JUDGMENT OF THE COURT
OF 14 DECEMBER 1978 [1]

N. G. J. Schouten B.V.
v Hoofdproduktschap voor Akkerbouwprodukten
(preliminary ruling requested by the College van Beroep voor het Bedrijfsleven)

Case 35/78

1. *Agriculture — Common organization of the markets — Monetary compensatory amounts — Determination — Condition — Alteration of the difference between exchange rates — Exchange rate to be taken into account — Representative rates — Discretionary powers of the Commission*

   (Regulation No 974/71 of the Council, Art. 2 (1) and Art. 3)

2. *Agriculture — Common organization of the markets — Cereals — Management Committee — Procedure — Opinion of the Committee — Absence — Measures adopted by the Commission — Communication to the Council — Obligation — None*

   (Regulation No 2727/75 of the Council, Art. 26)

1. Article 3 of Regulation No 974/71 of the Council may be interpreted as meaning that the exchange rates taken into account in order to establish the difference referred to must be assessed on the basis of economically justified criteria and that consequently it is open to the Commission to leave out of account rates which it considers to be unrepresentative. It follows that by so doing it does not exceed the margin of discretion conferred upon it in relation to the fixing of compensatory amounts.

2. According to the provisions of Article 26 of Regulation No 2727/75 it is only if the Commission adopts measures which are not in accordance with the opinion of the Committee that those measures must be communicated to the Council. Accordingly the absence of an opinion by the Committee in no way affects the validity of the measures adopted by the Commission.

In Case 35/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry) for a preliminary ruling in the proceedings pending before that court between

1 — Language of the Case: Dutch

N. G. J. SCHOUTEN B.V., Gießen,

and

HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN (Central Board for Agricultural Products),

on the validity of Commission Regulation (EEC) No 1356/76 of 11 June 1976 on the monetary compensatory amounts and the differential amounts applicable in respect of movements in the Irish pound and the pound sterling (Official Journal L 153, p. 39),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Article 2 (1) of Regulation (EEC) 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 (Official Journal, English Special Edition 1971 (I), p. 257) as amended by Regulation (EEC) No 1112/73 of the Council of 30 April 1973 (Official Journal 1973, L 114, p. 4) provides that:

"The compensatory amounts for the products covered by intervention arrangements shall be equal to the amounts obtained by applying to the prices:

(a) in respect of those Member States the currencies of which are maintained among themselves within a spread at any given moment of 2.25%, the percentage difference between:

— the conversion rate used under the common agricultural policy,

and

— the conversion rates resulting from the central rate;

(b) in respect of Member States other than those referred to in (a), the average of the percentage differences between:

— the relationship between the conversion rate used under the common agricultural policy for the currency of the Member State concerned and the official parity, or, where this parity is not observed, the central rate of each of the currencies of the Member States referred to in (a), and

— the spot market rate for the currency of the Member State in question in relation to each of the currencies of the Member States referred to in (a), as recorded over a period to be determined".

Article 3 of Regulation No 974/71 provides that:

"If the difference referred to in Article 2 (1) changes by at least 1 point from the percentage taken as a basis for the preceding determination, the compensatory amount shall be altered by the Commission in line with the change in the difference".

In application of Regulation No 974/71, Article 2 of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 (Official Journal 1975, L 139, p. 37) provides that:

"The period referred to in the second subparagraph of Article 1 (1a), the second indent of Article 2 (1) (b) and Article 2a of Regulation (EEC) No 974/71 shall run from a Wednesday to the following Tuesday".

Article 3 of Regulation No 1380/75 provides that:

"The spot market rates against each of the currencies of the Member States which keep their exchange rates within a spread at any given moment of 2.25% shall be:

...

(c) for the Irish pound and the pound sterling: the average rates recorded each working day at noon on the foreign exchange markets of the two Member States concerned."

