JUDGMENT OF THE COURT
OF 10 MAY 1978 [1]

Société pour l'Exportation des Sucres, S.A. v Commission of the European Communities

"Regulation to ensure fairness"

Case132/77

Agriculture — Short-term economic policy — Monetary compensatory amounts — Exemption from the burden — Clause to ensure natural justice — At the discretion of the Member States — Intervention by the Commission — Conditions
(Regulation No 1608/74 of the Commission, Art. 4)

Regulation No 1608/74, in principle, entrusted the administration of the system under the clause to ensure natural justice to the Member States and gave them a wide discretion, making them responsible for the decision, in each particular case, as to whether or not to avail themselves of the clause.
The Commission may intervene, in the circumstances provided for in Article 4 of the regulation, only in relation to specific contracts in respect of which the Member State in question intends to make use of the clause to ensure natural justice and informs the Commission of its intention. Only after such notification may the Commission, under Article 4 (2), consider the individual case in which it is intended to grant exemption and state any objection which it may have to the measure contemplated.

In Case 132/77

SOCIÉTÉ POUR L'EXPORTATION DES SUCRES, S.A., whose registered office is in Antwerp, represented by Wilma Viscardini, Advocate of the Padua Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 b Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, assisted by Jacques Delmoly, a Member of the Legal Department, with an address for service in Luxembourg at the office of Mario Cervino, a Member of the Legal Department of the Commission, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

CONCERNING, at the present stage of the proceedings, the admissibility of the application made under the second paragraph of Article 173 and alternatively under the second paragraph of Article 215 of the Treaty,

THE COURT

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

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

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. Regulation No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) established, in trade between Member States and third countries, a system of monetary compensatory amounts on imports and exports of agricultural products intended to compensate for fluctuations in the national currency of Member States which exceed a certain limit.

Regulation No 974/71 was subsequently amended and the above-mentioned system at the time of the facts with which the present action is concerned was governed by Regulation No 1112/73 of the Council of 30 April 1973 (Official Journal 1973, L 114, p. 4).

Having regard to the difficulties which such a system was likely to cause traders who, when a monetary event occurred involving the fixing or alteration of monetary compensatory amounts, were committed to performing contracts containing prefixed conditions, Regulation No 1608/74 of the Commission of 26 June 1974 (Official Journal 1974, L 170, p. 138) introduced "a certain flexibility" into the Community rules concerning those amounts by giving each Member State the power to apply a "natural justice" clause.

Article 1 of that "regulation to ensure natural justice" provides:

"Where monetary compensatory amounts are introduced or increased as a result of the fixing or the amendment of the central rate or of the representative rate of the currency of a Member State used in the context of the common agricultural policy, or where the decision of a Member State to permit its currency to float in relation to the currencies of the Member States where the fluctuation of the rate of exchange is kept within a maximum spread of 2.25%, the Member State in question shall be authorized to waive, on a discretionary basis and according to the following conditions, the monetary compensatory amount or so much thereof as corresponds to the increase."

Article 2 (1) provides "Article 1 shall apply only to imports and exports carried out pursuant to binding contracts concluded before the monetary measure referred to in that article."

Further, Article 4 of the regulation provides as follows:

"1. If, in a given case, a Member State intends to make use of the authorization provided for in Article 1 in respect of a contract the duration of which exceeds:

— the period of validity of the certificate where the certificate includes a prior fixing of the levy or the rebate in excess of three months, or

— three months, in other cases,

the Member State shall inform the Commission of its intention, indicating the reasons therefor and the proof furnished.

2. The Member State concerned may make use of the authorization only if the Commission, acting in accordance with the procedure laid down in Article 6 (1) of Regulation (EEC) No 974/71, raises no objection to the proposed measure within a period of six weeks from the day on which it is informed of the Member State's intention."

2. On 18 and 19 March 1975 the applicant company entered into two contracts for the purchase of sugar with two French suppliers; the contracts, which had to be performed between October and December 1975 in the first case and between October/December 1975 and January/May 1976 in the second case, were registered under Nos S 172 and S 125 respectively with the Fonds d'Intervention et de Régularisation du Marché du Sucre (hereinafter referred to as "the Intervention Agency") which is the French national intervention agency for sugar.

