JUDGMENT OF THE COURT
27 February 1985 [1]

In Case 112/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance [District Court], Paris (First Arrondissement), for a preliminary ruling in the action pending before that court between

Société des produits de maïs SA

and

Administration des douanes et droits indirects [Office for Customs and Indirect Duties]

on the validity of Commission Regulation (EEC) No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and Y. Galmot, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

gives the following

1 — Language of the Case: French.

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations of the parties submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Community may be summarized as follows:

1. Facts and procedure

The Société des produits de maïs SA, the plaintiff in the main proceedings, imports, exports, buys, processes and sells maize and various maize products.

It exported from France to other Member States of the European Economic Community various processed maize products, that is to say:

broken maize (heading No 10.05, now 23.02);

gluten (heading No 23.03);

various other products such as starch, glucose, dextrose and 'modified' products (such as starch mixed with chemical products) (*inter alia* subheadings 11.08 A I, 17.02 B I (a), 17.02 B I (b), 17.02 B II (a), 17.02 B II (b), 17.02-23, 17.02-28.0, 17.02-28.1, 35.05 A, 29.04-77.001).

Monetary compensatory amounts were charged on those exports under Commission Regulation No 562/76 of 24 March 1976 (Official Journal 1976 L 79, p. 4), as amended by subsequent regulations.

Since Regulation No 652/76 and the subsequent regulations amending it were held to be invalid by the Court of Justice in its judgment of 15 October 1980 (Case 145/79 *Roquette* [1980] ECR 2917), the Société des produits de maïs, by a document dated 30 December 1980, brought an action against the Administration des Douanes et Droits Indirects before the Tribunal d'instance, Paris (First Arrondissement), for the reimbursement of the improperly levied monetary compensatory amounts on the ground that they had no basis in law. Those amounts are as follows:

FF 598 212.48 in respect of broken maize (heading No 10.05, now 23.02);

FF 1 008 731.36 in respect of gluten (heading No 23.03);

FF 3 443 653.01 in respect of various other processed maize products (starch, glucose, dextrose, 'modified' products, *inter alia*, subheadings 11.08 A I, 17.02 B I (a), 17.02 B I (b), 17.02 B II (a), 17.02 B II (b), 17.02-23, 17.02-28.0, 17.02-28.1, 35.05 A, 29.04-77.001),

together with interest thereon at the legal rate.

In its defence the Administration des Douanes contended, on the one hand, that the plaintiff had not shown that the compensatory amounts fixed by the regulation in question in respect of the derived products 'clearly exceeded' the amounts fixed in respect of the quantity of maize used in the manufacture of those derived products, and, on the other hand, that the Court had decided in the aforementioned judgment of 15 October 1980 that 'the fact that Regulation No 652/76 and the subsequent regulations amending it are invalid does not enable the charging or payment of monetary compensatory amounts by the national authorities on the basis of those provisions to be challenged as regards the period prior' to the date of the judgment.

The Tribunal d'instance considered that by deciding in its judgment that there could be no reimbursement of sums charged prior to the date of the judgment, the Court largely deprived its declaration of invalidity of its relevance, that the judgment was completely contrary to the Court's previous case-law and finally that it raised important questions with regard to the application of Article 177 and the second paragraph of Article 174 of the EEC Treaty. It therefore decided, by judgment of 7 June 1983, in the interests of efficient administration of justice and of clarity, to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

(1) Are the provisions of Commission Regulation (EEC) No 652/76 of 24 March 1976 fixing the monetary compensatory amounts applicable to exports of broken maize (tariff heading No 10.05, now No 23.02), gluten (heading No 23.03) and products falling within subheadings 11.08 A I, 17.02 B I (a), 17.02 B I (b), 17.02 B II (a), 17.02 B II (b), 17.02-23, 17.02-28.0, 17.02-28.1, 35.05 A and 29.04-77.001 valid?

(2) If the reply to the first question is in the negative, to what extent are they invalid?

(3) If the reply to the first question is in the negative, what are the legal consequences of such invalidity with regard to a request for reimbursement of all or part of the monetary compensatory amounts levied by the national authorities on the basis of Commission Regulation No 652/76 of 24 March 1976?

(4) If it is duly established that a Community regulation is invalid and if such invalidity excludes any possibility of calling into question monetary compensatory amounts already charged under that regulation, does it also exclude, and if so, to what extent, any payment in respect of the monetary compensatory amounts in question?

The order making the reference was registered at the Court Registry on 16 June 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities, represented by its Legal Adviser, F. Lamoureux, and by the Société des produits de maïs, represented by A. Desmazières des Sechelles of the Paris Bar.

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. Nevertheless the Court requested both the Commission and the plaintiff in the main proceedings to reply in writing to a number of questions.

