OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 23 September 1986 *

Mr President,
Members of the Court,

The Rechtbank van Eerste Aanleg [Court of First Instance], Brussels, has made a reference to the Court for a preliminary ruling on the interpretation of Commission Regulation (EEC) No 1371/81 of 19 May 1981 laying down detailed rules for the administrative application of monetary compensatory amounts (Official Journal 1981, L 138, p. 1), and in particular of Article 17 (3), which provides as follows:

'3. Payment of monetary compensatory amounts shall be made by the competent authorities within two months from the day of deposit of sufficient supporting documents except in cases:

(a) of *force majeure*; or

(b) where administrative inquiries have been commenced concerning the entitlement to the monetary compensatory amounts. In such cases the payment shall be made only when the entitlement to the monetary compensatory amounts is accepted.'

As the facts and background to the case are stated in the Report for the Hearing, I do not need to sum them up here.

I shall examine in turn the question of the time from which the two-month period for payment begins to run, and the interpretation to be given to the concept of *force majeure*, in each case after re-stating the question submitted by the national court.

1. *The starting point for the two-month payment period*

The first question put by the national court is:

'1. Must Article 17 (3) of Commission Regulation (EEC) No 1371/81 be interpreted as meaning that the two-month period prescribed by it for the payment of monetary compensatory amounts starts to run on the day following that on which the request for payment of monetary compensatory amounts, together with the other requisite documents, is deposited with the competent national authority, or does that period not start to run until it is established, on the basis of an examination by the competent national authorities of the documents submitted, that sufficient supporting documents have been deposited and that the monetary compensatory amounts are due?'

Denkavit and the *Commission* take the view that the two-month period starts to run after the deposit of the request and the necessary accompanying documents with the competent authority, in this instance the Centrale Dienst voor Contingenten en Vergunningen [Central Department for Quotas and Licences, hereinafter referred to as 'the Central Department'].

The *Belgian State*, however, considers that the documentation is complete, and the two-month period therefore begins only when the Central Department has concluded the administrative procedure, which, it states, comprises the following stages (in chronological order): receipt of the request; registration of the request and

* Translated from the French.

allocation of a serial number; notification of that serial number to the person submitting the request; photocopy of the customs document; comparison of the information declared with the customs document; where necessary, inquiries to the customs administration.

In my view there can be no doubt that the first of those views is the correct one, for reasons connected with both the wording of Article 17 and its purpose.

In the first place, its wording is clear: the period runs 'from the day of deposit of sufficient supporting documents'. Clearly that deposit is the responsibility of the claimant and cannot depend on the conduct of the authority with which he lodges his request.

The relevant authority may indeed verify whether the documentation is complete — that is, whether all the required documents are joined to the request — but the claimant must in any event be in a position to know the exact date on which the period begins to run.

For example, in this instance the Belgian administration might have given one or more officials the task of receiving and registering new requests.

They would then have checked that the necessary documents were joined to the requests. In the case of imports from the Netherlands only one document was necessary, namely a copy of the X-10 import entry (see on that point the notice of the Ministry of Agriculture published in the *Moniteur belge* of 25 February 1982).

If that document had not been submitted the request would have been sent back and the two-month period would not have commenced.

Otherwise the request would have been registered without delay and the date of that registration would have marked the commencement of the period.

Checking that the copy of the X-10 import entry joined to the request tallies with the entry originally submitted to customs clearly forms part of the examination of the validity of a request.

In the second place, the second recital in the preamble to Commission Regulation (EEC) No 343/74 of 11 February 1974 (Official Journal 1974, L 40, p. 4), which introduced the notion of a time-limit for payment of monetary compensatory amounts into the regulations on the application of compensatory amounts, makes it clear that the aim of that provision is 'to avoid distortion of competition between those in the trades concerned in the Member States'. The same reasoning is given in the 14th recital in the preamble to Commission Regulation (EEC) No 1380/75 of 29 May 1975 (Official Journal 1975, L 139, p. 37), the section of which relating to the rules for the administrative application of monetary compensatory amounts was the predecessor of the provisions in Regulation No 1371/81 which the Court is now called upon to interpret.

That aim would be jeopardized if the time from which the period began to run varied from one Member State to another owing to differences between national procedures or because the relevant authorities were more, or less, diligent in carrying them out. That, too, is why a comparatively brief period was laid down in order to ensure that variations in the time taken to pay monetary compensatory amounts between one Member State and another were reduced to the minimum.

