JUDGMENT OF THE COURT
21 MAY 1976 [1]

Société Roquette Frères
v Commission of the European Communities

Case 26/74

Summary

1. *EEC — Own resources — Monetary compensatory amounts — Amounts improperly collected — Reimbursement — Award of interest — National authorities — Jurisdiction*

   (Decision of the Council of 21 April 1970, Article 6; Regulation No 2/71 of the Council, Article 1);

2. *Non-contractual liability — Application — Claim for nominal damages — Specific damage — Causal connexion — Proof*

   (EEC Treaty, Article 215)

1. Disputes in connexion with the reimbursement of amounts collected for the Community are a matter for the national courts and must be settled by them under national law in so far as no provisions of Community law are relevant.
   In the absence of provisions of Community law on this point it is currently for the national authorities, in the case of reimbursement of dues improperly collected, to settle all ancillary questions relating to that reimbursement, such as any payment of interest.
2. Even in a claim for nominal damages the applicant must prove actual damage and a causal connexion between such damage and the measures adopted by a Community institution.

In Case 26/74

ROQUETTE FRÈRES, a limited liability company governed by French law having its registered office at Lestrem (Pas-de-Calais), represented by Marcel Veroone, Advocate at the Lille Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 2 rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES represented successively by its Legal Adviser Jacques H. J. Bourgeois, acting as Agent, and, as regards the

1 — Language of the Case: French.

re-opening of the oral procedure, by its Legal Advisers Michel Van Ackere and Richard Wainwright, acting as Co-agents, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Bâtiment Chemins de Fer Luxembourgeois, place de la Gare,

defendant,

Application for compensation under the second paragraph of Article 215 of the EEC Treaty in connexion with monetary compensatory amounts.

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

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

I — Statement of facts

Because certain foreign exchange markets within the Community had been disturbed by speculative movements involving an abnormal influx of short term capital the Council of the Communities, by resolution of 9 May 1971 (JO C 58, p. 1), 'was prepared to envisage' that, in certain circumstances, Member States which had experienced an excessive influx of capital might, for a limited period, widen the margins of fluctuation for the exchange rates of their currencies in relation to their official parities.

In view of the fact that a perceptible margin of difference, within a Member State, between the current rate of exchange and the official parity was likely to give rise to difficulties as regards the proper functioning of the agricultural common market, since trade to which the current rate of exchange applied might then be effected at a price, in

national currency, lower than the intervention or buying-in prices laid down by Community rules on the basis of the official parity, the Council, by Regulation No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (JO L 106, p. 1), gave its authority, subject to certain conditions to Member States which, for the purposes of commercial transactions, allowed the exchange rate of its currency to fluctuate by a margin wider than the one permitted by international rules, to apply compensatory amounts, to be charged on imports of certain agricultural products granted on certain exports.

According to Article 1 (2) of Regulation No 974/71 compensatory amounts are applicable, on the one hand, to products covered by intervention arrangements under the common organization of agricultural markets, and, on the other hand, to products whose price depends on the price of the products mentioned above and which are governed by the common organization of the market or are the subject of a specific arrangement under Article 235 of the EEC Treaty.

In accordance with the final recital to Regulation No 974/71 the compensatory amounts should be limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products covered by intervention arrangements and should be applied only in cases where this incidence would lead to difficulties.

As regards the method of calculation of the compensatory amounts, Article 2 of Regulation No 974/71 lays down that, for products not covered by intervention arrangements, that is to say processed products, the compensatory amounts shall be equal to the incidence, on the prices of the product concerned, of the application of the compensatory amount to the prices of the product on which they depend.

At the beginning of 1973 the actual market exchange rates of the currencies of certain Member States appreciably exceeded the lower limit of fluctuation permitted by the international rules in force on 12 May 1971. By means of Regulation No 509/73 of 22 February 1973, amending Regulation No 974/71 (JO L 50, p. 1), the Council therefore provided for the grant on imports and the charge on exports of compensatory amounts by those Member States whose currencies had thus decreased in value.