2. Summary of the observations submitted to the Court

The *Commission*, whilst emphasizing that the documents forwarded to the Court did not indicate when the exports at issue had taken place, considers it necessary to point out that, apart from maize starch (tariff subheading 11.08 A I), the products to which the main proceedings relate are different from those concerned in Case 145/79 and that in the judgment making the reference the national court referred, in the case of some products, to general tariff headings of the Common Customs Tariff and not to specific subheadings, whereas the contested regulations fixed monetary compensatory amounts for products falling within certain subheadings and not within general headings. In addition the Commission considers that there were a number of errors and a certain amount of confusion in the judgment making the reference: subheading 17.02-23 does not cover any product either in the Common Customs Tariff or in the Nomenclature of Goods for External Trade Statistics of the Community and Statistics of Trade between

States (hereinafter referred to as 'Nimexe'); subheading 17.02-28.0 and 17.02-28.1 are Nimexe codes which correspond to subheading 17.02 B II (b) of the Common Customs Tariff; finally heading 29.04-77.001 is a Nimexe code corresponding to subheading 29.01 C III (b) 1 of the Common Customs Tariff.

Considering in turn the products in question, it states that 'broken maize' and 'gluten' both fall within subheading 23.02 A I (bran of maize or rice). With regard to the 'other maize products' subheading 11.08 A I covers maize starch, subheadings 17.02 B I (A) I, 17.02 B I (b), 17.02 B II (a) and 17.02 B II (b) glucose and glucose syrup, subheading 35.05 A dextrins and subheading 29.04 C III (b) 1 (corresponding to Nimexe code 29.04-77.001) glucitol (sorbitol).

With regard to the *first question* the Commission recalls that in the aforementioned Case 145/79 the Court of Justice declared Regulation No 652/76 invalid in particular on the ground that the Commission had exceeded the limits placed upon it by Regulation No 974/71 by fixing compensatory amounts applicable to maize starch on the basis of the intervention price of maize without deducting the production refund, when the compensatory amounts on other products processed from maize in respect of which no production refund was provided for were also calculated on the basis of the intervention price of maize. The Commission drew the appropriate inference from that judgment and, with effect from the date thereof, amended the monetary compensatory amounts applicable to products in respect of which it had not taken into account the amount of the production refund by adopting Regulation No 3013/80 of 21 November 1980 (Official Journal 1980 L 312, p. 12) as regards the products covered by the common organization of the market in the cereals sector and Regulation No 3224/80 of 11 December 1980 (Official Journal 1980 L 340, p. 1) as regards certain processed agricultural products not covered by Annex II to the Treaty. It emphasizes that new compensatory amounts were fixed in respect of all the products in question, except for those falling within subheading 23.02 A I, because it took the view that the ground on which the Court declared invalid the fixing of the compensatory amounts applicable to maize starch extended to a series of products in respect of which the amounts were fixed on a basis other than that of the intervention price of maize after deduction of the production refund. It should therefore be declared, in reply to the first question, that, with regard to the fixing of the monetary compensatory amounts applicable to the products falling within subheadings 11.08 A I, 17.02 B I, 17.02 B II, 23.03 A I, 29.04 C III (b) 1 and 35.05 A, Regulation No 652/76 is invalid for the reasons given in the judgment of 15 October 1980.

With regard to products falling within subheading 23.02 A I (broken maize and gluten), the Commission recalls that in Case 145/79 the Court decided that Regulation No 652/76 might also be invalid in so far as the sum of the monetary compensatory amounts applicable to products obtained by processing a given quantity of a basic product in a specific manufacturing process was 'clearly in excess of' the monetary compensatory amount fixed for that given quantity of the basic product. It observes, however, that the plaintiff in the main proceedings does not specify the type of manufacturing process in which the quantities of bran at issue were obtained according to the type and quality of the main products sought and, in addition, fails to demonstrate that the sum of the monetary compensatory amounts applicable to the derived products, including bran, was clearly in excess of the compensatory amount applicable to the quantity of maize from which those products were obtained.

It follows, according to the Commission, that the Court should also state, in reply to the first question, that consideration of the question referred to it has disclosed no factor of such a kind as to affect the validity of Regulation No 652/76 with regard to the fixing of the monetary compensatory amounts applicable to the products falling within tariff subheading 23.02 A I.

With regard to the *second, third and fourth questions*, the Commission notes that the Court has already declared in its judgment of 15 October 1980 that the fact that the provisions are invalid does not enable the charging or payment of monetary compensatory amounts by the national authorities on the basis of those provisions to be challenged as regards the period prior to the date of the judgment. In those circumstances it takes the view that, in the light of the grounds of the judgment making the reference, what is at issue is not so much the problem of the applicability of the Court's answer to all similar cases as the question whether an analogous application of the second paragraph of Article 174 in the context of a preliminary ruling declaring a measure to be invalid is well founded.

