JUDGMENT OF THE COURT
17 MARCH 1976 [1]

Lesieur Cotelle et Associés S.A. and Others v Commission of the European Communities

Joined Cases 67 to 85/75

Summary

1. EEC — Non-contractual liability — Community legislation — Course to be taken — Expectation — Absence —Results — Damage — Compensation — Conditions (EEC Treaty, Article 215)

2. Agriculture — Common organization of the market — Intra-Community trade and trade outside the Community — Monetary crisis — Compensatory amounts — Purpose — Maintenance — Conditions

1. On the assumption that the parties concerned could make the Community liable for the consequences of an unfilled expectation concerning the course which Community legislation will take, such liability could only exist with regard to actual and certain losses which they had suffered as a result.

2. Since the object of the establishment of the system of monetary compensatory amounts was the maintenance of single agricultural prices, the granting or levying of compensatory amounts is acceptable in respect of a specific product only if trade in that product (intra-Community or with third countries) would be disturbed in their absence.

In Joined Cases 67 to 85/75

LESIEUR COTELLE ET ASSOCIÉS S.A., a Société Anonyme under French law, having its registered office at 122, avenue du Général Leclerc, Boulogne sur Seine;

HUILERIES DE CHAUNY, a Société à Responsabilité Limitée under French law, having its registered office at rue Géo Lufbéry, 02300 Chauny;

HUILERIES PRECY, a Société Anonyme under French law, having its registered office at 45220 Château Renard;

1 — Language of the Case: French.

MAMESSIER MESSAGE ET FILS, a Société Anonyme under French law, having its registered office at Saint Remy, Chalon sur Saône;

FRANCEHUIL, a Société Anonyme under French law, having its registered office at 67, Cours Pierre Puget, 13006 Marseille;

JEAN ET GABRIEL CARTERON, a Société à Responsabilité Limitée under French law, having its registered office at Gevigney 70500 Jussy;

MR MARTIAL CARTERON, oil refiner and miller, carrying on business as a sole proprietor under the business name of Huilerie Martial Carteron, at Genevrières 52500 Fayl-Billot;

HUILERIES FELIX MARCHAND, a Société à Responsabilité Limitée under French law, having its registered office at 35, Rue Garnier, 53200 Château-Gontier;

PERROTTE POULLARD ET COMPAGNIE, a Société Anonyme under French law, having its registered office at 5 rue de l'Entrepôt, 76202 Dieppe;

MR RAYMOND GUYOT, oil refiner and miller, carrying on business as a sole proprietor under the business name of Huilerie Guyot at Bantanges 71500 Louhans;

HUILERIE COOPÉRATIVE DE LIGNON, an agricultural cooperative established under French law, having its office at Lignon 51290 Saint Rémy en Bouzemont;

HUILERIES ALSACIENNES, a Société Anonyme under French law, having its registered office at Place Henry Levy, 67000 Strasbourg;

ROBBE, a Société Anonyme under French law, having its registered office at Venette, 60206 Compiègne;

MRS ANNE MARIE CHERVIER, oil refiner and miller, carrying on business as a sole proprietor under the business name of Huileries de Lapalisse at 03120 Lapalissé;

P. DUMORTIER FRÈRES, a Société Anonyme under French law, having its registered office at 105, rue de Rotterdam, 59202 Tourcoing;

FRANCIS BERNARD ET SES FILS, a Société Anonyme under French law, having its registered office at 25, avenue Ferdinand Lobbedez, 62000 Arras;

HUILERIE BERNARD S.A., a Société Anonyme under French law, having its registered office at Sampigny, 55300 Saint Mihiel;

HUILERIE DE L'ARCEAU, a Société Anonyme under French law, having its registered office at 79120 Lezay,

represented and assisted by Lassier et Budry, a professional partnership, Advocates at the Cour de Paris, 39 Quai d'Orsay, 75007 Paris,

and

COMPTOIR COMMERCIAL ANDRÉ ET CIE, a Société Anonyme under French law, having its registered office at 4 bis Rue du Bouloi, 75001 Paris, represented and assisted by Mr Lussan, Bâtonnier and Advocate at the Cour de Paris, and by Lassier et Budry, a professional partnership, Advocates at the Cour de Paris, 39 Quai d'Orsay, 75007 Paris, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34 b rue Philippe-II, Luxembourg,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Kalbe, acting as Agent, assisted by Jacques Delmoly, member of the Legal Service,with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Bâtiment CFL, Place de la Gare,

defendant,

Application for damages under the second paragraph of Article 215 of the EEC Treaty,

THE COURT

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

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case and the arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and procedure

Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221) provides for the fixing of a target price and an intervention price for colza and rape seed. In view of the situation in the Community of the markets in question, which is characterized by high demand and low total production, this regulation does not give special tariff protection against imports from third countries. Nevertheless, Article 27 of Regulation No 136/66 provides that where the target price is higher than the world market price, a subsidy shall be granted for seed harvested and processed within the Community; that subsidy is as a general rule equal to the difference between these prices.

The regulation provides for the advance fixing of subsidies.