Regulation No 509/73 added to Regulation No 974/71 an Article 4 a, according to which, in trade with third countries, compensatory amounts granted on imports shall be deducted from the import charge and compensatory amounts charged on exports shall be deducted from the export refund and, in trade between the Member States and with third countries, compensatory amounts due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries.

By Regulation No 218/74 of 25 January 1974 of 25 January 1974 fixing the monetary compensatory amounts and certain rates for their application (JO L 24, p. 1), the Commission recorded, in particular, that the currency of France had depreciated by more than the margin of fluctuation permitted and fixed, for that Member State, the monetary compensatory amounts to be charged on exports and granted on imports of certain agricultural products.

At the request of the French State, the compensatory amounts fixed for France were stated to be applicable as from 21 January 1974, that being the date upon which the French franc was floated.

On 13 February 1974 the Ministry for Economic Affairs and Finance published in the Journal Officiel of the French Republic a Notice to importers and exporters of certain agricultural products

and foodstuffs concerning monetary compensatory amounts.

The company Roquette Frères, having its registered office at Lestrem (Pas-de-Calais), is largely concerned in the manufacture of amyloid products processed from maize, mainly intended for export.

As from 28 January 1974 the French Customs Administration demanded of the Roquette company the payment of monetary compensatory amounts on its exports of amyloid products both to Member States and to third countries.

II — Procedure

Since it was of the opinion that the payment of those compensatory amounts could not be justified, the Roquette company brought two parallel actions: it instituted proceedings before the Tribunal d'instance of Lille, against the French Customs Administration and, pursuant to the second paragraph of Article 215 of the EEC Treaty, by an application entered at the Court Registry on 26 March 1974, it brought the present action for compensation against the Commission of the European Communities.

The written procedure in the present case followed the normal course.

Having heard 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.

At the hearing on 1 October 1974 oral argument was presented and replies were given to questions put by the Court, on the one hand in Case 34/74 *(Société Roquette Frères* v *French State, Customs Administration;* reference for a preliminary ruling by the Tribunal d'instance of Lille), by the Roquette company, the Government of the French Republic and the Commission of the European Communities, and, on the other hand, in the present action by the Roquette company and the Commission.

The Advocate-General delivered his opinion in both cases at the hearing on 23 October 1974.

In its judgment of 12 November 1974 in Case 34/74 ([1974] ECR 1217) the Court gave a preliminary ruling on the questions submitted to it by the Tribunal d'instance of Lille.

On the same date the Court decided to stay the proceedings in the present case until the Tribunal d'instance of Lille had given judgment on the substance of the dispute before it.

By a judgment of 22 April 1975 the Tribunal d'instance of Lille found, referring to the preliminary ruling of the Court of 12 November 1974, that there was no legal basis for the monetary compensatory amounts claimed from the Roquette company during the period from 28 January to 21 October 1974 on the exportation of amyloid products manufactured by it; consequently it ordered the French State, Customs Administration, to make a payment of FF 7 500 000 on account to the Roquette company, and suspended judgment with regard to the balance.

By a judgment of 28 October 1975 the Tribunal d'instance of Lille took official note that the French State, Customs Administration, had reimbursed to the Roquette company a sum of FF 7 739 653·75 which the parties agree should be ordered to be paid as the total of the monetary compensatory amounts repayable to the Roquette company.

The Roquette company lodged an additional pleading in the present case on 31 October 1975. The Commission lodged its observations in reply on 1 December 1975.

Having heard the Judge-Rapporteur and the views of the Advocate-General the Court decided by order of 16 December 1975 to re-open the oral procedure.

With regard to the second head of its claim the Roquette company was requested to provide the Court with information on the existence and the composition of the damage for which it claims compensation; in this connexion it lodged on 15 January 1976 four tables of figures and an explanatory note.