In that respect it recalls that the Tribunal d'instance, Lille, the court *a quo* in Case 145/79, objected to the limits placed by the Court of Justice upon the invalidity of Regulation No 652/76 and argued in its judgment of 15 July 1981, with regard to the analogous application of the second paragraph of Article 174, that 'after it had interpreted Community law for the purpose of replying to questions referred to it for a preliminary ruling and had exhausted its powers, the Court took the step, for which there was no basis in law, of adding to the opinion it had thereby given a comment based on a provision which was not applicable to the situation under consideration. Far from amounting to a complementary statement which assisted it in its task of interpretation, the step taken by the Court constitutes the deliberate expression of a choice whereby preference is given to the principle of legal certainty over that of legality and to the authority of the Community legal order over the national legal order'. According to the Commission the questions contained in the judgment making the reference have the merit of making it possible to debate before the Court the question of an analogous application of the second paragraph of Article 174, which had not been possible in Case 145/79 since the question had not been raised by the Commission until the hearing.

The Commission notes that it had on many occasions asked the Court to apply the second paragraph of Article 174 and considers it sufficient, on the one hand, to recall the general reasons which justify the position adopted by the Court in the context of a judgment declaring a measure to be invalid and, on the other hand, to stress that the limitation of the effects of a declaration of invalidity must, in principle, be without prejudice to claims submitted to the national authorities before the date of the Court's judgment.

With regard to the justification of the application by analogy of the second paragraph of Article 174 in judgments declaring legislation to be invalid, the Commission is of the opinion that such application meets a twofold need: to ensure that Community law is applied uniformly and to safeguard legal certainty. In that respect it emphasizes that it is consistent with the aims of Article 177 to recognize that preliminary rulings on the interpretation of the Treaty or the validity of acts of the institutions have general effects, or at least effects extending beyond the case in question, since Article 177 is intended to guarantee the uniform application of Community law by national courts. With regard to judgments declaring a measure to

be invalid, as the Court has stated in its judgment of 13 April 1981 in Case 66/80 (*International Chemical Corporation* [1981] ECR 1191), 'there are particularly imperative requirements concerning legal certainty in addition to those concerning the uniform application of Community law'.

The idea that preliminary rulings extend beyond the context of the main proceedings in question involves the recognition that they have effect *ex tunc*. That solution, adopted with regard to the effect of interpretative judgments, has also been applied to judgments declaring a measure to be invalid. The attribution of effect *ex tunc* to declarations of invalidity, whilst it assimilates judgments declaring a measure to be void still closer to judgments declaring a measure invalid, may involve serious and sometimes unforeseeable consequences in relation to the past by calling into question again legal relationships which have been settled, especially in a Member State whose legislation provides for lengthy limitation periods.

The upsetting of established legal relationships as a result of a judgment declaring a measure invalid may be the exact counterpart of the effect of a judgment declaring a measure to be void and in those circumstances there is no reason why the court should not, if need be, limit the retroactive effect of its decision, just as it may do when it declares a measure to be void.

By inserting the second paragraph of Article 174 in the Treaty its authors, reflecting the position which exists in most legal systems, acknowledged that in exceptional cases the conflict inherent in every legal system between legal certainty and equity may be resolved by protecting relationships formed under the law as it previously stood, even if it was invalid. Article 174 therefore operates as a 'safety valve'. In fact, according to the Commission, such a solution extends beyond the strict confines of proceedings for a declaration that a measure is void and must guide the Court whenever it is faced with the possibility that difficulties, sometimes inextricable, may arise from the fact that, as regards the past, a legal situation is called into question again.

The Commission emphasizes that the general grounds of legal certainty on which the second paragraph of Article 174 is based have already led the Court to hold, in its judgment of 8 April 1976 in Case 43/75 (*Defrenne II* [1976] ECR 455), that the direct effect of Article 119 cannot be relied on in order to support claims concerning periods prior to the date of the judgment. The Court adopted the same approach in the *Roquette* case. In the *Defrenne II* case the Court emphasized that 'although the practical consequences of any judicial decision must be carefully taken into account, it would be impossible to go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from such a judicial decision'.

The fact that the Treaty has not expressly provided for the possibility of restricting in time the effects of judgments declaring a measure invalid cannot be relied upon as a ground for concluding that in the *Roquette* case the Court exceeded its jurisdiction and substituted itself for the legislature. Such an analysis, quite apart from excluding the possibility of the Court's filling a gap in the Treaty in accordance with the system of Community law, in fact challenges the whole sytem of legal protection against unlawful measures adopted by the legislature, a system to which the mechanism of cooperation between the Court of Justice and national courts provided for by Article 177 is geared.

Finally the Commission considers that the criticism in French academic writing of the application by analogy of the second paragraph of Article 174 is based, in fact, on a confusion between, on the one hand, the aims of the objection of illegality as structured in French law for the purpose of ensuring strict separation of the areas of jurisdiction of the various hierarchies of courts and, on the other hand, the aims of Article 177 which envisages, not the separation of areas of jurisdiction, but cooperation in order to ensure that Community law is applied uniformly.