During the period from 2 to 8 June 1976 inclusive, the Irish pound and the pound sterling were subject to speculative movements. The Commission took the view that, for that reason, the rates recorded during that period could not be considered as representative. Since moreover those rates subsequently recovered, thus eliminating the disparity recorded in the said period, the Commission considered it appropriate to take no account of their past movements and to make no amendment to the level of the monetary compensatory amounts fixed up to that time. Accordingly, the Commission adopted Regulation No 1356/76, Article 1 of which is in the following terms:

"By way of derogation from Article 3 of Regulation (EEC) No 2300/73 and from Article 2 of Regulation (EEC) No 1380/75, the components used to calculate the differential amounts and the monetary compensatory amounts relating to movements in the Irish pound and the pound sterling and applicable with effect from 7 June 1976 shall continue to apply during the period commencing 14 June 1976".

A draft of Regulation No 1356/76 had been submitted to the Management Committees for the agricultural products concerned for their opinion in

accordance with Article 6 of Regulation No 974/71, but it had failed to obtain the majority required by Article 26 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1).

In application of Regulation No 1356/76, the Hoofdproduktschap voor Akkerbouwprodukten (Central Board for Agricultural Products) by a circular of 10 June 1976 informed interested parties, including Schouten B.V. which carries on trade in cereal exports, that the compensatory amounts to be paid by it for trade with the United Kingdom as from 14 June 1976 would not be altered on the basis of the average of the spot market rates recorded on the foreign exchange markets during the period from 2 to 8 June 1976 inclusive but for the time being would remain unaltered.

Schouten B.V. appealed to the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry) against the decision of the Hoofdproduktschap, and by an order of 10 March 1978 that court decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. Are the provisions of Commission Regulation (EEC) No 1356/76 incompatible with Articles 1, 2, 2a, 3, 6 or 7 of Regulation (EEC) No 974/71 of the Council and/or with the provisions of Regulation (EEC) No 1380/75 of the Commission or else with any other binding provision of Community law?

   If so is the said regulation therefore invalid?

2. Is the amendment made by Regulation (EEC) No 1356/76 to the rules for the granting of monetary compensatory amounts incompatible with the principle of legal certainty which is fundamental to the Treaty or with the principle of equality before the law which is also fundamental to the Treaty:

   in itself;

   or because of the abrupt nature of the amendment;

   or because of the fact that the amendment related solely to the Irish pound and the pound sterling?

   If so is the regulation therefore invalid?

3. Must it be said that in adopting Regulation (EEC) No 1356/76 the Commission acted arbitrarily or at least that it exposed trade and industry to arbitrary decisions and thus abused its powers?

   If so is the regulation therefore invalid?

4. Properly interpreted do the provisions of Article 26 of Regulation (EEC) No 2727/75 of the Council mean that if the Management Committee has not decided on a draft measure submitted to it by a majority of 41 votes the Commission is not obliged to notify the measure to the Council?

   If that question is answered in the negative is Regulation (EEC) No 1356/76, which was not submitted to the Council, consequently invalid?

The order of the College van Beroep was received at the Court on 14 March 1978.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations submitted by Schouten B.V.

Regulation No 1356/76 derogates not only from the provisions of Regulation

No 1380/75 but also and principally from those of Regulation No 974/71, in particular Article 2 (1) (period to be determined) and Article 3; it is, however, difficult to find any foundation for such derogation in Regulation No 974/71. Since the latter is a Council regulation, the Commission cannot derogate from it by an act which it adopts itself. Article 6 of Regulation No 974/71 clearly does not confer any power for such a derogation.

Regulation No 1356/76 suspended the application of the system embodied in Regulations Nos 974/71 and 1380/75 because there were speculative movements in the pound sterling and the Irish pound, but Regulation No 974/71 was adopted precisely in order to protect the agricultural market from the fact that owing to speculation certain countries had widened the margins of fluctuation for the exchange rates of their currencies and that consequently the agricultural market might be threatened.

Regulation No 1356/76 breaches the principle of legal certainty. The system of compensatory amounts exempts grain merchants from the obligation to take precautions against any risk of speculative movements. Moreover, it must not be forgotten that the exchange rates are not determined by those merchants, nor does the speculation originate with them. On the basis of the percentage fluctuation during the reference period from 2 to 8 June 1976 inclusive they themselves calculated the value of the compensatory amounts applicable to trade with the United Kingdom as from 14 June 1976, and they based their transactions on that value. It is in this context that the principle of legal certainty comes into play. Furthermore, Regulation No 1356/76 is contrary to the system embodied in Regulations Nos 974/71 and 1380/75 in that it relates only to the pound sterling and the Irish pound and not to the other currencies. Therefore grain merchants exporting to Italy of France are not affected, and this results in a violation of the principle of equality before the law.

