JUDGMENT OF THE COURT
16 APRIL 1970[1]

La Compagnie Française Commerciale et Financière S.A. v Commission of the European Communities[2]

Case 63/69

Summary

Measures adopted by an institution — Regulation — Concept (EEC Treaty, Article 189)

The fact that a general provision does not have the same effect on all those subject to it is not in itself capable of depriving it of its character of a regulation. It is, on the contrary, in the nature of a general provision that when uniformly applied it may affect persons concerned in different ways according to their particular situation or activities.

A provision fixing the date from which the provisions of a regulation shall take effect partakes of the general nature, in the absence of any misuse of powers, of those provisions.

In Case 63/69

LA COMPAGNIE FRANÇAISE COMMERCIALE ET FINANCIÈRE S.A., having its registered office in Paris, assisted by André Vidart, Advocate at the Conseil d'État and at the Cour de Cassation, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34.B.IV, rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Armando Toledano-Laredo acting as Agent, assisted by Jacques H. J. Bourgeois acting as Adviser, with an address for service in Luxembourg at the Chambers of Émile Reuter, Centre Européenne, Kirchberg,

defendant,

1 — Language of the Case: French.
2 — CMLR.

Application for the annulment of:

1. The fixing at 81.87 FF per metric ton of the compensatory amount for wheat or meslin flour (heading No 11.01 A in the Customs Tariff) in the annex for which provision is made by Article 2 of Regulation (EEC) No 1670/69 of the Commission of 22 August 1969 on certain measures to be taken in the cereals and rice sectors as a result of the devaluation of the French franc;

2. Article 6 of the above Regulation in so far as it provides that: 'The provisions of Articles 2 to 4 shall have effect from 11 August 1969',

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur), A. Trabucchi, W. Strauß and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts of the case and the procedure followed may be summarized as follows:
After the devaluation of the French franc, the Council of the European Communities decided on 11 August 1969, first, not to change the value of the unit of account and, secondly, to issue a regulation containing measures designed to ensure that the adaptation to the situation thus created, which would affect the French prices of products subject to a common organization of the market, should not be too abrupt. To this end Regulation No 1586/69 of the Council (OJ L 202, 1969, p. 1) provides in particular that, for a limited period, the intervention prices payable by the French authorities (in units of account) may be reduced by 11.11 % (Articles 1 and 2). So as to avoid trade difficulties which might result from this situation, Article 3 provides that France shall grant import subsidies and levy compensatory amounts on exports. However, Article 8 gives the Commisssion the powers necessary to lay down the methods of applying these provisions, methods which include 'in particular the

fixing of the amounts of the import subsidies and of the compensatory amounts charged for exports'.
Regulation No 1670/69 of 22 August 1969, in which the Commission laid down these methods of application for the rice and cereals sectors, is the subject of the present disputes, in particular Articles 2 and 6.
('Article 2: The subsidies granted for imports and the compensatory amounts charged for exports by France shall be as fixed in the Annex hereto'.
'Article 6: This Regulation shall enter into force on 25 August 1969. The provisions of Articles 2 to 4 shall have effect from 11 August 1969').
The applicant brought an action to contest the figure of 81.87 FF per metric ton which the Annex referred to in Article 2 of Regulation No 1670/69 fixes as the compensatory amount to be levied on the export of wheat or meslin flour.
The applicant argues that, in fixing this compensatory amount—the only one in issue in these proceedings—at 81.87 FF per ton the Commission took into consideration the fact that the price of wheat in France did not rise, but did not take account of non-agricultural expenses contained in the cost price of flour. Moreover the cost price did not remain the same after as before devaluation: in particular, the mill FOB charges and the price of sacking went up, the former from 3.00 to 3.37 FF (payable in foreign currency), the latter from 2.75 to 3.05 FF, since imported products were involved.
The Commission therefore fixed the disputed compensatory amount without taking account of the fact that the total cost price had gone up from 65.42 FF to 66.09 FF per quintal and consequently infringed Regulations Nos 1586/69 of the Council and 1679/60 of the Commission, as well as the principle of equality between parties established by the Treaty.
Secondly the applicant takes objection to the retroactive effect given to the provisions in Articles 2 to 4 of the above Regulation No 1670/69 by Article 6 thereof.
The application was lodged at the Court Registry on 20 October 1969.
An interlocutory application was made to the Court by the defendant on 19 November 1969 raising an objection on the ground of inadmissibility, based on the second paragraph of Article 173 of the EEC Treaty, with a request that Article 91 of the Rules of Procedure be applied.
On 19 December 1969 the applicant presented its submissions on the objection.
After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure with regard to the objection of inadmissibility.
The parties presented oral argument at the hearing on 17 February 1970.
The Advocate-General delivered his opinion at the hearing on 11 March 1970.