The solution adopted by the Court in the *Defrenne II* case and expressed in German law in the final sentence of paragraph 79 (2) of the Gesetz über das Bundesverfassungsgericht [Law concerning the Federal Constitutional court] and in Paragraph 183 of the Verwaltungsgerichtsordnung [code of procedure before the administrative courts], whereby an application by analogy of the second paragraph of Article 174 must protect the special position of those who have challenged the legality of the invalidated regulation prior to the date of the judgment declaring it invalid, is justified, in the Commission's opinion, by the need to ensure effective legal protection for individuals who have initiated contentious proceedings in good time.

Nevertheless the Commission accepts that there may be limits to the extent to which that exception, namely the case of claims brought prior to the judgment declaring the regulation invalid, to the application by analogy of the second paragraph of Article 174 may be taken into account. Such is the case where the restriction in time of the effects of a judgment does not impose any real burden on the persons concerned or where the court states, as it did in its judgments of 15 October 1980, that the recovery of sums paid but not owed 'would be capable of causing considerable differences in treatment, thereby causing further distortions in competition'.

On the basis of the foregoing observations the Commission proposes that the Court should reply to the second, third and fourth questions in the following manner:

'With the exception of those cases where the provisions of Regulation No 652/76 which have been declared invalid were challenged before the national authorities or courts within the prescribed periods and before the date of delivery of the judgment in Case 145/79, the invalidity of the provisions of the regulation established in the aforementioned judgment and in this judgment does not enable the charging or payment of monetary compensatory amounts by the national authorities on the basis of those provisions to be challenged as regards the period prior to the date of the judgment in Case 145/79'.

The *Société des produits de maïs*, the plaintiff in the main proceedings, considers that the *first two questions* referred to the Court call for little comment, since the Court, in its judgment of 15 October 1980, declared that Regulation No 652/76 and the subsequent regulations were invalid:

in so far as they fixed the compensatory amounts applicable to maize starch on a basis other than that of the intervention price of maize after deduction of the production refund on starch;

in so far as they fixed compensatory amounts applicable to all the different products obtained by the processing of a given quantity of the same basic product, such as maize, in a specified manufacturing process at a figure appreciably higher than the compensatory amount fixed for that given quantity of the basic product.

According to the plaintiff in the main proceedings the solution arrived at in that judgment also applies to the products

referred to by it in its application for the reimbursement of monies paid but not owing.

In that respect it notes first that the products obtained by processing maize are virtually standard products, the manufacture of which requires a quantity of maize which is virtually the same from one manufacturer to another, which explains why the Commission fixes the prices and compensatory amounts applicable to derived products by reference to the prices and compensatory amounts applicable to the basic products. It goes on to state that, like any other exporter of maize products, it is able to show, on the one hand, that the compensatory amounts charged in respect of exports of maize starch and maize glucose were fixed on a basis other than that of the intervention price of maize after deduction of the production refund on starch and, on the other hand, that the compensatory amounts charged in respect of its exports of dextrose and modified products were fixed at a figure appreciably higher than the compensatory amount fixed for the quantity of maize from which they were processed. Finally, although no express reference was made to this point in the *Roquette* judgment, the rule that compensatory amounts applicable to products obtained by the processing of a given quantity of maize cannot be higher than the amount fixed for that given quantity should also apply to exports of gluten (heading No 23.03) and broken maize (heading No 10.03, now 23.02).

In that respect it emphasizes that gluten and broken maize are products derived from processing maize, that is to say they are secondary products obtained in the course of manufacturing starch, glucose, dextrose, or modified products, and that since a compensatory amount is charged on the primary product it follows that if an amount is also charged on the secondary product the total compensatory amount will, by definition, clearly exceed the compensatory amount charged on the basic product which has been utilized.

Consequently, it considers that the answer to be given to the national court should confirm the invalidity of Regulation No 652/76 as declared in the judgment of 15 October 1980 whilst stating that the said regulation, and the subsequent regulations amending it, are also invalid:

in so far as they fix monetary compensatory amounts applicable to secondary products where the compensatory amounts applicable to the primary product or products have already been charged on the corresponding quantity of basic product used.

With regard to the *last two questions* the plaintiff in the main proceedings, like the Commission, considers that, notwithstanding the third paragraph of the operative part of the judgment in the *Roquette* case, it would be useful for the thorny problem of the effect in time of judgments in proceedings for a preliminary ruling on validity to be debated before the Court.

In that respect it emphasizes that the solution adopted by the Court in that judgment has been the subject of sharp criticism in academic legal writing (Dalloz 1981, Jurisprudence p. 168, note signed Y.L.; Dalloz 1982, Jurisprudence p. 10, note by Boulouis; Joliet, *Le Droit Institutionnel des Communautés Européennes — Le Contentieux*, p. 233; Labayle, in *Revue Trimestrielle du Droit Européen 1982*, p. 484 and Actualité Juridique du Droit Administratif 1983, p. 168) and has been resisted to a considerable extent by French courts (Tribunal d'instance, Lille, 15 July 1981, Dalloz 1982, Jurisprudence p. 9; Tribunal d'instance, Douai, 19 January 1983, Gazette du Palais, 1 June 1983, Jurisprudence p. 3).