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 (OJ, English Special Edition 1971 (I), p. 257) introduced a system of compensatory amounts. Article 1 of that regulation, in the version in force at the time of the events in question, provides that:

'If, for the purposes of commercial transactions, a Member State allows the exchange rate of its currency to fluctuate by a margin wider than the one permitted by international rules, it shall be authorized to:

(a) charge on imports from Member States and third countries,

(b) grant on exports to Member States and third countries, compensatory amounts for the products referred to below under the conditions determined hereinafter'.

The detailed rules for the application of this regulation were laid down by the Commission, in accordance with the opinion of the Management Committees.

By Regulation No 1471/71 of the Commission of 9 July 1971 (JO L 154 of 10. 7. 1971, p. 26), the monetary compensatory amounts were applied to colza and rape seed.

After extending the application of the system of compensatory amounts to France, the Commission fixed the compensatory amounts valid as from 3 January 1972 in Regulation (EEC) No 17/72 of 31 December 1971 (OJ L 5 of 6. 1. 1972, p. 1), as amended by Regulation No 144/72 of 21 January 1972 (OJ L 19 of 23. 1. 1972, p. 1).

Regulation No 189/72 of the Commission of 26 January 1972 (OJ L 24 of 28. 1. 1972, p. 25) abolished with effect from 1 February 1972 the compensatory amounts applicable to oils and fats considering that 'the present situation of the market is such that the application of these compensatory amounts is no longer necessary in order to avoid disturbances in trade in the abovementioned products'.

Following the announcement of the new par value of the dollar by the International Monetary Fund, the Commission, by an Opinion of 12 May 1972, indicated that levies, refunds and other components based on world market prices would thenceforth be calculated by using this new par value (OJ C 47 of 12. 5. 1972, p. 1). In respect of oils and fats, the result of this was that the subsidies were calculated on the basis of world prices expressed in dollars in accordance with the new official par value.

The applicants who, *inter alia,* mill colza seed, consider that the abolition of the compensatory amounts relating to oils and fats made the subsidies fixed in advance before 26 January 1972 and those fixed in advance between 1 February and 1 April 1972 insufficient and that they have therefore suffered injury.

After requesting compensation from the Commission of the European Communities without success, they lodged an application against the Commission under the second paragraph of Article 215 of the EEC Treaty.

The applications were entered in the Registry of the Court on 31 July 1975.

By an order of 13 October 1975, the Court decided to join the cases for the purposes of the written and oral procedure.

The written procedure followed the normal course.

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

The Commission, however, replied in writing to a question put by the Court.

II — Conclusions of the parties

The *applicants* claim that the Court should:

— declare that the Commission of the European Communities is liable to the applicants for its wrongful acts or omissions in applying Regulation No 133/66 of the Council on the establishment of a common organization of the market in oils and fats with regard to the events described in the applications;

— order the Commission of the European Communities to make good the injury suffered by the applicants;

— order the Commission of the European Communities to pay the following damages:
FF 740 700 to the applicant in Case 67/75
FF 145 551 to the applicant in Case 68/75
FF 203 481 to the applicant in Case 69/75
FF 166 829 to the applicant in Case 70/75
FF 199 027 to the applicant in Case 71/75
FF 1 279 to the applicant in Case 72/75
FF 1 715 to the applicant in Case 73/75
FF 142 647 to the applicant in Case 74/75
FF 191 930 to the applicant in Case 75/75
FF 1 243 to the applicant in Case 76/75
FF 8 275 to the applicant in Case 77/75
FF 115 488 to the applicant in Case 78/75
FF 186 354 to the applicant in Case 79/75
FF 46 878 to the applicant in Case 80/75
FF 117 465 to the applicant in Case 81/75
FF 126 879 to the applicant in Case 82/75

FF 4 383 to the applicant in Case 83/75
FF 31 323 to the applicant in Case 84/75
FF 189 461 to the applicant in Case 85/75
and, in the case of all the applicants, interest at the Bank of France discount rate calculated from 10 December 1974;

— order the Commission of the European Communities to bear all the costs;
— in the alternative, if the Court requires further information, to order an expert's report for the purpose of assessing the amount of compensation due to the applicants;
— in that case, reserve costs but order the Commission of the European Communities forthwith to bear and to make an advance payment towards all the costs of the expert's report.

The *Commission* contends that the Court should:

— reject the applications as unfounded;
— order the applicants to bear the costs.

III — Submissions and arguments of the parties

A — Applications

The abolition of the compensatory amounts

According to the applicants, the abolition of the compensatory amounts has had the following consequences:

The subsidies which were fixed in advance before 26 January 1972 taking account of the compensatory amounts levied on imports of colza from third countries and which are paid when they are placed under control after that date, prove at that time to be inadequate in relation to the real difference between the world market price and the target price.

The subsidies fixed in advance between 1 February and 1 April 1972 were calculated by subtracting the world market price in dollars from the target price calculated in units of account. Since the world market price used in this calculation is much higher than the actual world market price, the result is that the subsidy is clearly inadequate.

Before their abolition, the compensatory amounts paid when colza was imported from outside the Community were added to the world market price expressed in United States dollars. The subsidy granted to Community colza millers was calculated on the basis of the price for colza from outside the Community expressed in units of account at the date on which it reached the Community frontier. When compensatory amounts are levied, the subsidy is calculated on the basis of the free-at-frontier world market price expressed in units of account, which accordingly reduces it in comparison with the subsidy which is calculated on the basis of the free-at-frontier world market price expressed in dollars.