The existence of speculative movements can be established only after the event, so that as a result of the way in which the compensatory amounts system works merchants are always affected after the event. If it were possible to adopt measures such as Regulation No 1356/76, those merchants would be constantly exposed to the risk of the system established by Regulations Nos 974/71 and 1380/75 being temporarily suspended at any arbitrarily chosen moment, on the basis of unspecified, arbitrary criteria.

Accordingly, Schouten B.V. is of the opinion that the first three questions referred to the Court for a preliminary ruling must be answered in the affirmative, and that consequently Regulation No 1356/76 is invalid or at least must be declared inapplicable.

Schouten B.V. assumes that the College van Beroep intends to ask whether Article 26 of Regulation No 2727/75 must be taken to mean that if the Management Comittee has not decided for or against a measure by a majority of 41 votes there is an adverse opinion, and that in such a case the Commission is obliged to communicate the measure to the Council. In Schouten's submission, this is the correct interpretation of the article. The measures at issue should therefore have been communicated to the Council, as no opinion was delivered in this case.

Accordingly Schouten B.V. is of the opinion that the fourth question referred to the Court for a preliminary ruling must be answered in the negative, and that consequently Regulation No 1356/767 is invalid or alternatively must be declared inapplicable.

B — Observations submitted by the Commission

Regulation No 1356/76 derogates from the normal method of calculating

monetary compensatory amounts, in particular with respect to the reference period during which the spot market rates are recorded. The second indent of Article 2 (1) (b) of Regulation No 974/71 specifies neither the periodicity concerned nor the method according to which the rates must be recorded. Therefore there is no derogation from that provision. As for Regulation No 1380/75, it lays down rules for the recording of those rates. Since Regulation No 1356/76 maintains in force the monetary compensatory amounts of the preceding week — which in their turn were calculated on the basis of an earlier reference period — it does constitute a derogation from Regulation No 1380/75. However the Commission must be regarded as being entitled to derogate from Regulation No 1380/75 as regards both substance and form. As to form, since it is empowered to fix the detailed rules for the application of Regulation No 974/71, it is also authorized to depart from such rules fixed by itself earlier and according to the same procedure. As to substance, it has the power and even the duty to derogate from that regulation in order as far as possible to achieve the objectives of Regulation No 974/71, that is to say to ensure that situations of monetary instability in which the real exchange rate differs from the official parity should not result in upsetting the intervention system and should not lead to disturbances in trade. Regulation No 1356/76 should precisely be regarded as a necessary derogation of this kind. Application of the exchange rates recored on the Irish and English foreign exchange markets during the period from 7 to 14 June 1976 would have put the monetary compensatory amounts at a level bearing no relation to the real value of the Irish pound and the pound sterling, and by that very fact would have influenced the level of prices by departing from the level of the intervention prices. Moreover, in the subsequent period — until August 1976 — the spot market rates for the pound consistently maintained a fairly high level, so that the fall which occurred in the week of 2 to 8 June must be considered as an entirely exceptional event.

Therefore the Commission considers that there are no grounds for concluding that Regulation No 1356/76 is invalid, either for incompatibility with the measures mentioned or for incompatibility with any other binding provision of Community law.

As regards violation of the principle of the protection of legitimate expectations, the Commission considers that this principle can undoubtedly play a part in an action based on Articles 178 and 215 of the Treaty claiming compensation for damage suffered as a result of an unlawful act by the Community, but that it cannot be taken into consideration where it is a question of establishing whether a particular Community measure is void or invalid. The Commission adopts the point of view expressed on this matter by Mr Advocate General Trabucchi in his opinion in Case 47/75 *(Germany* v *Commission* [1976] ECR 569, at p. 589) "... it is doubtful whether the disappointment of mere expectations is capable, in itself, of resulting in an annulment or in a declaration that a measure is invalid".