According to the plaintiff in the main proceedings it is desirable that the Court should revise its position and return to its

previous case-law (in particular its judgment of 12 June 1980 in Case 130/79 *Express Dairy Foods Limited* [1980] ECR 1887, following the proposals in the Opinion of Mr Advocate General Capotorti).

The second paragraph of Article 174 of the EEC Treaty should not be applied by analogy in the context of proceedings under Article 177 of the Treaty. Once it has been declared invalid in a preliminary ruling, a regulation can be nothing else but null and void both as regards the parties and as regards the national court which referred the question to the Court of Justice for a preliminary ruling.

According to the plaintiff in the main proceedings that view is justified by the following considerations:

1. The system of direct actions for a declaration of nullity and the procedure for obtaining a preliminary ruling of invalidity are fundamentally different, in particular in relation to limitation periods, *locus standi* and the courts having jurisdiction. Given the existence of two strictly independent, perfectly consistent and complete systems, there should not be applied by analogy to the procedure for obtaining a preliminary ruling of invalidity the provisions applying to proceedings for a declaration of nullity. That is made all the more clear by the fact that the second paragraph of Article 174 is, within the system of actions for a declaration of nullity, a very exceptional provision which the Court may apply only 'if it considers this necessary' and only 'in the case of a regulation'. Since the second paragraph of Article 174 is an exceptional provision, outside the scope of the ordinary law, which was introduced in order to mitigate, in case of necessity, temporary difficulties which might arise from a regulation's being declared void, it must be applied in a restrictive manner. That excludes both its widespread application in the context of the system of actions for a declaration of nullity and its application by analogy in the context of the procedure for obtaining a preliminary ruling of invalidity.

2. To apply by analogy the second paragraph of Article 174 is to ensure the survival of a regulation which is not in conformity with Community law and of the compensatory amounts charged under that regulation. The assets of undertakings which suffer under that situation are confiscated in a manner which is hardly compatible with Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The only reason why such consequences are allowed in the context of direct actions for a declaration of nullity is that they are substantially mitigated. In the context of such actions the Court is seised of the matter within a short period, which means that where, in case of necessity, it makes use of the second paragraph of Article 174 the effects of this will be limited in time and in a uniform manner with regard to all the undertakings placed in the same position. In the context of proceedings for a preliminary ruling, however, the use of the second paragraph of Article 174 results in the survival of an illegality which has lasted for several years.

3. The application by analogy of the second paragraph of Article 174 is open to criticism on the ground that it creates serious uncertainties. Since compensatory amounts can be recovered only as from the date of the judgment containing the declaration of invalidity, it follows that the longer the delay in giving judgment the less the national and Community authorities will be called upon to effect reimbursement. There is therefore a danger that the sums refunded will vary according to the date on which the proceedings were initiated, the length of the proceedings, the exhaustion of remedies, whether or not the national court makes a reference to the Court of Justice and the date of such reference. Thus there is the danger that the sum refunded will acquire a contingent character which would

be incompatible, in particular, with the principle of legal certainty.

4. The application by analogy of the second paragraph of Article 174 leads to a breach of the principle of the immediacy of Community law by discriminating against national law in favour of Community law. If a provision of national law is inconsistent with Community law, Community law takes precedence immediately and without limitation. There is no need to wait for an amendment of the national provision or a preliminary judicial decision declaring the non-conformity of that provision with Community law and fixing the date from which that non-conformity is to take effect. If the second paragraph of Article 174 were to apply to proceedings for a preliminary ruling, a regulation incompatible with superior Community law would be invalid only with effect from the date of the judgment which declared that it was invalid and only with regard to the future. The supremacy of a rule of superior Community law over a rule of subordinate Community law would therefore depend on a further act, that is to say a judicial declaration of invalidity by virtue of which the effects of that supremacy would be confined to the future. Such an extension would infringe the principle of the immediacy of Community law and would be highly objectionable (1) because it would discriminate between national law which is not in conformity with Community law and subordinate Community law which is not in conformity with superior Community law, (2) because it would enable the Commission as guardian of the Treaties to show less respect for Community law than is required from the Member States themselves and (3) because, when all is said and done, it would deprive the Community authorities of responsibility for their acts.

5. The application by analogy of the second paragraph of Article 174 would deprive Article 177 of its substance. According to the wording of that article the question of the validity of a Community regulation raised before a national court is a preliminary issue in the main proceedings and becomes a matter for a preliminary ruling once the national court refers it to the Court of Justice. For such a question to be admissible it is necessary that the main proceedings should also be admissible. That may become a matter of serious doubt if, by making the second paragraph of Article 174 a general provision, a system is created under which the effects of the invalidity will be produced only in respect of the period commencing on the date of the declaration of invalidity. Under such a system, since the regulation providing for compensatory amounts would be valid until the date of the judgment declaring it invalid and it would not be invalid retroactively, those amounts would not, at the date of the institution of the proceedings before the national court, qualify for reimbursement. The national court would therefore be obliged to find, as it would have to base itself on the situation obtaining at the date on which the proceedings were instituted before it, that the applicant had no interest in bringing an action for the reimbursement of the compensatory amounts paid and accordingly would have to declare the main proceedings inadmissible. In the absence of any matter in litigation the national court is unable to refer to the Court of Justice a question for a preliminary ruling. As a result any objection of invalidity and any examination of the issue of invalidity in proceedings for a preliminary ruling would be excluded with regard to regulations involving pecuniary obligations. Such a result is incompatible with Article 177 of the Treaty which does not contain such restrictions and which would thereby be deprived of its substance.