Conversely, the subsidy becomes inadequate when compensatory amounts are abolished after it has been fixed in advance, because it is no longer sufficient to reduce the target price to the world market price. In the same way, by postulating *a priori* that the dollar is equal to a unit of account, the result is that subsidies of an inadequate amount are calculated since a world market price higher than the actual price was deducted from the target price. The inadequacy of the value of the subsidies thus fixed in advance after 1 February 1972 was equal to the compensatory amounts, the purpose of which was to mitigate the reduction in the par value of the dollar in relation to the unit of account.

The wrongful acts of the Commission

According to the applicants the wrongful act of the Commission consists first in

adopting a legislative measure making the abovementioned subsidies which were fixed in advance inadequate in view of Articles 27 and 29 of Regulation No 136/66 of the Council. In so doing, the Commission has infringed rules of law intended to protect citizens of the Community.

The recitals of the preamble to Regulation No 136/66 emphasize that the production of colza must be supported and that the interests of producers and processing industries must be protected against disturbances caused by imports from third countries. Such is the function of the system of subsidies which thus creates rights which must be protected for the benefit especially of the processing industries.

Regulation No 189/72 was adopted in breach of the principle of legitimate expectation. That regulation entered into force after a very short period had elapsed and made inadequate the subsidies which were fixed in advance and related to contracts previously entered into. The abolition of the compensatory amounts was, in addition, in breach of the principle of Community preference. In the absence of contracts on the Community market, traders had to obtain their supplies from third countries at the real international market price quoted in dollars. Regulation No 189/72 created unequal conditions of competition. Because of their contracts the applicants were unable to buy on the cheaper market in third countries, whereas other traders could, in so doing, make considerable commercial profits.

To the extent to which undertakings in Member States with currencies which have appreciated more than the French franc in relation to the dollar were able to import colza from outside the Community more cheaply than French undertakings, there was in addition a further type of distortion of competition.

The wrongful act of the Commission consists further in an adequate appraisal of the facts. Only half the colza harvest in France was sold by 1 February 1972 because imports already exceeded exports (see table, p. 6). From the financial point of view, the trend followed by the dollar (see table, p. 7) should have led the Commission to increase the compensatory amounts rather than to abolish them.

Even supposing that such had not been the factual situation, the discontinuance of the compensatory amounts without at the same time implementation of machinery for correcting the subsidies would nevertheless have constituted a wrongful act, that is, inequality of competition because of the different floating of the various national currencies in relation to the unit of account.

The damage

The applicants consider that by not receiving sufficient subsidies within the meaning of Articles 27 and 29 of Regulation No 136/66, they have suffered material damage. Because of the system established by this regulation, the applicants are, with regard to the sale of their products, in a situation similar to that of an international trader with whom they are in competition over the whole market.

On the other hand, since supplies must in fact be arranged in the long term, the applicants made contracts to pay at least the target price for colza without having firm undertakings for sales of oil. Because of the inadequate subsidies, they had to sell at the actual world market price and follow the decline in the price of oil obtained from colza which had been bought at the target price. This led to losses.

According to the applicants, this damage is all the more unjust since the subsidy intended for colza producers is paid to the processers, because entitlement to the subsidy only arises at the time when the seed is milled or placed under control.

The applicants had therefore to account for the subsidy to the producers to whom they had already paid the subsidy by purchasing the colza at the target price.

The assessment of the damage

The applicants assess the damages under two heads as follows:

1. As regards subsidies fixed in advance before 1 February 1972 for seed placed under control between 1 February and 31 March 1972, the deficit is equal to the corresponding compensatory amounts (assuming that Annex IX to Regulation No 17/72 had not been repealed).
2. As regards the subsidies fixed in advance between 1 February 1972 and 31 March 1972 for seed placed under control in February, March, April, May and June 1972, the deficit is equal to the reduction in the par value of the dollar in relation to the unit of account and corresponds likewise to the compensatory amounts.

The applicants in Cases 67/75, 68/75, 71/75, 73/75, 79/75, 81/75, 83/75 and 85/75 suffered the first type of damage, the applicants in Cases 72/75, 76/75, 77/75 and 84/75 suffered the second type and the applicants in Cases 69/75, 70/75, 74/75, 75/75, 78/75, 80/75 and 82/75 suffered both types of damage simultaneously.

The applicants add that if the Court does not accept this general scheme it would then be open to it to order an expert's report to be obtained.

B — Defence

After describing the regulations and the financial situation at the time of the events in the present case, the Commission maintains that the abolition of the compensatory amounts in respect of oils and fats did not constitute a wrongful act such as to make the Community liable under the second paragraph of Article 215 of the Treaty and that the alleged damage gives the applicants no right to compensation.

The legality of the abolition of the compensatory amounts

Referring to the judgment of the Court of 24 October 1973 in Case 5/73, *Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof* [1973] ECR 1091, the Commission states that the function of the system of compensatory amounts is to enable the intervention machinery to continue to operate despite monetary distortions and to avoid disturbances in trade and not to protect the competitive position of certain traders.

As soon as the application of compensatory amounts no longer appears necessary to avoid disturbances in trade in the products concerned, the Commission may properly decide to abolish them (Judgment of the Court of 14 May 1975 in Case 74/74, *Comptoir National Technique Agricole (CNTA) S.A.* v *Commission,* [1975] ECR 533).

