounts fixed in advance, as is apparent from the preamble to Regulation No 243/78, was introduced in order to facilitate trade by enabling traders to obtain a measure of security precisely in the event of monetary changes such as those of 23 March 1981; thus it is also clear that it is not possible for those who have made no use of that facility to claim the benefit of provisions such as those in Regulation No 1608/74 (exemption from the levying of monetary compensation in respect of transactions under pre-existing contracts when there is an alteration in the monetary compensation). An exporter who does not have the monetary compensation fixed in advance knowingly assumes the risk of its being altered. He cannot then argue in connection with the cancellation of certificates that the disappearance of the monetary compensatory amounts leads to a disadvantage which should be taken into account in his case.

The other arguments of the plaintiff do not, in my view, carry conviction.

(c) That applies to the argument that Article 1 (3) of Regulation No 1054/78 (as amended by Regulation No 1509/78) refers to "certificates not including an advance fixing of a monetary compensatory amount". Obviously that part of the provision concerns purely the currency relevant for determining whether or not there is a disadvantage, and does not mean that monetary compensatory amounts not fixed in advance should be taken into account in determining whether there is a disadvantage.

(d) That also applies to the plaintiff's argument in relation to Commission Regulation No 908/81 on the advance fixing of monetary compensatory amounts in the tender system for the export of sugar, which was likewise adopted after the monetary changes which concern us now. Although that provides that a request for advance fixing of the monetary compensatory amounts may be lodged after the request for an export licence if it relates to a licence delivered before the date of application of the regulation, if the customs export formalities are completed on or after the date of application of the regulation, and if the person concerned has not used advance fixing of monetary compensatory amounts for the exportation in question, it must not be overlooked that the preamble to the regulation states that any large-scale exercise, pursuant to Regulation No 1134/68 in conjunction with Regulation No 878/77, of the right to cancellation of export licences which have been issued following partial invitations to tender could be seriously prejudicial to management of the sector and that therefore a measure to avoid disadvantages within the meaning of Article 4 of Regulation No 878/77 should be adopted. The possibility of subsequent advance fixing of monetary compensatory amounts was thus only a measure to offset a disadvantage pursuant to the second paragraph of Article 4 (2) of Regulation No 878/77. That is certainly no evidence for the claim that the absence of monetary compensatory amounts fixed in advance and the consequences thereof should always be taken into account in determining whether there is a disadvantage for the purposes of Article 4 of Regulation No 878/77.

4. Fourth question

This also relates to the interpretation of Article 1 of Regulation No 1054/78 as amended by Regulation No 1509/78. It seeks to know whether in calculating the disadvantage mentioned there the purchase price should be taken into account. The national court had in mind the argument of the plaintiff in the main proceedings to the effect that the alteration of the representative rates of 6 April 1981 affected the intervention price and thus the market price and that that alteration made it impossible for the plaintiff to carry through the exports profitably on the basis of the refund fixed in advance.

The plaintiff in the main action considers that the fourth question should be answered in the affirmative. It refers to the fact that the second paragraph of Article 1 (1) includes a reference to prices, and maintains that when both the refund and the monetary compensatory amounts are fixed in advance a disadvantage of the kind referred to can arise only if there is an alteration in prices. Once again, both the Commission and the defendant in the main proceedings take the opposite view.

In this connection too, in my opinion, the latter have the better arguments.

It might, in fact, seem sufficient now to refer to the oberservation relating to the answer to the third question to the effect that the general context of the rules indicates that only the effects of a change in the representative rates on the amounts fixed in advance, which obviously does not include the purchase price, are to be taken into account.

In addition to that, however, it may be said that support for this view is also to be found in the wording of Article 1 of Regulation No 1054/78. As regards the definition of what constitutes a disadvantage, the criterion given there is that an alteration of the amounts applicable to a transaction as a result of the application of new representative rates must result either in the levying of a greater amount or the granting of a lesser amount than that applicable before the entry into force of the said rate. On that definition, the purchase price is quite irrelevant.

On the other hand, the conclusions which the plaintiff seeks to draw from the wording of the second subparagraph, which mentions prices, do not appear to be convincing. The Commission has rightly explained that the reference to prices was not intended to introduce a new factor (the purchase price) into the determination of what constitutes a disadvantage; the purpose of the subparagraph is simply to determine the relevant date for the purposes of calculating the disadvantage. That is, in fact, quite clear from Article 1 (2) (b), which states that in the case of simultaneous alteration of the representative rate and of the price level in units of account, the disadvantage resulting from the alteration in the representative rate must outweigh any advantage afforded by the effect of the alteration in the price level. That makes it clear that the alteration in the price level is not to be taken into account in calculating the disadvantage, but is relevant only in comparing the disadvantages resulting from an alteration in the representative rate and the advantages of an alteration in the price.

C — In conclusion, therefore, I must propose that all the questions put by the College van Bereop voor het Bedrijfsleven should be answered in the negative, and it be declared that Articles 1 and 4 of Regulation No 1134/68 did not apply to the monetary changes which occurred on 23 March 1981; in calculating the disadvantage for the purposes of Regulation No 1054/78, moreover, the monetary compensatory amounts not fixed in advance are not to be taken into account, nor is an alteration in the purchase price resulting from an alteration in the representative rates and its effects on the intervention prices.