II — Conclusions of the parties

The *applicant* claims that the Court should:

— annul the contested decisions with all the consequences that that entails in law and as regards costs;

— order the Commission to take the necessary measures to comply with the judgment to be delivered, with the same consequences in law;

— further, order all the necessary measures of inquiry for the purposes mentioned above.

In its interlocutory application the *defendant* claims that the Court should:
deciding in accordance with Article 91 of the Rules of Procedure on the admissibility of the original application, and without going into the substance of the case:

— declare the original application inadmissible;

— order the applicant to pay the costs of the proceedings.

In its submissions in response to the interlocutory application the *applicant* contends that the Court should:

— dismiss the objection raised in the interlocutory application and declare the original application admissible;

— on that ground refer the case for final judgment in accordance with the provisions of Article 91 (4) of the Rules of Procedure;

— order the Commission to pay the costs of the interlocutory application.

III — Submissions and arguments of the parties as to admissibility

The submissions and arguments of the parties as to the admissibility of the application may be summarized as follows:

The *defendant* first alleges that, taken as a whole, Regulation No 1670/69 has general application in that it determines, as regards products subject to the common organization of the market in the rice and cereals sectors, the provisions for giving effect to the rules introduced by Regulation No 1586/69 of the Council. Consequently the question raised by the present application is whether the two contested provisions constitute an exception in this respect, in that their nature is not primarily legislative, so that they can be regarded as a decision of direct and individual concern to the applicants. It is from this viewpoint that the defendant develops its arguments, first as regards the fixing of the compensatory amount on exports and secondly as regards the provision in Article 6, paragraph 2.

A — After outlining the situation produced on the one hand by the devaluation of the French franc and on the other by the adoption of Regulation No 1586/69 of the Council, the defendant concludes that the fixing of the amounts of the import subsidies and of the compensatory amounts charged on exports for common wheat forms an integral part of the machinery set up by Regulation No 1586/69 of the Council and set in motion by Regulation No 1670/69 of the Commission. The position as regards common wheat is equally that of wheat or meslin flour, which are products of first-stage processing and therefore closely bound up with the system applicable to common wheat.

Moreover it is obvious, according to the defendant, that the provision fixing the compensatory amounts for exports has general application in view of the following considerations:

— the provision in question applies to objectively determined situations;

— it has legal consequences for categories of persons (and of transactions) which are viewed in a general and abstract manner with reference to their share in the market for the product in question.

It also follows from the last consideration that the applicant has no grounds for claiming that the fixing of the compensatory amount on exports is of individual concern to it, since there is nothing to distinguish it in this respect from the other participants in the market in question.

Considering it unnecessary to establish whether the contested provision is of direct concern to the applicant, the defendant thereby concludes that this submission is inadmissible.

B — According to the defendant the application directed against the second paragraph of Article 6 of Regulation No 1670/69 is also inadmissible. Its main points in this context are as follows:

— Since Article 2 of the above regulation is in the nature of a regulation, any provision which, like the second paragraph of Article 6, lays down the conditions of its application *ratione temporis*, shares that nature;

— The second paragraph of Article 6 has general application and concerns the applicant solely by reason of his being a member of a category which, moreover, is not the only category envisaged;

— if, moreover, Article 6 is considered in relation to the fixing of the level of the compensatory amount, that fixing is not of direct and individual concern to the applicant in so far as it takes effect from 11 August 1969;

— in this context it is not possible to rely on

the fact that at the time when the regulation was adopted the persons concerned by it were identifiable, in order to justify the conclusion that they were at that time distinguished individually by virtue of this fact, and thus that they were concerned as individuals;

— Such a view would make the contested measure subject to two different sets of rules, the first applicable during the period of retroactivity, and the other for the remainder of the period of application of the measure, an unacceptable result, according to the defendant.