In so doing it is in no way disregarding the function and purpose of those amounts, because their objective is not in general merely to mitigate 'the reduction in the par value of the dollar in relation to the unit of account'. None of the provisions or rules of Community law relied upon by the applicants prescribes the maintenance of the system of compensatory amounts.

The Commission contests that the Community was under a duty, in view of monetary disparities, to make full compensation for the effets on the position of the applicants brought about by the monetary decisions of the Member States and third countries. To accept such a duty would amount to making the Community bear the consequences of decisions which are mainly the result of the unilateral action of the Member States and to making it liable in a sphere of policy in which it

has at present insufficient power, both as regards the Community and in respect of third countries.

On this point the Commission relies upon the judgment of the Court of 24 October 1973 in Case 43/72 *Merkur-Außenhandels-GmbH* v *Commission* [1973] ECR 1055.

As for the principle of legitimate expectation which concerns only the subsidies fixed in advance before the publication of Regulation No 189/72, the Commission considers that the applicants cannot claim protection for the indirect benefit which, according to the circumstances, the existence of the compensatory amounts may represent for them. This is the benefit of obtaining an 'adequate' subsidy in the sense that the compensatory amounts on imports brought the cost price of imported seed up to the level of that of the Community seed purchased by the applicants.

As regards the inaccurate appraisal of the facts, the Commission states that it found, on the basis of statistics relating to the certificates of advance fixing of refunds and of subsidies issued, that on 1 February 1972 84 % of Community production had been actually or practically sold. In view of that market situation and because of the real purpose of the compensatory amounts, it was lawful to adopt Regulation No 189/72.

As for the trend followed by the rate of exchange of the dollar, the Commission emphasizes that the Community authorities are under no duty to correct all monetary distortions.

The damage alleged

According to the Commission the account of the purchase and sale transactions (Application, pp. 7 and 8) is unfounded. The applicants assume that the prices of oil actually fell and that this fall was the result of the abolition of the compensatory amounts. That abolition had no noticeable effect on the price of colza seed on the French market or on the price of oils. The development of the price of colza oil is generally controlled by that of the price of soya oil, a product for which there are no compensatory amounts. The effect of Regulation No 189/72 therefore was in no way to force the applicants to buy seed at the target price and sell oil at a discount. Furthermore, the subsidy is not paid to the processers but to the holders of certificates, whether they are processers or not. The applicants are not accountable for the subsidy to producers; the payment of the latter is not subject to the condition that this subsidy has actually and wholly benefited the producer; no provision imposes the requirement to pay the target price to the producer.

As regards the damage in respect of competition, the Commission claims that the applicants have not explained what the damage consists in.

Nevertheless it must be observed that because of the abolition of compensatory amounts, a type of distortion of competition different from that asserted by the applicants has been prevented. In fact, because of the absence of compensatory amounts on competing products such as soya, the latter were able to be substituted for colza. Further, the claim to the maintenance of a competitive situation protected by compensatory amounts is extraneous to the purpose of those amounts.

Lastly, since the compensatory amounts have had no noticeable effect on the market price of oils, their abolition has not noticeably affected the price which the applicants were able to obtain for the oils. The 'damage' thus consists in a fall in the cost prices of the applicants' competitors, who obtained supplies on the world market, thus increasing their profits in comparison with the applicants' profits. That difference, if any, cannot however constitute damage for

which the Community must make compensation.

In any case, the applicants must also establish the actual existence of damage and produce proof which enables the validity of the assessment which they put forward to be substantiated.

The causal link

Even if the applicants have in fact suffered damage because of a fall in the market price of oils, that is the result of the conduct of the applicants themselves.

A normally diligent trader purchases seed with a definite delivery time and covers himself at the same time by the forward sale of oils and of oil cake. By failing to act in this way he accepts the risk that the market price will be either more or less favourable to him at the time of sale. The risk is the same whether he purchases seed on the world market or Community seed and whether he has or has not asked for the advance fixing of the subsidy for that seed.

C — Reply

The malfunctioning of the common organization of the market in oils and fats

The applicants emphasize that they are asking for compensation for the damage caused by the malfunctioning of the common organization in question as a result of the abolition of the compensatory amounts. The claim for damages is therefore based on the infringement of rights created in their favour by Regulation No 136/66.

The economic purpose of the subsidy paid under that regulation is the same as the refund granted on exports outside the Community. The function of both is to enable Community processers to obtain Community colza at the world price, process it and sell it at the world price both on the world market and on the Community market.

In order to maintain equality between Community processers, the Commission must grant them a subsidy of the same amount and enable them to obtain both Community colza and colza sold on the world market on the same conditions.

In order to maintain equality between Community processers and processers in other parts of the world, whilst observing the principle of Community preference, Community processers should be given a subsidy which is adequate to enable them to bring the price of Community colza down to the actual world market price.

The applicants persist in their statement that the function of the compensatory amounts levied at the French frontier was to compensate for the reduction in par value of the dollar against the unit of account used in the administration of the common organizations of the market in relation to the French franc.