6. The application by analogy of the second paragraph of Article 174 would not seem to be justified by the precedents concerning the application by analogy of

Article 176 (judgments of 19 October 1977 in Joined Cases 117/76 and 16/77 *Ruckdeschel* [1977] ECR 1753 and in Joined Cases 124/76 and 20/77 *Moulins et Huileries de Pont-à-Mousson* [1977] ECR 1795). Neither the first paragraph of Article 176 nor the aforementioned case-law derogates from or is inconsistent with the principle of the immediacy of Community law. On the contrary, the application by analogy of Article 176 reinforces that immediacy. Furthermore, such analogous application does not seem capable of jeopardizing the full, complete and harmonious application of Article 177.

7. Nor is application by analogy justified by the decision of the Court of Justice in *Defrenne II* (judgment of 8 April 1976 in Case 43/75 [1976] ECR 455) or by the decision of the European Court of Human Rights in the *Marckx* case (judgment of 13 June 1979). Unlike Article 119 of the Treaty in the matter of equal pay or certain provisons of Belgian law concerning the status of illegitimate children, the rules of superior Community law infringed by Regulation No 652/76 and the subsequent regulations are not rules of Community law which have received a new interpretation or the direct effect of which has recently been established, since they are contained in Regulation No 974/71 of the Council.

In the alternative, the plaintiff in the main proceedings contends, with regard to the fourth question, that if the second paragraph of Article 174 is applied by analogy and if the reimbursement of sums paid prior to the date of the judgment containing the declaration of invalidity is prohibited on the basis, adopted in the *Roquette* judgment, that to call in question such sums once again would entail more disadvantages than advantages in a general economic context, the result is that a sacrifice is imposed on the undertakings concerned in the general interest of the Community. In view of that and having regard to the French case-law which recognizes a right of reimbursement in such a case, it is not possible to exclude every payment, if only by way of compensation, in respect of the compensatory amounts in question.

Having regard to the aforementioned considerations the plaintiff in the main proceedings proposes that the Court should reply to the last two questions in the following manner:

The effect of the invalidity of Regulation No 652/76 is that it must be regarded as void;

or, in the alternative,

the fact that compensatory amounts which have been charged under an invalid regulation prior to the date of the judgment declaring it invalid may not be called in question does not prevent undertakings, of whom a sacrifice is required in the general interest, from being compensated as a result.

3. Oral procedure

The plaintiff in the main proceedings, Société des produits de maïs SA, represented by A. Desmazières de Séchelles, and the Commission of the European Communities, represented by F. Lamoureux, acting as Agent, presented oral argument at the sitting on 11 July 1984.

The Advocate General delivered his opinion at the sitting on 14 November 1984.

Decision

1 By judgment of 7 June 1983, which was received at the Court on 16 June 1983, the Tribunal d'instance [District Court], Paris (First Arrondissement), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions on the validity of Commission Regulation (EEC) No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (Official Journal 1976 No L 79, p. 4).

2 Those questions were raised in the course of a dispute between the French customs administration and the Société des produits de maïs, a French manufacturer of processed maize products, the plaintiff in the main proceedings.

3 In paragraph 1 of the operative part of its judgment of 15 October 1980 (Case 145/79 *Roquette* [1980] ECR 2917), the Court, ruling on questions referred to it by the Tribunal d'instance, Lille, by judgment of 29 June 1979, declared invalid Commission Regulation No 652/76 of 24 March 1976:

'in so far as it fixes the compensatory amounts applicable to maize starch on a basis other than that of the intervention price of maize after deduction of the production refund on starch;

in so far as it fixes the compensatory amounts applicable to wheat starch on a basis other than that of the reference price of wheat after deduction of the production refund on starch;

in so far as it fixes the compensatory amounts applicable to all the different products obtained by the processing of a given quantity of the same basic product, such as maize or wheat, in a specified manufacturing process at a figure appreciably higher than the compensatory amount fixed for that given quantity of the basic product, and

in so far as it fixes compensatory amounts applicable to potato starch which exceed those applicable to maize starch.'

In paragraph 3 of the operative part of that judgment, however, the Court stated, for reasons set out in paragraphs 51 and 52 of the judgment, that,

'The fact that the above-mentioned provisions are invalid does not enable the charging or payment of monetary compensatory amounts by the national authorities on the basis of those provisions to be challenged as regards the period prior to the date of this judgment.'