The *applicant* alleges, first, that the contested provisions should be examined to see whether they are of direct and individual concern to it without first stopping to conduct an examination of the nature of these provisions *in abstracto*. In this respect it refers to the judgment of the Court in Case 40/64 (*Sgarlata and Others* v *Commission of the EEC*, [1965] E.C.R. 215 et seq.).

Next it remarks that it in no way contests the principle underlying the fixing of the compensatory amount on exports of wheat or meslin flour, but solely the fixing of that amount at the sum of 81.87 FF per metric ton of flour.

It cannot be argued that this provision is not clearly of direct and individual concern to it, because the result of the fixing is a loss to it of 10.80 FF per metric ton exported, or 1.08 FF per quintal. It is quite obvious that the increase in the mill FOB charges and the sacking price is not the same for all the various undertakings exporting flour and that the charges must differ according to the geographical location of the factory and the size of the sacking plant. Thus, even though the amount has to be fixed at a flat rate, it must take into account that increase in the cost price. In any event it cannot be considered as affecting all the undertakings concerned in a similar fashion and this alone, according to the applicant, is sufficient to destroy the argument on the point set out in the interlocutory application.

Next the applicant claims that the case-law of the Court reveals that the concept of individuality does not imply that only one natural or legal person may be concerned by the measure in question; it can equally well support the proposition that more than one person can be affected, provided that such persons are clearly identifiable and that their activities are carried out in the same marketing centre. That is precisely the case here, the undertakings affected having been recognized as such by the Commission on the date of the contested measure, the only date relevant in the present instance.

On the other hand the contested provision also concerns the applicant directly by virtue of the losses it has suffered consequent upon the fixing of the compensatory amount at 81.87 FF per metric ton.

As regards the second head of its conclusions the applicant notes that in the interlocutory application it is claimed that the arguments used to support the submission that the first head of the conclusions is inadmissible are equally valid for the second. It points out that the head of the conclusions directed against Article 6 is not a subsidiary claim but a principal one, and invokes the same arguments against the submissions in the interlocutory application as it used with regard to the first head of the conclusions, and considers that no further observations are called for.

Grounds of judgment

1 In an application lodged on 20 October 1969 the applicant seeks the annulment of Regulation No 1670/69 of the Commission of 22 August 1969 relating to certain measures in the cereals and rice sectors following the devaluation of the French franc (OJ, L 214 p. 7) in so far as it fixes at 81.87 FF per metric ton the compensatory amounts payable on the export of wheat or meslin flour and appearing in the annex

provided for in Article 2 and provides in Article 6 that the provisions in Articles 2 to 4 shall have effect from 11 August 1969.

2 In an interlocutory application lodged at the Registry on 21 November 1969 the defendant has raised an objection of inadmissibility under Article 91 of the Rules of Procedure, claiming that the measure in question was a regulation and was not of individual concern to the applicant.

3 It is therefore for the Court to examine in the light of Article 173 of the Treaty whether the provisions which form the subject-matter of the application are merely in the form of a regulation and do, in reality, constitute a decision of individual concern to the applicant.

4 The regulation in question was adopted pursuant to Article 8 of Regulation (EEC) No 1586/69 of the Council of 11 August 1969 relating to certain measures of conjunctural policy to be taken in the agricultural sector as a result of the devaluation of the French franc (OJ, L 202 p. 1) and forms part of a body of provisions designed to adjust the functioning of the intervention mechanisms of the common organization of agricultural markets to the devaluation of the French franc on 8 August 1969.

5 The main purpose of these measures is that certain correcting factors, corresponding to the devaluation of the French franc as against the unit of account, should be applied to certain amounts payable or to be charged by France as a result of the common agricultural policy, and they lay down the amounts of these in French francs for various products.

6 The applicant acknowledges that these are general measures and therefore in the nature of a regulation, and admits that the fixing of the compensatory amounts for export and of the import subsidies on wheat, flour and meslin are an integral part of the adjustment process and therefore have, in principle, general application.