On this level the link between the compensatory amount and the subsidy appears: Articles 27 and 29 of Regulation No 136/66 require the Commission to grant a subsidy calculated on the basis of the world market price at the Community frontier, determined on the basis of the most favourable purchasing opportunities. The actual devaluation of the dollar made the purchasing opportunities on that market more favourable and the Commission was therefore required to take account of that situation.

After the entry into force of Regulation No 189/72, the reduction in the par value of the dollar in relation to the unit of account was no longer subject to compensation and because at the same time the subsidy was calculated without regard to that reduction it was inadequate and in breach of the rights created by Regulation No 136/66.

In the present case there is no question of a guaranteed price because the subsidy

is the difference between two prices, based on the principle of Community preference.

It appears from the third recital of the preamble to Regulation No 974/71 that the system of compensatory amounts was established to avoid serious difficulties as regards the functioning of the common market.

Further, the Commission itself explained the link between the compensatory amounts and the functioning of a common organization of the market, especially in its observations submitted in the *Balkan* case by saying that 'On the other hand, the devaluation of the dollar on 8 May 1972 enabled the compensatory amounts to be reduced in proportion to the increase in the levies'.

Bearing in mind that within the framework of a system of 'deficiency payments' there is no levy and that the subsidy is in principle equal to the refund, there is no doubt as to the link between the subsidy and the compensatory amount.

As for the truth of the facts, the applicants consider that the Commission (statement of defence, p. 15) is confusing the advance fixing of subsidies with the actual sale of colza seed processed into oil.

In France, colza producers must sell their seed through authorized agents. These agents immediately declare to the Société Interprofessionnelle des Oléaginaux imports of colza and sales to millers or exporters in the same way as the milling operations and export transactions which create entitlement either to the subsidy or to the refund. Clearly, the Société Interprofessionnelle des Oléagineux is familiar with the advance fixing of subsidies and of refunds.

According to the figures appearing in the minutes of the meeting of the Board of Directors of the Société Interprofessionnelle des Oléagineux of 18 January 1972, the proportion of seed sold on the French market in relation to seed harvested was slightly less than 50 %.

The damage

According to the applicants, the damage is quite clear: because they had to obtain the raw material at the full price and sell the finished product in accordance with the fall in prices on the world market, they were unable to avoid losing profit, even if they made no losses. The applicants adhere to their statement that because the subsidy is paid only after the processer has purchased the colza from the producers at a price close to the target price the damage suffered is particularly unjust. If, for reasons of convenience, the Council intended to make the processers responsible for the system guaranteeing producers fair sales of their produce, it is, in fact, unacceptable for it to make these processers bear the financial risks of this policy of guarantee.

The Commission certainly fails to appreciate the implementation in France of the common organization of the market in oils and fats. In France, the grant of the subsidy is subject to milling and the claim for payment must include a milling declaration.

The statements of the Commission concerning the conduct of a diligent trader suggest that it also fails to appreciate the true nature of the facts and of the French legislation in force.

Colza is processed in order to produce 41 % oil and 53·5 % oil cake. The latter is the subject of very long-term supply contracts. In order to keep these outlets, French millers have to make longterm contracts for the purchase of colza.

Colza, however, owes its value for the most part, to the value of the oil obtained, for which there is no long-term market in France. Further, the circulars

of the French Ministry for Finance (Annexes IV and V) authorize forward sales of goods on foreign markets only to cover actual imports from abroad. The applicants were not therefore able to cover themselves for the oil obtained from colza produced in France, even though they were bound by long-term supply contracts.

Because they had, as a precaution, to continue the programme for obtaining supplies in France even after the abolition of the compensatory amounts the second type of damage specified in the application occurred.

As regards the problem of competition between colza and soya, the applicants consider that since soya was not being produced in Europe at the time of the facts in question it cannot have repercussions on the damage suffered. That seed, not being the object of a subsidy, is sold at the real value of its world market price.

The world market price of colza is regulated by the competition between the two seeds and therefore by the world market price of soya. Consequently, the subsidy calculated on the basis of the world market price of colza must take account of the world market prices of soya. By making the subsidy inadequate, the Commission did not put an end to distortion in the competition between the two seeds.

D — Rejoinder

The functioning of the common organization

The Commission contests the arguments of the applicants based on the functioning of the common organization in question.

The system of compensatory amounts, which lays down limited measures directed towards a limited objective is not intended to ensure the proper functioning of the common organization of the market in the sense that is must compensate for the effect of the actual devaluation of the dollar on the calculation of the subsidy or even to maintain Community preference or equality between traders in view of the monetary fluctuations.

The argument set out in the reply is not capable of establishing that the absence of compensation for the depreciation of the dollar infringes the rights which the common organization of the market creates in favour of the applicants.

Arguments based on the 'special characteristics' of the common organization of the market in oils and fats are irrelevant. As for the degree of compensation to be made for the effect of fluctuations in the currencies of third countries, that common organization is no different from others. The subsidy granted to Community seed fulfils a function comparable to that of import levies in other common organizations of the market. The fact that in the first case Community production is sold at the world market level and in the second at Community level does not make a fundamental difference to the problem. With regard to the organization of the market in cereals, the Court has in fact ruled that the Community institutions are not required to make compensation for all the effects of national monetary measures. This also applies to monetary measures adopted by third countries. The parallel between the subsidy and the export refund is unfounded for three reasons:

(a) The subsidy and the refund apply to different economic processes, the former being paid only for Community seed processed within the Community, the latter applying only to sales of seed on the world market.