The additional oral observations of the parties and their replies to the questions put by the Court were heard on 9 March 1976.

The Advocate-General delivered a further opinion at the hearing on 31 March 1976.

III — Conclusions of the parties

Since the applicant has obtained the reimbursement of all the compensatory amounts wrongly paid, it formally abandons, so far as is appropriate, this head of its conclusions; on the other hand it states that the Tribunal d'instance of Lille has refused to order the French State to pay it interest on the overdue payment of those sums.

In the new state of the procedure the applicant thus requests the Court

(a) to rule that it is entitled
   - to the payment of interest calculated at a suitable rate on the compensatory amounts calculated from the dates of each such wrongly-made payments;
   - to nominal damages in compensation for the damage resulting from the effects on its activity of the unfair treatment it has suffered from the point of view of competition;

(b) to order the Commission to bear the costs of the proceedings.

The *Commission* contends that the Court should

- dismiss as unfounded the claim for the award of nominal damages;
- dismiss as inadmissible or, in any case, as unfounded the claim for the award of interest on the compensatory amounts;
- order the applicant to pay the costs.

IV — Submissions and arguments of the parties

A — With regard to admissibility

Although the *Commission* does not raise a formal objection of inadmissibility it disputes various aspects of the admissibility of the application.

(a) Although in its judgment of 12 November 1974 in Case 34/74 the Court found that the Commission had made an error it did not find that it was thereby guilty of wrongful act or omission. What occurred in the present case was not a negligent act but an error in the interpretation of the relevant provisions; such an error is understandable and consequently does not constitute negligence.

(b) The claim for the award of interest on the compensatory amounts repaid to the applicant company is ancillary to the main claim. It constitutes an action for the recovery of undue payments which is foreign to the action for compensation for damage under Article 215 of the EEC Treaty; in the present state of Community law it is entirely a matter for the national courts.

According to the *applicant* it is impossible seriously to dispute the admissibility of the application.

(a) The Court has found that the Commission wrongly interpreted the Community regulations on monetary compensatory amounts. It is therefore guilty of a wrongful act or omission.

On any view the second paragraph of Article 215 does not state that there must be a wrongful act or omission and in its judgment the Court has not precluded the possibility of liability without a wrongful act or omission, since this may follow in particular from damage of an exceptional nature suffered by a national by reason of a regulation.

(b) Interest on a principal sum comes under the general system of damages and consequently under the system of liability.

B — With regard to the substance of the case

1. Fact giving rise to the damage

The *applicant* considers that the mistake of interpretation and consequently the wrongful act or omission of the Commission, found by the judgment of the Court of 12 November 1974, constitutes the sole cause of the damage which it has suffered. The interpretation of the Commission was binding on the Member States which therefore cannot incur liability in operating the machinery of the monetary compensatory amounts.

The *Commission* maintains that the error of interpretation which led to the improper charging of the compensatory amounts in no way arose in Regulation No 218/74; the error came about on the application of the compensatory amounts fixed in this regulation in conjunction with the so-called 'levelling-off' rule provided for in Article 4 a of Regulation No 974/71 of the Council. The liability for the error of interpretation thus rests in the first instance with the national authorities which are required to apply the 'levelling off' rule in granting or charging compensatory amounts.

2. The nature of the damage

According to the *applicant* the damage for which, having regard to the judgments of the Tribunal d'instance of Lille, it claims compensation arises from the effect on its liquid assets of the payment of the compensatory amounts and the consequences of unfair treatment.

(a) The Tribunal d'instance of Lille refused to order the French State to pay interest on the overdue repayment amounts improperly charged on the grounds that, in the first place, the Code des Douanes Français (the French Customs Code) provides for the award of interest in one case only which does not obtain in the present proceedings, and in the second place that, instead of retaining the sums which it collected the French State immediately transferred them to the Community budget.