Finally, it is only natural and equitable for the two-month time-limit to be as mandatory and objective as the time-limit imposed on claimants by Article 17 (2) of the same regulation. Except in cases of *force majeure*, entitlement to the grant of

monetary compensatory amounts '*shall be lost*' unless claimants deposit the relevant documents 'within the 12 months following the day on which the customs authorities accepted the import entry or the export declaration' (the emphasis is mine).

In its judgment of 22 January 1986 in *Denkavit France* v *Forma* (Case 266/84 [1986] ECR 149),[1] the Court took the view that the two-month period laid down by the article corresponding to paragraph (3) 'completes the system' set out in the previous article whose purpose is 'to ensure that administrative matters are dealt with without undue delay' (paragraphs 18 and 19 of the Decision). In fact, if that aim is to be achieved, it is just as necessary for the two-month time-limit imposed on the relevant authority for the payment of amounts due to run from the time at which the claimant lodges his request and the necessary documents, as it is for the 12-month time-limit imposed on claimants for the submission of full documentation to run from the time at which the customs authorities accept the import entry or the export declaration.

It is quite a different matter if the relevant authority finds that the claimant's entitlement to monetary compensatory amounts is open to doubt. In such a case Article 17 (3) (b) empowers it to open administrative inquiries lasting until entitlement to compensatory amounts is finally established, which may delay payment beyond the two-month time-limit. In that case, however, the administration is obliged to inform the claimant that inquiries have been opened and that as a result it may not be possible to comply with the time-limit.

1 — That judgment deals with Regulation No 1380/75, of which Articles 14, 15 and 16 correspond, with slight differences in wording, to Article 17 (1), (2) and (3) of Regulation No 1371/81.

If within the two-month period such administrative inquiries are not opened, or the request is not refused, the national authority must make payment within that period.

For all those reasons I conclude that the correct interpretation is the one given in the first limb of the first question submitted for a preliminary ruling, and I therefore propose that the Court answer Question 1 as follows:

Article 17 (3) of Commission Regulation (EEC) No 1371/81 must be interpreted as meaning that the two-month period laid down for the payment of monetary compensatory amounts starts to run on the day following that on which the request for payment, together with the other requisite documents, is deposited with the competent national authority.

2. *The concept of* force majeure

The national court then puts to the Court the following two questions:

'2. May *force majeure* within the meaning of Article 17 (3) (a) of Commission Regulation (EEC) No 1371/81 be pleaded if the complexity of the rules on the grant of monetary compensatory amounts for a particular agricultural sector, and the resulting difficulty in checking the documents deposited and computing the amounts applicable, make it impossible for the competent national authority of a Member State to comply with the two-month time-limit laid down in Article 17 (3), even by using all the staff available, owing to a sudden great increase in the number of requests for monetary compensatory amounts?

3. May the competent national authority plead *force majeure* within the meaning of Article 17 (3) (a) of Regulation No 1371/81 if, as a result of national legislation imposing budgetary restrictions, its staff cannot be increased to meet a sudden sharp increase in the number of requests for the grant of monetary compensatory amounts?'

In the view of the *Belgian State*, the combination of the three following exceptional circumstances must be regarded as a case of *force majeure* within the meaning of Article 17 (3) (a) of Regulation No 1371/81:

(a) the sudden sharp increase in requests for monetary compensatory amounts, which was due to the fact that between 22 February 1982, when the Belgian/Luxembourg franc was devalued, and 23 May 1983 monetary compensatory amounts had to be extended for the first time to imports into Belgium of agricultural products from the Netherlands, Belgium's largest trading partner for imported agricultural products;

(b) insufficient staff at the Central Department, which could not be remedied owing to the budgetary restrictions imposed by law;

(c) the complexity of the system of monetary compensatory amounts in the animal feedingstuffs sector, which is apt to produce delays in the administrative procedure for determining entitlement to compensatory amounts and for paying them.

For their part, *Denkavit* and the *Commission* are of the view that none of those circumstances satisfies the criteria which must be satisfied, according to the judgments of the Court, in order for a case of *force majeure* to be made out.

In *Denkavit France* v *Forma*, cited above, the Court summed up a consistent line of decisions in this field by stating that 'the concept of *force majeure* must be understood in the sense of unusual and unforeseeable circumstances, beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised. That concept must be considered in relation to the provisions of each regulation in which the term *force majeure* appears' (at paragraph 27 of the Decision).[2]

It is true that almost all the cases of *force majeure* pleaded before the Court were pleaded by undertakings or individuals.