(b) The subsidy must be granted when the conditions of Article 27 (1) of Regulation No 136/66 are fulfilled, whereas the refund is only a possibility offered by Article 28 (1) of that regulation.

(c) Lastly, the method of calculation is different; further, the subsidy is fixed five months in advance and the repayment two months in advance, as a general rule.

As for the observance of equal conditions of competition and Community preference, the Commission considers that it is in practice impossible to adhieve absolutely identical conditions of supply, even if these are kept theoretically identical by means of the machinery of the common organization.

Furthermore, the market price adopted by the Commission for the calculation of the subsidy is not the same as 'the actual world price', because Article 29 of Regulation No 136/66 provides that it 'shall be determined on the basis of the most favourable purchasing opportunities, prices being adjusted where appropriate, to take the prices of competing products into account'.

It is for the applicants to show specifically that the subsidies granted do not actually, in their position, give them Community preference and equal conditions of competition.

Even if the argument of the applicants is justified, it has not been established that the Community was required to make full compensation for the effects of the monetary measures adopted by third countries. The applicants cannot rely on the decisions by which official par values were renounced in favour of real par values. No pre-existing legal principle which must be observed in the present case is applied in those subsequent decisions. Furthermore, that decision was taken in order to improve the functioning of the system of monetary compensatory amounts and not to compensate traders for the effects of the depreciation of the dollar.

The protection of legitimate expectation

The Commission refers to its argument set out in the statement of defence and adds that the applicants cannot claim that it is necessary to maintain by another method compensation for the 'secondary effects' which the compensatory amounts may have had on their position.

As for the situation of the market in France, the applicants are mistaken about the inferences which should be drawn from that situation. As soon as the Commission was able to establish that large quantities of seed were not likely to be involved in intervention it was able lawfully to abolish the compensatory amounts. The fact that this abolition has no effect on the prices on the French market shows that the Commission was not mistaken in its appraisal.

The damage

The Commission considers that it has refuted the statement of the applicants concerning the losses claimed because the argument on this point set out in the statement of defence (p. 16) was not contested. The damage caused by the failure to make a profit is based on the assumption that if the compensatory amounts had been maintained, the price which the applicants would have been able to obtain on the market would have been higher. It is not contested that the abolition of the compensatory amounts has had no effect on the prices of colza seed on the French market and that the development of oil prices was not noticeably influenced by that abolition.

The Commission contests the argument of the applicants that their position is that of 'accountability' for the subsidy to the producers and insists that the latter was a subsidy for processing, not a subsidy to the processer. Even in France, the holder of a subsidy certificate is entitled to receive that subsidy.

As for the oil market in France, the Commission mentions that it has quotations showing the existence of

forward offers over three or four months during the period in question.

Further, the circular of the French Ministry for Finance (Reply, Annexes IV and V) although making forward sales abroad difficult does not prohibit them.

Lastly, as regards the reasons relied upon for placing the seed under control after the abolition of the compensatory amounts, the Commission considers that these considerations come within the exclusive responsibility of the applicants in their capacity as traders.

IV — Oral procedure

The parties presented oral argument at the hearing on 3 February 1976.

The Advocate-General delivered his opinion at the hearing on 26 February 1976.

Law

1 The applications, lodged on 31 July 1975, seek a declaration that the European Economic Community is liable for the damage which the applicants allege that they have suffered because of the abolition by Regulation No 189/72 of the Commission of 26 January 1972 (JO L 24, 1972, p. 25) of the compensatory amounts applicable to oils and fats, especially to colza seed and oils obtained from that seed and because of the malfunctioning of the common organization of the market in oils and fats which was the result thereof.

2 The applications claim in consequence that the Court should order the Community to pay the sums specified in the applications.

3 The applicants, which are undertakings the objects of which are *inter alia,* the purchase, sale and milling of colza seed, state that the common organization of the market in oils and fats established by Regulation No 136/66 of the Council of 22 September 1966 (OJ English Special Edition 1965-1966, p. 221) provides, in addition to a target price and an intervention price fixed in accordance with the usual procedures, for production subsidies which are paid to processers when the target price applicable to a type of seed is higher than the world market price of that product.

4 They state that that subsidy is equal to the difference between these two prices expressed in units of account and the world market price to be taken into consideration is determined periodically by the Commission in accordance with the procedure laid down by Community rules.

5 The applicants further state that thus price formation in the common market occurs as it does in the world market and Community production is supported by subsidies which seek to ensure for it remuneration related to the target price.

6 The establishment of the system known as monetary compensatory amounts for French imports and exports of colza seed by Regulations Nos 17/72 and 144/72 of the Commission of 31 December 1971 and 21 January 1972 (OJ L 5, 1972, p. 1 and L 19, 1972, p. 1) is stated to have been the necessary result of the alteration in the rate of exchange of the dollar which occurred in autumn 1971 and to have been intended to maintain the proper functioning of the common organization of the market in oils and fats, especially as regards the products mentioned.

7 The result of the sudden abolition of this system in respect of oils and fats as from 1 February 1972 by Regulation No 189/72 is said to have been, as regards the applicants, that 'subsidies fixed in advance before 26 January 1972 taking account of the compensatory amounts levied when colza was imported from third countries and paid when they were placed under control after that date were then inadequate in comparison with the real difference between the world market price and the target price'.