The first argument appears debatable in the extreme. Nevertheless the applicant did not think that it should or could, for that reason alone, lodge an appeal, especially since its rights to compensation had been reserved. Moreover the line of argument adopted by the Tribunal d'instance of Lille in these two respects cannot simply be transposed to the present case.

The award of interest calculated at an appropriate rate on the compensatory amounts, to run from the dates on which each of those amounts was wrongly paid, enables proper compensation to be made for the effect which the cash withdrawals had on the liquid assets of the applicant.

In its originating application the applicant suggested that the Court should fix such interest at the discount rate of the Banque de France. This suggestion was subsequently adopted in the law of 11 July 1975 Article 1 of which provides that 'the rate of legal interest shall in all cases be fixed for the duration of the calendar year. For the year in question it shall be equal to the discount rate applied by the Banque de France on 15 December of the foregoing year'. Article 3 of that law further provides that when an order for payment

is made the rate of legal interest shall be increased by five points upon the expiry of a period of two months from the day on which the judgment, if it were provisional, became enforceable.

The applicant is however prepared to leave the matter to the discretion of the Court, should the Court prefer to adopt a method which it considers better.

(b) It is scarcely possible without a certain arbitrariness to provide information and statistical data with regard to unfair treatment and its effects on the activity of the applicant. The distortion of competition was all the more serious since the obligation to pay compensatory amounts on exported products corresponded, so far as foreign competitors selling in France was concerned, to the grant of compensatory amounts on products imported into France by those competitors. The repayment to the applicant of the sums wrongly collected redresses more or less exactly the first aspect of the situation; on the other hand foreign competitors no doubt do not have to repay the amounts wrongly granted to them which, during the period complained of, allowed them to benefit from advantageous conditions *vis-à-vis* the applicant.

This represents a specific element of damage, but one which is difficult to quantify. In those circumstances, since the applicant has succeeded in its principal claim it wishes to display moderation and only requests the Court to award it nominal damages.

In reply to the request of the Court for information on this aspect of its claim for compensation the applicant pointed out that there are no official statistics for the total of the compensatory amounts paid in respect of the imports into France of amyloid products for the period from 1 February to 20 October 1974. Proceeding from the basis of the average monthly rates and the tonnages this total amounts to FF 3 618 923·20. Those benefiting from these sums could have put them to extremely varied and complex uses, whether they retained them solely for their own advantage or whether they passed on the benefit thereof in whole or in part to their customers by reducing the selling prices. In any case the compensatory amounts helped to distort a free competitive market of which the applicant holds a 45 % share.

The *Commission* opposes the claims of the applicant by submitting the following considerations:

(a) The claim for compensation for the consequences of unfair treatment cannot be accepted. Damages, albeit nominal, are justified only to the extent that damage is proved. There is nothing in the case-law of the Court to provide grounds for the conclusion that such damages may be awarded in the absence of proof expressed in figures. Although the applicant has lodged certain statistical tables it has failed to adduce even a shred of evidence to show that damage has occurred and still subsists, far less the existence of quantifiable damage. Furthermore it does not even maintain that such damages must be awarded by virtue of principles common to the laws of the Member States.

(b) The claim for the award of interest gives rise to objections both in principle and with regard to the conditions under which it is submitted.

If it is admitted, for the sake of argument, that no provision or principle of French law confers upon the applicant a right to the reimbursement of interest it must be considered whether such a right may be inferred from provisions of Community law.

In their application and in proceedings arising therefrom the monetary compensatory amounts are governed by the same rules as the other measures of the common agricultural policy. Since

the amounts are charged and granted by the Member States the relationships deriving from them are constituted between those liable for payment and the beneficiaries on the one hand and the national authorities on the other. In the absence of Community provisions in this sphere and provided that there is no infringement of the rights to which Community law gives rise for the benefit of individuals, such relationships are necessarily governed, for the purpose of filling the lacunae, by the provisions of national law.