In the only three cases in which, to my knowledge, *force majeure* was pleaded by a Member State, the Member State was seeking to justify its failure to fulfil an obligation in proceedings under Article 169 of the EEC Treaty. In the first two cases (judgment of 5 May 1970, Case 77/69 *Commission* v *Belgium* [1970] ECR 237 and judgment of 18 November 1970, Case 8/70 *Commission* v *Italy* [1970] ECR 961), the Court rejected pleas of *force majeure* based

2 — On a number of identical occasions in the recent past the Court has used two other substantially identical formulations to define the concept of *force majeure*: '... apart from the special features of the specific areas in which it is used, the concept of *force majeure* essentially covers unusual circumstances which make it impossible for the relevant action to be carried out. Even though it does not presuppose absolute impossibility, it nevertheless requires abnormal difficulties, independent of the will of the person concerned and apparently inevitable even if all due care is taken' (see judgments of 9 February 1984, Case 284/82 *Busseni* v *Commission* [1984] ECR 557; 30 May 1984, Case 224/83 *Ferriera Vittoria* v *Commission* [1984] ECR 2349; 12 July 1984, Case 209/83 *Ferriera Valsabbia* v *Commission* [1984] ECR 3089).
The other formulation is: '... recognition of circumstances of *force majeure* presupposes that the external cause relied on by individuals has consequences which are inexorable and inevitable to the point of making it objectively impossible for the persons concerned to comply with their obligations' (judgments of 18 March 1980, Joined Cases 154/78 *et al. Valsabbia and Others* v *Commission* [1980] ECR 907; 13 November 1984, Joined Cases 98 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763).

on the dilatoriness of the parliamentary procedure on the ground that 'the liability of a Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution'.

In a more recent case (judgment of 11 July 1985, Case 101/84 *Commission* v *Italy* [1985] ECR 2629), the Court acknowledged that a bomb attack which had destroyed equipment at a statistical data bank 'may have constituted a case of *force majeure* and created insurmountable difficulties' but did not in the event uphold the plea because 'its effect could only have lasted a certain time, namely the time which would in fact be necessary for an administration showing a normal degree of diligence to replace the equipment destroyed and to collect and prepare the data' (paragraph 16 of the Decision).

That said, I do not think that those judgments can be taken to indicate that the Court draws a distinction according to whether the plea of *force majeure* is put forward by an individual or an undertaking or by a Member State. On the contrary, it seems to me that the judgments I have referred to must be applicable to anyone and that consideration of whether there has been *force majeure* cannot be affected merely by differences in the legal context in which that concept is to have effect.

In this case the relevant legal context is Commission Regulation No 1371/81.

I have shown earlier what were the considerations which led to the adoption of Article 17 (3); the prime consideration was to avoid distortion of competition between traders in the Member States.

It follows that the competent authorities must show the greatest diligence in the application of that provision.

The only cases in which the time-limit may be exceeded are the exceptional cases specifically mentioned, namely *force majeure* and where administrative inquiries are opened.

(a) Is the difficulty in calculating monetary compensatory amounts in the animal feedingstuffs sector capable of constituting a case of *force majeure* or one of the ingredients of *force majeure*?

On this point I share the view of the Commission that 'it is extremely unlikely that the author of the Community legislation intended to lay down a time-limit for payment with which it was objectively impossible to comply, even in normal circumstances, in a given agricultural sector. It is still less probable that [it] intended that objective impossibility to be covered by the exception provided for in "cases of *force majeure*" by Article 17 (3) (a)'.

If it had taken the view that the animal feedingstuffs sector might create special difficulties, the author of the Community legislation would surely have fixed a period longer than two months for that sector at least.

Regulation No 1371/81 was adopted after all the relevant management committees had given their assent (see the last recital in the preamble to the regulation). That implies that at least the majority of the Member States considered that a period of two months could be complied with even in the animal foodstuffs sector. Furthermore, no delays in payment in other Member States have come to the notice of the Court.

Indeed it would scarcely seem possible to regard the complexity of Community legislation which a Member State has taken part in drafting as constituting an unusual and unforeseeable difficulty which has proved insurmountable for that State's staff despite all possible diligence in overcoming it.