8 Further, the Commission is alleged to have been 'in breach of several rules laid down by the Treaty and secondary legislation intended to protect nationals of the Community', and therefore to have committed a wrongful act in fixing in advance during the period from 1 February to 1 April 1972 and accordingly in paying 'inadequate subsidies calculated on the basis of a world market price higher than the real one'.

Admissibility

9 Towards the end of the oral procedure, the Commission, the defendant, contested the admissibility of the application, alleging that the claim for damages in fact called in question the method of calculation used by the competent national authority, that is to say the Société Interprofessionnelle des Oléagineux to fix in advance the subsidies provided for in Regulation No 136/66 relating to the period in dispute, a complaint which the applicants could and should have brought before the competent national courts for a decision on the legality of the national measures adopted in execution of Community provisions.

10 During the proceedings and especially during the oral procedure, the applicants modified their arguments and referred to the wrongful act constituted by the failure to adjust the determination of the world market prices to be adopted for the fixing of subsidies to the fluctuations of the dollar rather than the abolition of the compensatory amounts.

11 Consequently the argument of the applicants that the objection of inadmissibility is out of time appears insufficiently founded.

12 Furthermore, that argument is irrelevant because the admissibility of the proceedings must be examined by the Court of its own motion.

13 In that respect the proceedings must be examined and a ruling given on the basis of the conclusions contained in the applications which in the present case remain unaltered; it was then maintained that the fixing of the monetary compensatory amounts together with the fixing of subsidies formed a coherent whole. It was therefore alleged that the abolition complained of caused the malfunctioning of the common organization of the market in oils and fats particularly as regards subsidies and compensation was claimed for the damage caused by that abolition.

14 Furthermore, most of the decisions fixing subsidies in advance which the defendant regards as the real purpose of the proceedings, were prior to the adoption and the publication of Regulation No 189/72, so that it is difficult to understand how the applicants could, at the appropriate time, have taken account of the deficiencies or illegalities which they claim vitiated these decisions and have brought the matter before the competent national courts.

15 In these circumstances, the applications are admissible in so far as they concern the consequences of the advance fixing of subsidies granted before Regulation No 189/72 was adopted.

16 On the other hand, they are inadmissible in so far as they concern the advance fixing of subsidies requested and granted during the period from 1 February to 1 April 1972, because the applicants were, in those cases, in a position to bring the alleged infringements 'of several rules laid down by the Treaty and secondary legislation intended to protect the nationals of the Community' before the competent national courts.

The substance of the case

The argument of the applicants may be summarized as follows:

(a) The common organization of the market in oils and fats involves for producers guaranteed remuneration for their products, in the present case colza seed, equal to the target price fixed for the marketing year in question.

(b) Since the alteration in the rate of exchange of the dollar, which occurred in Autumn 1971, the subsidies laid down in order to provide the abovementioned remuneration have become inadequate to attain that objective because of their method of calculation (in unaltered units of account).

(c) In order to compensate for that deficiency and to protect Community production against competition from colza seed and oil derivatives offered at prices based on the devalued rate of exchange of the dollar, it became necessary to introduce the system of compensatory amounts on imports and exports.

(d) The abolition of this system exposed Community production, in the present case the applicants, to the risk of price formation at levels insufficient to achieve the abovementioned guarantee and has consequently caused damage for which the Community is liable.

18 As regards point (d), the applicants have merely stated that the logical result of the abolition of the compensatory amounts had to be a fall in prices on the Community market in the products in question but have adduced no proof that in fact such a fall occurred.

19 On the orther hand, the repeated statement of the defendant that the price level in the common market remained unaltered after that abolition has not been seriously contested.

20 It is possible moreover to understand the argument of the applicants as meaning that they were misled by the introduction of the system of compensatory amounts into obtaining supplies of seeds of Community origin and requesting corresponding advance fixing of the subsidies, on the

assumption that it would be made particularly difficult for them to purchase seed on the world market because of the duty to pay the compensatory amounts.

21 Because that assumption proved to be mistaken as soon as the compensatory amounts in question were abolished, in the meanwhile they lost the opportunity of obtaining supplies more cheaply on the world market, this being damage for which they consider the Community liable.

22 However, even on the assumption that the parties concerned could make the Community liable for the consequences of an unfilled expectation concerning the course which Community legislation will take, such liability could only exist with regard to actual and certain losses which they had suffered as a result.

23 Since such losses have not been proved, damage for which the Community might be liable has not been established.

24 As regards point (c), the rules in question do not bear out the existence of a link between the introduction of the system of monetary compensatory amounts, on the one hand, and the functioning of the common organization of the market in oils and fats, especially as regards the determination of subsidies, on the other, as presumed by the applicants.

25 In fact, the establishment of the system of monetary compensatory amounts was motivated by concern that the Member States or third countries might, by the adoption of monetary measures, create distortions in intra-Community trade or trade with third countries in the agricultural products concerned such as seriously to disturb the functioning of the Community markets.

26 The object of the establishment thereof was not therefore additional protection for Community price levels but the maintenance of single prices, which is the basis of the present organization of the agricultural markets, so that the granting or the levying of compensatory amounts is acceptable in respect of a specific product only if trade in that product would be disturbed in their absence.