Since the French franc was floating when each contract was entered into, monetary compensatory amounts were being applied in trade with France. Nevertheless, after the French franc returned to the "monetary snake" in May 1975, such trade as from 20 May was no longer subject to the said compensatory amounts. On 15 March 1976 the French Government decided once again to allow the franc to float and it thus left the monetary snake. Following that decision monetary compensatory amounts were reintroduced on 25 March 1976 in trade with France: that measure involved, as regards France, the grant of a monetary compensatory amount on imports and the levying of a monetary compensatory amount on exports.

Meanwhile, in February 1976, when the French franc was still in the snake and there was no monetary compensatory amount on exports effected under the aforementioned contracts, the applicant entered into forward currency contracts for the purchase of the French francs necessary for the payment of the sugar remaining to be delivered.

3. Relying on the aforementioned Regulation No 1608/74 and in

particular Article 4 thereof, the applicant lodged with the Intervention Agency applications for exemption from the monetary compensatory amounts in respect of the exports still remaining to be made. That application was rejected by the Intervention Agency which, by letter dated 30 September 1977, informed the applicant as follows:

"In reply to your letter of 8 September I must inform you that Regulation (EEC) No 1608/74 stipulates that Member States which intend to make use of the provisions for exemption from monetary compensatory amounts must, in respect of contracts the duration of which exceeds three months, inform the Commission of their intentions.

Upon examination of the statement of intention to grant exemptions notified by the French Government to the Commission at the beginning of 1977, the Commission stated that contracts entered into when the system of monetary compensatory amounts was in force in France did not justify the application of the provisions of Regulation (EEC) No 1608/74. The Commission was expressly referring to contracts entered into before May 1975.

In view of this attitude I can only confirm that it has not been possible to grant exemption from the monetary compensatory amounts in respect of the deliveries of sugar which have been made to you under your contracts Nos S 125 and S 172 entered into in March 1975."

The applicant subsequently wrote to the Commission on 23 August and 9 September 1977 whereupon the Director General for Agriculture replied by letter dated 7 October 1977:

"Under Article 4 of Regulation (EEC) No 1608/74 the Member States alone have the right to reject an application for exemption.

For this reason you should apply directly to the French authorities in order that they may, if necessary, give a statement of reasons for the decision taken.

Further, might I remind you that the questions raised in your letter were answered twice orally when Mr Rozan visited the Commission, which took the view that, on the basis of the information given by Mr Rozan, the French authorities were justified in rejecting the application for exemption.

In reply to your letter of 9 September 1977 I confirm that the reasons given by the French Intervention Agency closely reflect the views of the Commission.

As regards your request to forward to you the correspondence which has taken place between the Commission and France on the present question, I must inform you that all the Commission does is to lay down the criteria which Member States apply. In those circumstances it does not appear proper to communicate to you the correspondence with France."

This being the case, the applicant, on 31 October 1977, brought the present action in which it claims that the Court should:

"— Annul the decision taken by the Commission under Article 4 (2) of Regulation (EEC) No 1608/74, excluding certain contracts from exemption from the French monetary compensatory amount solely because they were concluded before May 1975;

— In the alternative, order the Commission to pay the applicant the sum of FF 134 736.60 by way of damages, with interest;

— Order the Commission to pay the costs."

4. By application under Article 91 of the Rules of Procedure lodged on 5 December 1977 the defendant asked that the action should be dismissed as inadmissible and the applicant ordered to pay the costs.

The applicant having claimed in its observations submitted on 24 January 1978 that the objection of inadmissibility made by the defendant should be dismissed and the defendant ordered to pay the costs, the Court invited the Commission to produce the telex message which it sent to the French Permanent Representation on 25 February 1977 concerning the memorandum relating to the "intention to grant exemptions" sent by it on 19 January 1977 and decided, after hearing the report of the Judge-Rapporteur and the views of the Advocate General, to open the oral procedure on the said objection in accordance with Article 91 (3) of the Rules of Procedure without any preparatory inquiry.

II — Submissions and arguments of the parties

In support of its objection of inadmissibility the Commission observes in particular as follows:

(a) The application for annulment

— The action is already inadmissible by reason of the fact that the procedure resulting in the alleged refusal did not take place in the present case.

The procedure of Article 4 (2) of Regulation No 1608/74 was initiated after an informal exchange of views between the Member State concerned and the Commission. Before asking formally for authorization to make use of the clause to ensure natural justice provided for by the regulation, the said State informed the Commission of the contracts of the kind referred to in Article 4 (1) in respect of which it was contemplating granting exemption from monetary compensatory amounts. That was a mere information procedure, on which occasion the Commission may give its opinion, in a general way, on the criteria which the Member State intends to pursue in applying Regulation No 1608/74. Only if the Member State did not agree with the Commission would the formal procedure of Article 4 (2) be opened.