No provision of Community law governs the question of interest. In the present state of affairs the question whether there exists a right to be awarded interest on sums wrongly paid and at what rate it is calculated thus comes under the provisions of national law governing the relationships which arise between individuals and the national authorities when those sums are granted or charged.

In those circumstances it does not appear that the solution sought by the applicant is acceptable. This solution consists in obtaining, through an application for compensation, a benefit which is governed by national proceedings in contentious matters of payment and which is refused by Community law to the extent to which the latter defers to a national law which excludes the payment of interest. This would lead to the Community's paying interest instead and in place of a Member State without being able to claim repayment from that State.

Furthermore it has been in no way proved that any provision or principle of French law confers upon the applicant a right to the repayment of interest in addition to the repayment of sums wrongly paid by it to the French authorities. Contrary to a generally recognized principle the applicant claims compensation for damage which it could itself have avoided by appealing against the judgment of the Tribunal d'instance of Lille; accordingly its action must be dismissed on this ground too.

3. Causal connexion

In the view of the *applicant* the damage which it alleges is a direct result of the mistaken interpretation by the Commission of the provisions in question.

On the other hand the *Commission* considers that it is in no way responsible for the situation of which the applicant complains and that it is thus impossible to involve the liability of the Community through the action of the Commission.

Law

1 By an application lodged at the Court Registry on 26 March 1974 the applicant claimed under Article 178 and the second paragraph of Article 215 of the EEC Treaty compensation from the Community for the damage caused to it by the Community through the effect of Regulation No 218/74 of the Commission of 25 January 1974 (OJ 1974 L 24, p. 1) fixing the monetary compensatory amounts in respect of the importation of amyloid products into the French Republic or, as appropriate, in respect of the importation of the same products contrary to the criteria established by Regulation No 974/71 of

the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ, English Special Edition 1971 (I), p. 257) as amended in particular by Regulation No 509/73 of the Council of 22 February 1973 (OJ 1973, L 50, p. 1).

2 In the original application the applicant calimed the reimbursement of the compensatory amounts paid in respect of exports during a period from 28 January to 21 October 1974, interest on these sums, together with an award of interest for the disruption of its business both from the effect on its liquid assets and the consequences of the unfair competitive conditions which it suffered as a result of the economic effects of Regulation No 218/74.

3 Parallel with this application the applicant instituted proceedings before the Tribunal d'instance of Lille for the reimbursement of the compensatory amounts in dispute and for the payment of interest at the legal rate on these sums.

4 In these proceedings the Tribunal submitted to the Court under Article 177 of the Treaty preliminary questions as to whether the application of compensatory amounts in respect of the export of amyloid products provided for by Regulation No 218/74 of the Commission was in accordance with Regulations Nos 974/71 and 509/73 of the Council.

5 In the judgment given on 12 November 1974 in reply to those questions *(Société Roquette Frères* v *French State,* Case 34/74 [1974] ECR 217) the Court found that for the relevant period the fixing of the compensatory amounts for the products in question by Regulation No 218/74 of the Commission was not in accordance with the provisions of the basic regulations of the Council.

6 Following that judgment the applicant obtained an order against the French State for reimbursement of the compensatory amounts in dispute, by virtue of a judgment of the Tribunal d'instance of 22 April 1975.

7 On the other hand in the same judgment the Tribunal d'instance ruled that the applicant was not entitled to interest at the legal rate on the sums reimbursed.

8 In view of this judgment the applicant amended its conclusions and now only claims from the Community:

(a) the award of interest calculated at an appropriate rate on the compensatory amounts, and

(b) 'nominal damages' as compensation for the harm occasioned to it by the unfair competitive conditions which it suffered as a result of the measure adopted by the Commission.

On the question of interest

9 It is clear from the provisions on the Communities' own resources, that is to say, the Decision of the Council of 21 April 1970 and Regulation No 2/71 of the Council of 2 January 1971 in implementation thereof (OJ, English Special Edition 1970 (I), p. 224 and OJ, English Special Edition 1971 (I), p. 3) in conjunction with Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218) that the national authorities must ensure on behalf of the Community and in accordance with the provisions of Community law that a certain number of dues, including the monetary compensatory amounts, are collected.