7 However, according to the applicant the fixing of the contested rate of 81.87 FF per metric ton of flour exported affects the undertakings concerned unequally, since it has been calculated without taking into account the differing effects of the increase of certain constituent elements of the cost price, in particular transport and sacking costs, which are payable in non-French currency.

8 It says that since these costs vary according to the geographical location of the factory and the size of the sacking plant, the fixing of the contested amount does not

have general and uniform effect but affects the various French exporters in different ways, and, therefore, individually.

9 The fact that a general provision does not have the same effect on all those subject to it is not in itself capable of depriving it of its character of a regulation.

10 It is, on the contrary, in the nature of a general provision that when uniformly applied it may affect persons concerned in different ways according to their particular situation or activities.

11 Furthermore, the applicant's view that it is individually concerned by the provision in question appears to rest on a false appreciation of the objective of the measures.

12 They are not intended to balance out the advantages and disadvantages of the devaluation of the French franc for dealers so as to ensure that their situation is unaltered and to nullify the effects of the devaluation in their case.

13 On the contrary, the measures refrain from dealing with the range of individual effects which the devaluation might have and are intended exclusively to draw the quasi-automatic consequences of the devaluation on the price mechanisms which are expressed in units of account and laid down by the common agricultural rules.

14 These measures are therefore in the nature of regulations and do not concern the applicant individually.

15 Consequently the application directed against the fixing in the annex provided for by Article 2 of Regulation No 1670/69 of the compensatory amounts for exports of wheat or meslin flour at 81.87 FF per metric ton is inadmissible.

16 The same applies to the application against Article 6 of the said regulation.

17 That article provides that the provisions of Articles 2 to 4 of the regulation shall have effect from 11 August 1969, and determines the method of treating transactions occurring during the period of the suspension of the value of the unit of account.

18 The provision in question fixes the date from which the new provisions shall take effect.

19 In the absence of any misuse of powers, such a provision partakes of the general nature of the measures which it brings into effect.

20 In any event the choice of 11 August as the date was necessary from an objective point of view, since the adjustment of the intervention mechanisms of the common agricultural policy to the devaluation of the French franc had to be accomplished at the earliest possible date, that is, from the entry into force of Regulation No 1586/69.

21 There is therefore nothing whatever to indicate that Article 6 is merely in the form of a regulation and concerns the applicant individually.

22 The result of the foregoing is that the application must be dismissed in its entirety as inadmissible.

Costs

23 According to Article 69 (2) of the Rules of Procedure the unsuccessful party shall pay the costs.

24 In the present instance the applicant has failed in its application.

25 It must therefore be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 173 and 189;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses the application as inadmissible;**
2. **Orders the applicant to bear the costs.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 16 April 1970.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 11 MARCH 1970

Mr President,
Members of the Court,

In the three cases before us today, 63/69, 64/69 and 65/69, we are concerned with certain measures taken by the Commission in the field of common organizations of agricultural markets after the devaluation of the French franc in August 1969 in order to prevent an increase of prices in France.
In this context, it must be remembered that the system of common agricultural prices is based on the unit of account. It is therefore plain that any modification of the parity of the currency of a Member State could carry with it serious disturbances for the common system. Regulation No 653/68 of the Council of 30 May 1968 (OJ, L 123 p. 4) 'on conditions for alterations to the value of the unit of account used for the common agricultural policy' was adopted with the possibility of these modifications of parity in mind. Article 4 thereof provides that: 'The value of the unit of account ... shall be suspended, from the time of the official announcement by the Member State which first announces an alteration in the parity of its currency, up to and including the day of publication of the value thenceforth applicable'. The same Article provides further that: 'Settlement of transataions involving agricultural products or goods processed therefrom, where such transactions are carried out during the suspension period and are subject to provisions of the common agricultural policy or to special trade systems applicable, to those goods, shall take place only after publication of the value of the unit of account thenceforth applicable as provided for in the preceding paragraph and shall be based on the new value and take into account the alterations made pursuant to Articles 5 and 6'. Accordingly, immediately after the announcement of the decision of the French Government relating to the modification of the

1 — Translated from the German.