The fact that Regulation No 1356/76 deals exclusively with the Irish pound and the pound sterling in no way constitutes an argument which allows it to be inferred that there is a violation of the principle of equality before the law. Regulation No 1356/76 dealt only with those two currencies because they were the only ones subject to speculation. If identical treatment had been applied to currencies other than the Irish pound and the pound sterling, which were in a different objective situation, that would have resulted in discrimination.

The Commission in no way acted arbitrarily in adopting Regulation No

1356/76. On the contrary that Community measure bears witness to a scrupulous, circumspect policy on the part of a legislature which reacts attentively to unusual situations and in such cases is capable of temporarily suspending a part of the body of general rules implementing that policy. Therefore the Community legislature reacted adequately and precisely to a special situation.

If the Management Committee has not decided on a measure by the required majority of 41 votes, it must be concluded that no opinion has been delivered. Consequently, it cannot be said that the Committee has delivered an opinion adverse to the measure adopted by the Commission, and therefore in such a case there is no obligation to communicate the measure to the Council. Accordingly, since there was no adverse opinion by the Management Committee, the fact that Regulation No 1356/76 was not submitted to the Council cannot provide grounds for concluding that it is invalid.

The Commission proposes that the answer to the questions raised by the College van Beroep should be that consideration of them has disclosed no factor of such a kind as to affect the validity of Regulation No 1356/76.

Schouten B.V., represented by H. H. Kronenberg, Advocate of the Rotterdam Bar, and the Commission of the European Communities, represented by its Legal Adviser, P. Gilsdorf, acting as Agent, presented oral argument at the hearing on 12 October 1978.

The Advocate General delivered his opinion at the hearing on 14 November 1978.

Decision

1 By an order of 10 March 1978, which was received at the Court on 14 March 1978, the College van Beroep voor het Bedrijfsleven referred to the Court under Article 177 of the EEC Treaty several questions on the validity of Commission Regulation (EEC) No 1356/76 of 11 June 1976 on the monetary compensatory amounts and the differential amounts applicable in respect of movements in the Irish pound and the pound sterling (Official Journal 1976, L 153, p. 39).

2 These questions have been raised in the context of an action by a Netherlands exporter, the appellant in the main action (hereinafter referred to as the appellant), against a decision of the Hoofdproduktschap voor Akkerbouwprodukten (Central Board for Agricultural Products), the respondent in the main action (hereinafter referred to as the respondent), which was notified to the appellant by a circular of 10 June 1976 and which provided that the monetary compensatory amounts to be paid by the respondent for trade with the United Kingdom with effect from 14 June 1976 would not be altered on the basis of the average of the spot market rates recorded on the foreign exchange markets during the period from 2 to 8 June 1976 inclusive but for the time being would remain unchanged.

3 Article 1 (1) of Regulation (EEC) 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 (Official Journal, English Special Edition 1971 (I), p. 257), as amended by subsequent regulations, in particular Regulation (EEC) No 2746/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64), Regulation (EEC) No 509/73 of the Council of 22 February 1973 (Official Journal 1973, L 50, p. 1) and Regulation (EEC) No 1112/73 of the Council of 30 April 1973 (Official Journal 1973, L 114, p. 4), provides that:

"(1) If, for the purposes of commercial transactions, a Member State allows the exchange rate of its currency to fluctuate by a margin wider than that permitted by international rules in force on 12 May 1971,

(a) the Member State whose currency increases in value beyond the permitted fluctuation margin shall charge on imports and grant on exports,

(b) the Member State whose currency decreases beyond the permitted fluctuation margins shall charge on exports and grant on imports,

compensatory amounts for the products referred to in paragraph (2), in trade with the Member States and third countries".

4 Among the products referred to in Article 1 (2) of the same regulation are to be found products covered by intervention arrangements under the common organization of agricultural markets.