The memorandum sent by the French Permanent Representation to the Commission on 19 January 1977 concerning the "intention to grant exemptions" in relation to a number of contracts, some of which had been entered into between March 1974 and April 1975, does not come within the scope of the formal procedure of Article 4 (2) but within that of the aforementioned preliminary information. By a telex message dated 25 February 1977 the Commission informed the said Representation that since contracts were involved which were entered into on dates on which monetary compensatory amounts applied in France, there appeared to be no justification for exempting the exports in question from the monetary compensatory amounts applicable as from 25 March 1976. On this issue the French Permanent Representation replied by telex message dated 15 March 1977:

"The French authorities share the views of the Commission regarding the contracts entered into between 19 January 1974 and 19 May 1975."

Apparently this is the exchange of views to which the Intervention Agency refers in its letter of 30 September 1977 sent to the applicant. The reference in that letter to the "examination of the statement of intention to grant exemptions notified by the French Government to the Commission at the beginning of 1977" related solely to that exchange of views between the French Government and the Commission and not to an opinion in the context of the formal procedure of Article 4 (2) of the regulation. This is especially so since the contracts in question registered with the Intervention Agency under Nos. S 125 and S 172 had never been submitted to the Commission.

— Further, it is wrong to see in the letter of 7 October 1977 from the Director General for Agriculture to the applicant a measure against which an application for annulment might be directed. It is simply a letter supplying information sent in answer to a request for information; as such it cannot bind the Commission or, on the other hand, express a final intention capable of having legal effects.

(b) The application for damages

— Since for the reasons set out above the Commission, or its departments, cannot be held to have adopted any measure and the refusal to grant the exemption in question is the act of the French administration, there is no causal link between the unlawful act and the loss to be compensated such as is necessary to found any liability on the part of the Community under the second paragraph of Article 215 of the Treaty.

— Even assuming, moreover, that the Court were prepared to consider the refusal on the part of the French administration to exempt the contracts in question as being due to the "attitude" of the Commission, it would be the French courts which would have jurisdiction in an action brought against that refusal. The latter is a national measure implementing Regulation No 1608/74 and the proceedings instituted against it relate to the lawfulness of the imposition by the French administration of that part of the monetary compensatory amounts which exceeded those in force on the day the contracts were entered into.

— The application for damages contains an insufficient statement of the grounds on which it is based, having regard to Article 38 (1) of the Rules of Procedure of the Court, since the applicant has not even advanced *prima facie* evidence of the preconditions for liability on the part of the Commission under the second paragraph of Article 215 of the Treaty.

The *applicant* takes the view first of all that the fact that there has been no decision on the part of the Commission specifically referring to the contracts in question is not in itself sufficient to exclude the existence of a measure for which the Commission is responsible and which adversely affects the applicant. The applicant has never claimed that the Commission has refused to grant exemption from the monetary compensatory amounts in respect of the aforementioned contracts. It has maintained and continues to maintain that the Commission objected to the exemption from the monetary compensatory amounts of "certain contracts" solely because the were entered into before May 1975 and it is "because" of that attitude that the French administration refused the application for exemption lodged by the applicant.

The measure contested in the present case is thus contained at points 2 and 3 (first sentence) of the telex message sent by the Commission to the French Permanent Representation on 25 February 1977, worded as follows:

"2. The five following cases do not justify the application of Regulation No 1608/74:

P 30 A W contract of 23 July 1974

P 30 B B contract of 5 March 1974

P 42 A contract of 25 March 1975

P 45 B contract of 4 April 1975

P 58 K contract of 1 August 1974

In all these cases the contracts were entered into at a time when those concerned had to take account of the application of monetary compensatory amounts. On the dates in question monetary compensatory amounts applied in France and their abolition did not occur until May 1975. Accordingly

there appears to be no justification for exempting the exports in question from the monetary compensatory amounts applicable as from 25 March 1976.

3. The French Government is requested to withdraw the cases referred to at point 2."

After thus endeavouring to specify the measure contested the applicant considers the admissibility of the action in relation to that measure. It makes the following observations:

(a) The application for annulment

— The explanations given by the Commission regarding the way in which in practice the procedure provided for by Article 4 (2) of Regulation No 1608/74 was conducted and the distinction which it makes in this respect between providing information and the formal procedure under the said article would seem to show that "in fact" the Commission established a different procedure in this case from that provided for by the regulation.