4 In its own decision of 15 July 1981 on the basis of that judgment, the Tribunal d'instance, Lille, nevertheless ordered the customs authorities to refund to Roquette the sums overpaid by it since 25 March 1976 as monetary compensatory amounts on its exports. According to the Tribunal, it was not bound by paragraph 3 of the operative part of the Court's judgment since 'after it had interpreted Community law for the purpose of replying to questions referred to it for a preliminary ruling and had exhausted its powers, the Court took the step, for which there was no basis in law, of adding to the opinion it had thereby given a comment based on a provision which was not applicable to the situation under consideration'. The Tribunal stated moreover that since the Court had no regulatory power with regard to the Community, its action could not modify the division of jurisdiction between itself and the national courts, and that it was for the national courts alone to draw the consequences in their domestic legal system of the Court's declaration of invalidity.

5 Relying on the above-mentioned judgment of the Court of 15 October 1980 declaring invalid Commission Regulation No 652/76 and the subsequent regulations on the one hand and on the judgment of the Tribunal d'instance, Lille, of 15 July 1981 on the other, on 30 December 1981 the Société des produits de maïs brought an action before the Tribunal d'instance, Paris, against the Director General for Customs and Indirect Duties seeking the repayment of the compensatory amounts improperly levied by the French customs authorities, under Regulation No 652/76, on its exports to other Member States of a number of maize products.

6 The defendant in the main proceedings raised an objection of inadmissibility based on paragraph 3 of the operative part of the said judgment of 15 October 1980. It argued furthermore, again referring to that judgment, that the plaintiff had not established that the compensatory amounts fixed by the regulation in question for products obtained by the processing of maize clearly exceeded those fixed for the quantity of maize used in their manufacture.

7 The defendant suggested however that if the Tribunal did not consider the judgment of 15 October 1980 to be sufficiently clear, it should refer the matter to the Court. Taking into account the evidence produced by the parties and their submissions, the Tribunal held it necessary, in the interests of clarity and of the proper administration of justice, to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

(1) Are the provisions of Commission Regulation (EEC) No 652/76 of 24 March 1976 fixing the monetary compensatory amounts applicable to exports of broken maize (tariff heading No 10.05, now No 23.02), gluten (heading No 23.03) and products falling within subheadings 11.08 A I, 17.02 B I (a), 17.02 B I (b), 17.02 B II (a), 17.02 B II (b), 17.02.23, 17.02. 28.0, 17.02. 28.1, 35.05 A and 29.04.-77.001 valid?

(2) If the reply to the first question is in the negative, to what extent are they invalid?

(3) If the reply to the first question is in the negative, what are the legal consequences of such invalidity with regard to a request for reimbursement of all or part of the monetary compensatory amounts levied by the national authorities on the basis of Commission Regulation No 652/76 of 24 March 1976?

(4) If it is duly established that a Community regulation is invalid and if such invalidity excludes any possibility of calling into question monetary compensatory amounts already charged under that regulation, does it also exclude, and if so, to what extent, any payment in respect of the monetary compensatory amounts in question?

The first question

8 In its first question the Tribunal asks whether the provisions of Commission Regulation No 652/76 fixing the monetary compensatory amounts applicable to exports of broken maize (tariff heading No 10.05, now No 23.02), gluten (heading No 23.03) and products falling within subheadings 11.08 A I, 17.02 B I (a), 17.02. B I (b), 17.02 B II (a), 17.02 B II (b), 17.02. 23, 17.02. 28.0, 17.02. 28.1, 35.05 A, 29.04.-77.001 are valid.

9 During the proceedings it became apparent, however, that the provisions at issue in the main proceedings are those of Regulation No 652/76 which fix the compensatory amounts applicable to products falling within subheadings 23.02 A I

(maize or rice bran), 23.03 A I (gluten), 11.08 A I (maize starch), 17.02 B I (a) (glucose and glucose syrup), 17.02 B I (b) (glucose and glucose syrup), 17.02 B II (a) (glucose and glucose syrup), 17.02 B II (b) (glucose and glucose syrup), 35.05 A (dextrin), 29.04 C III (b) 1 (glucitol or sorbitol).

A — Compensatory amounts applicable to products other than maize bran (broken maize)

10 Since the Commission has accepted that the grounds of invalidity laid down by the Court in its said judgment of 15 October 1980 apply to all the provisions in question except for that fixing the compensatory amounts applicable to maize bran (broken maize) (subheading 23.02 A I), it is sufficient to state that with regard to the fixing of the monetary compensatory amounts applicable to the products falling within subheadings 11.08 A I, 17.02 B I, 17.02 B II, 23.03 A I, 29.04 C III (b) 1 and 35.05 A Commission Regulation No 652/76 of 24 March 1976 is invalid for the reasons already stated in the judgment delivered on 15 October 1980.

B — Compensatory amounts applicable to maize bran (broken maize)

11 With regard to maize bran (broken maize) it should first be pointed out, as the Commission has correctly observed, that since no export refunds are paid on those products the ground of invalidity accepted by the Court in its said judgment of 15 October 1980 for the fixing of compensatory amounts on maize starch is inapplicable.