10 Under Article 6 of the decision of 21 April 1970, the terms of which were repeated by Article 1 of Regulation No 2/71, these collections shall be made by Member States in accordance with national provisions laid down by law, regulation or administrative action.

11 Disputes in connexion with the reimbursement of amounts collected for the Community are thus a matter for the national courts and must be settled by them under national law in so far as no provisions of Community law are relevant.

12 In the absence of provisions of Community law on this point, it is currently for the national authorities, in the case of reimbursement of dues improperly collected, to settle all ancillary questions relating to such reimbursement, such as any payment of interest.

13 The Tribunal d'instance thus had sole jurisdiction to decide whether interest should be awarded and in exercise of that jurisdiction it came to a decision on this point in its judgment of 22 April 1965 against which, moreover, no appeal was made.

14 In those circumstances the head of the claim relating to the award of interest on the sums improperly collected is inadmissible.

With regard to the compensation claimed on the ground of adverse affect on the conditions of competition

15 It is clear from the additional pleading lodged after the judgment delivered by the Tribunal d'instance that the reimbursement of the compensatory amounts improperly collected compensates to the applicant's satisfaction the damage which its own exports suffered.

16 According to the statements which the applicant has made the damage which it claims to have suffered arose from the fact that, by reason of the payment of compensatory amounts on the importation into France of amyloid products, its foreign competitors enjoyed more favourable marketing conditions than the applicant and that the conditions of competition were distorted to its disadvantage.

17 In support of that allegation the applicant has produced statistics intended to prove the overall increase during the relevant period in importations of amyloid products into the French Republic.

18 Since the applicant itself admits that it is difficult to determine the precise effect of this development on its commerical interests it has merely requested nominal damages by way of compensation for the damages which it claims thereby to have suffered.

19 The Commission for its part disputes the evidential value of those figures, pointing out in particular that during the same period a notable increase in French exports to the other Member States had also occurred and indeed, in the case of certain of the relevant products, to a much higher degree than the imports.

20 This, according to the Commission, is sufficient to prove that the conjunctural trend indicated by the applicant did not originate in the establishment of the disputed compensatory amounts.

21 Under the second paragraph of Article 215 the Community shall, in accordance with the general principles common to the laws of the Member States, make good 'any damage caused by its institutions'.

22 Even supposing that the fact that Regulation No 218/74 of the Commission is not in accordance with the basic regulations of the Council, as was found by the Court in its judgment of 12 November 1974, were capable of rendering the Community liable, it would still be the case that the applicant has failed to prove the damage which it claims to have suffered.

23 Although the Court expressly requested the applicant to supplement the particulars of its claim in this respect, the latter merely produced overall figures the interpretation of which is doubtful and it failed to prove any actual damage which it has specifically suffered in the course of its business or a causal connexion between this damage and the measures adopted by the Commission.

24 The fact that the applicant has reduced its claim to nominal damages does not relieve it of providing conclusive proof of the damage suffered.

25 Consequently this head of the claim must be dismissed.

Costs

26 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

27 The applicant has failed in its submissions.

28 It must therefore be ordered to bear the costs.

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to bear the costs.**

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 21 May 1976.

A. Van Houtte
Reigstrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 23 OCTOBER 1974
[1974] ECR 1232

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 31 MARCH 1976 [1]

Mr President,
Members of the Court,

1. The present case is a sort of appendix to other proceedings already concluded at Community and national level. The fact is that, in addition to the action for damages brought before this Court against the Commission, the applicant has at the same time brought before the national court an action against the French administrative authorities the object of which is in many respects substantially the same.

Before the French court the applicant sought reimbursement of the compensatory amounts which it claimed to have paid unduly in application of Article 4a (2) of Regulation No 974/71 of

1 — Translated from the Italian.