Moreover, in order to facilitate the task of the competent authorities, Article 6 of Regulation No 1371/81 provides that 'the person concerned shall declare . . . all such particulars as are necessary for determining the monetary compensatory amount' and, in particular, 'in so far as it is necessary for determining the monetary compensatory amount, particulars of the composition of the products'.

Finally, it is clear from the way in which the national court formulated Question 2 that it, too, does not accept that the complexity of the calculations can in itself constitute a case of *force majeure*, for it cites that factor only in conjunction with 'a sudden great increase in the number of requests'.

(b) That point calls for the following observations.

If a Member State decides to devalue its currency by more than a certain percentage, it becomes necessary from one day to the next to grant monetary compensatory amounts on imports of agricultural products from all the other Member States, except those which have devalued their currencies by the same amount, and from non-member countries.

Thus an absence of monetary compensatory amounts suddenly gives way to an avalanche of requests.

It is clear that that represents a shock for any administration even if it is well staffed.

Yet the Community legislature did not provide for a transitional period (for example, by laying down a provisionally longer payment period) to deal with the case where a Member State has to introduce monetary compensatory amounts for the first time.

It must therefore have been assumed that the Member States would take the necessary measures in order to ensure that, if monetary compensatory amounts were introduced or extended in their trade with other countries, the relevant authorities would be equipped to deal with the contingency.

A sudden great increase in the number of requests for payment of monetary compensatory amounts is in fact an entirely normal and foreseeable consequence of the system of compensatory amounts itself, which was introduced because it was predicted that currency adjustments would take place from time to time.

Thus Belgium, too, should have taken certain precautions in that regard.

The possibility that negative compensatory amounts would be introduced on imports of agricultural products from Belgium's main trading partner for such products, namely the Netherlands, could certainly no longer be regarded as an unforeseeable event after October 1981, since at that time, some four months before the devaluation of the Belgian/Luxembourg franc in February 1982, it was decided that the Netherlands would cease to be regarded as forming a single Member State together with Belgium and Luxembourg for the purposes of the regulations on monetary compensatory amounts (following the amendment of Regulation No 1371/81 by Commission Regulation No 2898/81 of 7 October 1981, Official Journal 1981, L 287, p. 1).

(c) As for the lack of sufficient staff due to budgetary restrictions imposed by law, that too is something that cannot be regarded as an ingredient of *force majeure* because it is an element attributable to the Belgian State and is therefore hardly outside its control.

Moreover, the relevant authorities might have been able to keep to the two-month time-limit even with their existing staff by

paying monetary compensatory amounts as a form of advance while expressly reserving the right to conduct more detailed inquiries at a later stage.

As the causes which led to the difficulties in question were not outside the control of the Belgian State — or else because they did not have inexorable and inevitable consequences to the point of making it objectively impossible for the Member State to fulfil its obligations — I have come to the view that the combination of those circumstances cannot constitute a case of *force majeure* either.

I would even go so far as to say, following the judgment in *Commission* v *Italy* cited above, that even if they had been such as to constitute a case of *force majeure* and create insurmountable difficulties, they could only have been relied upon in relation to the time which would have been necessary for an administration showing a normal degree of diligence to remedy them. In this case, however, *force majeure* seems to have been relied upon, at least as regards Denkavit, for the entire period of validity of the monetary compensatory amounts in question, namely 15 months (from 24 February 1982 to 23 May 1983).

I therefore propose that the Court answer the questions put to it by the national court as follows:

1. Article 17 (3) of Commission Regulation (EEC) No 1371/81 must be interpreted as meaning that the two-month period laid down for the payment of monetary compensatory amounts starts to run on the day following that on which the request for payment, together with the other requisite documents, is deposited with the competent national authority.

2. *Force majeure* within the meaning of Article 17 (3) (a) of Commission Regulation (EEC) No 1371/81 may not be pleaded when the complexity of the rules on the grant of monetary compensatory amounts for a particular agricultural sector, and the resulting difficulty in checking the documents deposited and computing the amounts applicable, make it impossible for the competent national authority of a Member State to comply with the two-month time-limit laid down in Article 17 (3), even by using all the staff available, owing to a sudden great increase in the number of requests for monetary compensatory amounts.

3. The competent national authority may not plead *force majeure* within the meaning of Article 17 (3) (a) of Commission Regulation (EEC) No 1371/81 when, as a result of national legislation imposing budgetary restrictions, its staff cannot be increased to meet a sudden sharp increase in the number of requests for the grant of monetary compensatory amounts.

The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings before the national court, costs are a matter for that court.