First of all, it appears from the wording and objectives of Article 4 (2) that the aim of the procedure referred to therein is to allow the Commission to manifest its opposition if necessary to the Member States' applying the "natural justice" clause to certain contracts. It is accordingly difficult to understand why the Member State in question should begin the said procedure only when it is aware of the views of the Commission and knows that such views are unfavourable.

Secondly, contrary to its claim that consideration of the contracts notified for purposes of information prior to the formal procedure of Article 4 (2) offers it an opportunity to interpret this or that criterion laid down in Article 2 of the regulation, the Commission has no power of interpretation in this respect. Interpretation of a Community measure is a matter for the courts; an authoritative interpretation must have the same form and follow the same procedure as that of the measure in question.

In the third place, the establishment of a procedure for "information" prior to the formal procedure of Article 4 (2) of the regulation would reverse the rôles and responsibilities in relation to what is provided for in the said article. Further, by means of such a procedure the Commission would escape, or at least tend to escape, from its responsibilities and would cause the Management Committee to be excluded from participation since in practice it would never be consulted.

— However that may be, the documents annexed to the application do not show that the cases with regard to which the Commission manifested its opposition to exemption from the monetary compensatory amounts were considered in the context of "a mere information procedure". On the contrary, the memorandum sent by the French Permanent Representation on 19 January 1977 was an official notification of the "intention to grant exemptions" formed by France in application of Regulation No 1608/74 so that the formal procedure of Article 4 of the said regulation was thereby already opened. The Commission was moreover aware of it, for in asking France by telex message of 25 February 1977 for particulars in order to form a final assessment of a certain number of cases (other than those concerned in the present action) it invited the French authorities to give such particulars before 2 March 1977, that is to say before the expiry of the period of six weeks provided for in Article 4 (2) of the regulation. It even added that in the absence of such particulars the French Government was invited temporarily to withdraw the files in question "but to re- submit them as soon as it has been possible to answer the questions raised"

(last part of point 3 of the telex message). The Commission's concern thus to regain the period of six weeks laid down by Article 4 (2) of Regulation No 1608/74 shows that the procedure referred to in that provision had clearly been instituted. Further, the Commission's attitude with regard to the contracts entered into before May 1975, as appears from the aforementioned telex message, is firm and without reservation, contrary to that expressed with regard to the cases referred to at point 1 of the same telex message. It is obviously only in relation to the latter cases that it is possible to speak of an "exchange of views" or "information".

— The fact that the contested measure mentioned expressly only certain contracts and not others is quite fortuitous, since the notification by the French Government of its intention to grant exemptions was given in successive dispatches and the Commission was required to manifest any objection it might have within the period provided for in Article 4 of the regulation, which begins to run "from the day on which it is informed".

— The fact that the Management Committee was not consulted does not mean that the objection raised by the Commission to the intention to grant exemptions was without any legal effect. Although a measure taken contrary to the rules of procedure is unlawful, it must be applied so long as it is not annulled.

— Finally, the contested measure is of direct and individual concern to the applicant within the meaning of the second paragraph of Article 173 of the EEC Treaty.

(b) The application for damages

— The applicant's position is quite different from that which the Commission seems to attribute to it. The applicant is asking quite simply for exemption, and not partial exemption, from the monetary compensatory amounts for the reasons set out in its application. Further, it is not the lawfulness of the imposition of the monetary compensatory amounts by the French administration which is in issue, but the lawfulness of the measure by which the Commission objected to exemption from those amounts. The circumstances in issue are thus to be distinguished from those concerned in Joined Cases 12, 18 and 21/77. Accordingly, the defendant's argument that the applicant should have brought its case before the French courts on the ground that the refusal by the French administration to exempt the contracts in question is a "national measure implementing Regulation No 1608/74" has no legal foundation.

— As for the Commission's objection that the applicant has not given a sufficient statement of the grounds on which its application for damages is based, it is clear that the argument is the same as that put forward in relation to the application for annulment. It is apparent from the application that the applicant considers that the Commission or its departments have acted or conducted themselves unlawfully in having caused the French administration to refuse to grant exemption from the monetary compensatory amounts, thus violating the spirit and the letter of Regulation No 1608/74.