5 Article 2 (1) of the regulation provides that:

"(1) The compensatory amounts for the products covered by intervention arrangements shall be equal to the amounts obtained by applying to the prices:

(a) in respect of those Member States the currencies of which are maintained among themselves within a spread at any given moment of 2.25%, the percentage difference between:

— the conversion rates used under the common agricultural policy,

and

— the conversion rates resulting from the central rate;

(b) in respect of Member States other than those referred to in (a), the average of the percentage differences between:

— the relationship between the conversion rate used under the common agricultural policy for the currency of the Member State concerned and the official parity, or, where this parity is not observed, the central rate of each of the currencies of the Member States referred to in (a), and

— the spot market rate for the currency of the Member State in question in relation to each of the currencies of the Member States referred to in (a), as recorded over a period to be determined".

6 Article 3 of Regulation No 974/71 provides that:

"If the difference referred to in Article 2 (1) changes by at least 1 point from the percentage taken as a basis for the preceding determination, the compensatory amount shall be altered by the Commission in line with the change in the difference".

7 In application of Regulation No 974/71, Article 2 of Regulation No 1380/75 of the Commission of 29 May 1975 (Official Journal 1975 L 139, p. 37) provides that the references period referred to in the second indent of Article 2 (1) (b) of Regulation No 974/71 shall run from a Wednesday to the following Tuesday.

8 Article 3 of Regulation No 1380/75 provides that:

"The spot market rates against each of the currencies of the Member States which keep their exchange rates within a spread at any given moment of 2.25% shall be:

...

(c) For the Irish pound and the pound sterling: the average rates recorded each working day at noon on the foreign exchange markets of the two Member States concerned".

9 During the period from 2 to 8 June 1976 inclusive, the Irish pound and the pound sterling were subject to speculative movements, so that the difference for that week changed by 2.69 points from the percentage taken as a basis for the preceding determination.

10 Since the situation rapidly recovered towards the end of that period, the Commission considered it appropriate to take no account of the recent movements in the two currencies in question and to make no amendment to the level of the monetary compensatory amounts fixed up to that time.

11 Accordingly, on 11 June 1976 the Commission adopted Regulation No 1356/76, Article 1 of which provides:

"By way of derogation ... from Article 2 of Regulation (EEC) No 1380/75, the components used to calculate ... the monetary compensatory amounts relating to movements in the Irish pound and the pound sterling and applicable with effect from 7 June 1976 shall continue to apply during the period commencing 14 June 1976".

12 The appellant brought an action before the College van Beroep voor het Bedrijfsleven against the respondent's decision not to alter the monetary compensatory amounts with effect from 14 June 1976, and that court referred the following questions to the Court of Justice for a preliminary ruling:

1. Are the provisions of Commission Regulation (EEC) No 1356/76 incompatible with Articles 1, 2, 2a, 3, 6 or 7 of Regulation (EEC) No 974/71 of the Council and/or with the provisions of Regulation (EEC) No 1380/75 of the Commission or else with any other binding provision of Community law?

   If so is the said regulation therefore invalid?

2. Is the amendment made by Regulation (EEC) No 1356/76 to the rules for the granting of monetary compensatory amounts incompatible with the principle of legal certainty which is fundamental to the Treaty or with the principle of equality before the law which is also fundamental to the Treaty:

   in itself;

   or because of the abrupt nature of the amendment;

or because of the fact that the amendment related solely to the Irish pound and the pound sterling?

If so is the regulation therefore invalid?

3. Must it be said that in adopting Regulation (EEC) No 1356/76 the Commission acted arbitrarily or at least that it exposed trade and industry to arbitrary decisions and thus abused its powers?

If so is the regulation therefore invalid?

4. Properly interpreted do the provisions of Article 26 of Regulation (EEC) No 2727/75 of the Council mean that if the Management Committee has not decided on a draft measure submitted to it by a majority of 41 votes the Commission is not obliged to notify the measure to the Council?

If that question is answered in the negative is Regulation (EEC) No 1356/76, which was not submitted to the Council, consequently invalid?

13 The appellant exports cereals from the Netherlands to the United Kingdom, and payment is made in pounds sterling.

14 According to the appellant, payment is very often made a short time after the date of importation upon presentation of documentary evidence.