12 With regard to the ground of invalidity based on the fact that the sum of the monetary compensatory amounts applied to all the products and by-products of the processing of a given quantity of maize is appreciably greater than the compensatory amount applicable to that quantity of maize, it should be pointed out that the Commission has expounded the view that maize bran (broken maize) is not obtained by the processing of maize. In its view maize bran is simply waste to which that ground of invalidity cannot be applied.

13 In the procedure under Article 177 of the Treaty it is not for the Court of Justice but for the national court alone to make the findings of fact necessary for the resolution of that problem. As the case now stands, there are therefore no grounds for extending the declaration of invalidity contained in the judgment of 15 October 1980 to maize bran (subheading 23.02 A 1). If the Tribunal finds that

maize bran (broken maize) is not merely waste but constitutes a by-product of maize, it may refer a second question to the Court.

14 The answer to the first question must therefore be that the provisions of Commission Regulation No 652/76 are invalid in so far as they fix the monetary compensatory amounts applicable to exports of maize gluten (heading No 23.03) and products falling under subheadings 11.08 A I; 17.02 B I (a); 17.02 B I (b); 17.02 B II (a); 17.02 B II (b); 17.02. 23; 17.02. 28.0; 17.02. 28.1; 35.05 A; 29.04.-77.001.

The second, third and fourth questions

15 In those questions the Tribunal essentially asks the Court to specify the limits and consequences of the invalidity of Regulation No 652/76, as laid down in the judgment of 15 October 1980, taking particular account of what was said in paragraph 3 of the operative part of that judgment.

16 It should in the first place be recalled that the Court has already held in its judgment of 13 May 1981 (Case 66/80 *International Chemical Corporation* [1981] ECR 1191) that although a judgment of the Court given under Article 177 of the Treaty declaring an act of an institution, in particular a Council or Commission regulation, to be void is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of a judgment which it has to give.

17 Secondly, it must be emphasized that the Court's power to impose temporal limits on the effects of a declaration that a legislative act is invalid, in the context of preliminary rulings under indent (b) of the first paragraph of Article 177, is justified by the interpretation of Article 174 of the Treaty having regard to the necessary consistency between the preliminary ruling procedure and the action for annulment provided for in Articles 173, 174 and 176 of the Treaty, which are two mechanisms provided by the Treaty for reviewing the legality of acts of the Community institutions. The possibility of imposing temporal limits on the effects of the invalidity of a Community regulation, whether under Article 173 or Article 177, is a power conferred on the Court by the Treaty in the interest of the uniform application of Community law throughout the Community. In the particular case of the judgment of 15 October 1980, referred to by the Tribunal, the use of the

possibility provided for in the second paragraph of Article 174 was based on reasons of legal certainty more fully explained in paragraph 52 of that judgment.

18 It must be pointed out that where it is justified by overriding considerations the second paragraph of Article 174 gives the Court discretion to decide, in each particular case, which specific effects of a regulation which has been declared void must be maintained. It is therefore for the Court, where it makes use of the possibility of limiting the effect on past events of a declaration in proceedings under Article 177 that a measure is void, to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party which brought the action before the national court or of any other trader which took similar steps before the declaration of invalidity or whether, conversely, a declaration of invalidity applicable only to the future constitutes an adequate remedy even for traders who took action at the appropriate time with a view to protecting their rights.

19 That question, which concerns the determination of the scope of the said judgment of 15 October 1980, is however irrelevant for the purpose of this action, which was brought before the national court on 30 December 1981, that is, after the declaration that the provisions referred to in the first question were invalid.

20 The answer to the questions raised by the Tribunal must therefore be that it must be held, as the Court has already stated in the said judgment of 15 October 1980, that the fact that the provisions of Commission Regulation No 652/76 of 24 March 1976 have been held invalid does not make it possible to challenge the charging or payment of monetary compensatory amounts by national authorities on the basis of those provisions prior to the date of the judgment declaring them invalid.

Costs

21 The costs incurred by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings 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 Tribunal d'instance, Paris (First Arrondissement), by judgment of 7 June 1983, hereby rules:

(1) **The provisions of Commission Regulation No 652/76 are invalid in so far as they fix the monetary compensatory amounts applicable to exports of maize gluten (heading No 23.03) and products falling under subheadings 11.08 A I; 17.02 B I (a); 17.02 B I (b); 17.02 B II (a); 17.02 B II (b); 17.02. 23; 17.02. 28.0; 17.02. 28.1; 35.05 A; 29.04.-77.001**

(2) **The fact that the provisions of Commission Regulation No 652/76 of 24 March 1976 have been held invalid does not make it possible to challenge the charging or payment of monetary compensatory amounts by national authorities on the basis of those provisions prior to the date of the judgment declaring them invalid.**

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Galmot

Delivered in open court in Luxembourg on 27 February 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President