27 It follows that the Commission could and even should have decided to abolish the system of compensatory amounts for the products in question, as soon as its application proved to be no longer necessary in order to prevent disturbances in trade.

28 The applicants have not shown that the abolition thereof caused disturbances in trade.

29 Regulation No 189/72 was therefore in accordance with the objectives and provisions of the Community rules concerning monetary compensatory amounts.

30 As regards point (b), Article 1 of Regulation No 129 of the Council of 23 October 1962 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy (OJ English Special Edition 1959-1962, p. 274) provides: 'Where, in instruments concerning the common agricultural policy which are adopted by the Council under Article 43 of the Treaty, or in provisions adopted pursuant to those instruments, sums are expressed in units of account, the value of that unit of account shall be 0·88 867 088 grammes of fine gold'.

31 Under Article 2 (1) of that regulation, 'Where measures taken in pursuance of the instruments or provisions referred to in Article 1 require sums given in one currency to be expressed in another currency, the exchange rate to be applied shall be that which corresponds to the par value communicated to and recognized by the International Monetary Fund'.

32 Lastly, according to Article 3 of that regulation, the Council and the Commission may 'Where monetary practices of an exceptional nature are likely to jeopardize the implementation of the instruments or provisions referred to in Article 1 ... make derogations from this regulation'.

33 It follows that the Council and the Commission had to continue to apply Article 2 (1) of the abovementioned regulation in calculating the subsidy as long as the fluctuations of the dollar were not such as to jeopardize the functioning of the common organization of the market in oils and fats.

34 The applicants should have proved that that functioning was not only jeopardizing but actually disorganized in order to show that the Council and the Commission have failed to fulfil their duties under Regulation No 129.

35 Their general statements however cannot be accepted as proof of clear misuse of the powers conferred by that regulation.

36 The applicants allege also that in the determination of the criteria for the calculation of the subsidy, the Commission could have taken account of the reduction in the par value of the dollar as it did as from 1 April 1972 by means of the adjustment provided for in Article 29 of Regulation No 136/66 and laid down in Article 6 of Regulation No 115/67 of the Council of 6 June 1967 laying down criteria for determining world market prices for oil seeds and fixing the frontier crossing point (OJ English Special Edition 1967, p. 31).

37 That adjustment tends, according to the wording of the last recital of the preamble to Regulation No 115/67, to 'prevent Community processers from being encouraged by the economic advantages arising from the processing of various oil seeds to give preference to one type of seed'.

38 As competition between different types of seed and not that between Community seed and imported seed of the same type is involved, the adjustment in question could therefore not have served the purpose envisaged by the applicants.

39 Consequently, the complaint that the Commission did not exercise the powers conferred by Article 6 in the manner desired, is unfounded.

40 Lastly, as regards point (a), in so far as Regulation No 136/66 is intended to give guarantees, the latter relate to colza seed farmers and not processers, as appears from Article 24 thereof, according to which 'The derived intervention price ... guarantees that producers will be able to sell their produce at a price which, allowing for market fluctuations, is as close as possible to the target price'.

41 The subsidies granted to seed processers are not intended to guarantee to the latter a fixed payment for their processing, but to enable them to buy Community seed at prices close to the target price.

42 Furthermore, Regulations Nos 116/67, 2114/71 and 2730/71 of the Council of 6 June 1967, 28 September and 20 December 1971 respectively (JO 1967, p. 2198 and 1971, L 222, p. 2 and L 282, p. 18) by giving the power to fix the subsidy in advance entails the opportunity for processers of obtaining from the system all the benefits which it may include, as long as they undertake to place their product under control during the period of advance fixing.

43 In these circumstances, the applicants have no basis for claiming an alleged guarantee provided by Regulation No 136/66.

44 They have alleged further that, having regard to the system of subsidies as laid down by that regulation, the sudden abolition of the monetary compensatory amounts constitutes, especially with regard to undertakings which obtained advance fixing during January 1972, an infringement of the principle of the protection of legitimate expectation.

45 Since the introduction of those amounts was motivated, in accordance with Community rules, by concern to prevent disturbances in trade and not by concern to ensure for producers unchanged remuneration, this complaint cannot be sustained.

46 It follows from all the foregoing that the applications are unfounded and must, consequently, be dismissed.

Costs

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

48 Since the applicants have failed in their action, they must therefore be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the applications as inadmissible in so far as they concern subsidies fixed in advance between 1 February 1972 and 31 March 1972;**

2. **As for the remainder, dismisses them as unfounded;**

3. **Orders the applicants to bear the costs.**

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 17 March 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 26 FEBRUARY 1976

My Lords,

The applicant in each of these nineteen actions is a French oil-miller. The actions are brought against the Commission under Article 178 and the second paragraph of Article 215 of the EEC Treaty for damages in respect of that Institution's allegedly wrongful exercise, in the early part of 1972, of its powers relating to subsidies and to monetary compensatory amounts (which I shall call for short 'm.c.a.'s') on colza and rape seed.

Your Lordships will remember that the common organization of the market in oils and fats was established by Council Regulation No 136/66/EEC of 22 September 1966. So far as colza and rape seed, and oil extracted from them, are concerned, that organization has regard