15 During the reference period defined in Article 2 of Regulation No 1380/75 of the Commission, the exporter seeks to sell an amount in pounds sterling equivalent to that part of the selling price which corresponds to the intervention price.

16 By acting in this way a prudent exporter manages to guard against any falls in the exchange rate of the pound sterling between the reference period and the export period.

17 The appellant submits that by omitting to fix new monetary compensatory amounts for the period commencing 14 June 1976, Regulation No 1356/76 involvles not only a derogation from the provisions of Regulation No 1380/75, but also and principally a derogation from those of Regulation No

974/71, in particular Article 2 (1) (period to be determined) and Article 3 of that regulation.

18 It is submitted that since the latter is a Council regulation, the Commission cannot derogate from it.

19 Furthermore, Regulation No 1356/76 is said to violate the principle of legal certainty.

20 According to the appellant, by relying on the system embodied in Regulation No 974/71 exporters should have been able on the basis of the percentage fluctuation during the reference period from 2 to 8 June 1976 inclusive themselves to calculate the value of the monetary compensatory amounts which ought to have applied to trade with the United Kindgom with effect from 14 June 1976 and to base their transactions on that value.

21 Furthermore, Regulation No 1356/76 is said to be contrary to the system embodied in Regulations Nos 974/71 and 1380/75 in that it relates only to the pound sterling and the Irish pound and not to the other currencies, so that merchants exporting to Italy or France are not affected, and this is said to result in a violation of the principle of equality before the law.

22 For the reference period from 26 May 1976 to 1 June 1976 the average exchange rates of the pound sterling showed a real difference of — 22.37%, that is to say a difference of — 20.87% for the purposes of the second indent of Article 2 (1) (b) of Regulation No 974/71.

23 Since the difference taken as the basis for the preceding determination was — 19.2%, the change in the difference prompted the Commission to fix the monetary compensatory amounts for the period commencing on 7 June 1976 on the basis of an adjusted difference of — 20.9% in its Regulation No 1312/76 of 3 June 1976 altering the monetary compensatory amounts (Official Journal 1976, L 148, p. 1).

24 The movements in the real difference during the period from 1 June to 8 June 1976 were the following:

date	*real difference*
1 June	— 22.98
2 June	— 25.51
3 June	— 25.86
4 June	— 26.04
7 June	— 25.76
8 June	— 22.35

25 On the last of those dates, the difference was less than that on 1 June 1976, and in the days preceding the adoption of Regulation No 1356/76 of 11 June 1976, the difference never reached a level approaching that of 4 June 1976.

26 Consequently, the Commission was able to state in the third recital in the preamble to the said regulation that "those rates have since improved, thus eliminating the disparity recorded in the above-mentioned period".

27 In these circumstances, the Commission considered it "appropriate to take no account" of the rates recorded during the period commencing on 2 June 1976 "and to make no amendment for the present to the monetary compensatory amounts . . . relating to the currencies in question".

28 However, Article 3 of Regulation No 974/71 of the Council provides that if the difference referred to changes by at least 1 point from the percentage taken as a basis for the preceding determination, the compensatory amounts shall be altered by the Commission in line with the change in the difference.

29 The average adjusted difference which was to be recorded for the reference period from 2 June 1976 to 8 June 1976 was — 23.59% and diverged by 2.69 points form the percentage taken as a basis for the preceding determination.

30 Therefore it appears that by omitting to fix new compensatory amounts the Commission departed from the provisions of the said article, and it should be examined whether it could legally do so.

31 It appears from the preamble to Regulation No 974/71 that the system of monetary compensatory amounts was introduced in order to obviate the risk of disruption for the intervention system and abnormal movements of prices jeopardizing a normal trend of business in argriculture.

32 According to the last recital in the preamble to the said regulation "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 ... it is appropriate to apply them only in cases where this incidence would lead to difficulties".

33 Consequently it must be considered whether, where a difference in the exchange rate is recorded over a short period and where before the date laid down for the determination of the compensatory amounts in respect of that difference the exchange rate improves to such an extent that there is no longer any reason to fear risks to the intervention system or abnormal movements of prices, the structure of the compensatory amounts system requires that notwithstanding that improvement the compensatory amounts must be altered in line with the difference recorded during that period.

34 As regards trade with the country whose currency had depreciated for a few days during the reference period, the effect of such an alteration would be that imports carried out during the period of application of the new compensatory amounts would enjoy monetary compensatory amounts at a level which was not justified by the exchange rates applicable on the day of importation, and that equally unjustified monetary compensatory amounts would be imposed on exports.

35 It emerges from the preamble to Regulation No 974/71 of the Council that such a result would be contrary to the purpose and the structure of the compensatory amounts system introduced by that regulation.

36 Accordingly, Article 3 of the regulation may be interpreted as meaning that the exchange rates taken into account in order to establish the difference referred to must be assessed on the basis of economically justified criteria, and that consequently it was open to the Commission to leave out of account rates which it considered to be unrepresentative.

37 It follows that by so doing it did not exceed the margin of discretion conferred upon it in relation to the fixing of compensatory amounts.

38 The foregoing also answers the appellant's argument to the effect that by adopting the regulation at issue the Commission failed to comply with the provisions of its Regulation No 1380/75 which fixes the reference period.

39 As regards the alleged breach of the principle of legal certainty, although an exporter is entitled to try to guard against any changes in the exchange rates in the manner described by the appellant, it should be observed that the monetary compensatory amounts system has the objectives stated above and was not intended to give traders an exchange guarantee or to indemnify them against any loss.

40 As regards the alleged breach of the principle of equality before the law, it suffices to observe that in a case such as the present, in which it appears that alteration of the compensatory amounts on the basis of statistics applying to one Member State would not be economically justified, there is nothing in that principle to prevent the application to other Member States of the rate of compensatory amounts which is economically justified.

41 The fourth question asks whether Commission Regulation No. 1356/76 is invalid because the Management Committee did not decide in favour of the measure adopted by the Commission and the Commission did not communicate the measure adopted to the Council in accordance with the provisions of Article 26 of Regulation No 2727/75 of the Council of 29 October 1975 (Official Journal 1975, L 281, p. 1).

42 Article 6 of Regulation No 974/71 provides that detailed rules for the application of that regulation shall be adopted in accordance with the procedure laid down in Article 26 of Council Regulation No 120/67 on the common organization of the market in cereals, as last amended by Regulation No 2434/70, or, if appropriate, the corresponding article of the other regulations on the common organization of agricultural markets.

43 Regulation No 120/67 was repealed and replaced by Regualtion No 2727/75, Article 26 of which corresponds to Article 26 of Regulation No 120/67 and provides as follows:

"1. Where the procedure laid down in this article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time-limit set by the Chairman according to the urgency of the matter. An Opinion shall be delivered by a majority of 41 votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within one month."

44 It appears from the last recital in the preamble to Regulation No 1356/76 that the Management Committee did not deliver an opinion within the time-limit set by its chairman.

45 According to the provisions of Article 26 of Regulation No 2727/75, it is only if the Commission adopts measures which are not in accordance with the opinion of the Committee that those measures must be communicated to the Council.

46 Accordingly the absence of an opinion by the Committee in no way affects the validity of the measures adopted by the Commission.

47 Therefore the answer to all the questions raised should be that consideration of Commission Regulation No 1356/76 has disclosed no factor of such a kind as to affect its validity.

Costs

48 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

49 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by an order of 10 March 1978, hereby rules:

Consideration of Commission Regulation No 1356/76 has disclosed no factor of such a kind as to affect its validity.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 14 December 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 14 NOVEMBER 1978 [1]

Mr President,
Members of the Court,

I shall not recite the facts from which the main action arose. They were set out clearly and fully in the report for the hearing.

I — Schouten B.V., the appellant in the main action, challenged the validity of Commission Regulation No 1356/76 of 11 June 1976 on monetary compensatory amounts and the differential amounts applicable in respect of movements in the Irish pound and the pound sterling, on several grounds of complaint which form the basis of four partially overlapping questions by the College van Beroep.

It is alleged that the regulation is contrary to the basic regulation, 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

1 — Translated from the French.