III — Oral procedure

The parties were heard on the admissibility of the action at the hearing on 11 April 1978.

The Advocate General delivered his opinion at the hearing on 26 April 1978.

Decision

1 By application lodged on 31 October 1977 under the second paragraph of Article 173 and the second paragraph of Article 215 of the EEC Treaty the applicant claims, principally, that the Court should "annul the decision taken by the Commission under Article 4 (2) of Regulation (EEC) No 1608/74, excluding certain contracts from exemption from the French monetary compensatory amounts solely because they were concluded before May 1975", that is to say at a date when monetary compensatory amounts applied in France to sugar.

2 In support of its conclusions it maintains that it was as a result of the Commission's objection at the outcome of the said procedure in its telex message of 25 February 1977 sent to the French authorities that the latter were unable to grant it exemption from the monetary compensatory amounts re-introduced in France on 25 March 1976 in respect of supplies of sugar to be made under two contracts entered into on 18 and 19 March 1975.

3 In the alternative, the applicant claims compensation for the damage which it has suffered, since the refusal of the French authorities to grant exemption from the monetary compensatory amounts was, in its opinion, the result of the wrongful act of the Commission.

4 By application lodged on 5 December 1977 under Article 91 of the Rules of Procedure of the Court the defendant pleaded that the action was inadmissible because the refusal was not due to an act of the Commission.

5 It maintains that it has adopted no measure in the present case which could bind the power of decision of the French authorities with regard to the refusal to grant the exemption for which the applicant applied to them.

6 In its telex message of 25 February 1977 sent to the French Permanent Representation the Commission confined itself to considering the contracts notified by the French Government on 20 January 1977 — which in any event did not include the contracts in question — in the light of the criteria laid down in Article 2 of Regulation No 1608/74 and without instituting the procedure referred to in Article 4 of the said regulation.

7 The applicant alleges, on the contrary, that the procedure of Article 4 of Regulation No 1608/74 was indeed instituted in the present case, since in the aforementioned telex message the Commission had formally given its views on the subject of the French Government's intention to grant exemptions, of which intention the Commission had been informed in accordance with Article 4 (1).

8 Although the view expressed by the Commission referred to contracts other than those in question, it was nevertheless based solely on the fact that the contracts were entered into before May 1975 and therefore extends to the contracts in question, which were entered into in March 1975.

9 The letter of 30 September 1977 sent to the applicant by the Fonds d'Intervention et de Régularisation du Marché du Sucre (the French Intervention Agency for sugar) shows, moreover, that the position adopted by the Commission was decisive in the present case, since the Intervention Agency made express reference thereto to justify its refusal.

10 It is appropriate to consider the admissibility of the principal claim and that of the claim in the alternative separately.

A — The principal claim

11 Regulation No 1608/74 established a system based on a clause to ensure natural justice authorizing Member States, "on a discretionary basis", to grant traders committed to performing fixed contracts exemption from monetary compensatory amounts introduced after the contracts were entered into.

12 The said regulation does not provide for the universal application of that clause to classes of contracts considered on the basis of certain common characteristics, but states expressly, in the fourth recital of its preamble, that the benefit of the clause to ensure natural justice shall be granted or refused on the basis of an examination of each individual case in the light of the loss suffered by the trader concerned.

13 As appears from the sixth recital, the regulation, in principle, entrusted the administration of the rules concerned to the Member States and gave them a wide discretion, making them responsible for the decision, in each particular case, as to whether or not to avail themselves of the clause.

14 Intervention by the Commission restricting the discretion of a Member State is provided for by the regulation only in the case, referred to in Article 4, of contracts the duration of which exceeds three months or the period of validity of the export certificate, where the certificate includes a prior fixing of the levy or the rebate in excess of three months.

15 However, it appears from the above-mentioned article, and in particular from the words "in a given case" at the beginning of the first paragraph, that the Commission may intervene only in relation to specific cases in respect of which the Member State in question intends to make use of the clause to ensure natural justice and informs the Commission of its intention, "indicating the reasons therefor and the proof furnished", in order to enable it to assess all the facts capable of justifiying exemption from the monetary compensatory amounts.

16 Only after such notification may the Commission, under Article 4 (2), consider the individual case in which it is intended to grant exemption and state any objection which it may have to the measure contemplated.

17 It is clear that the French Government did not inform the Commission of its intention to grant exemption from the monetary compensatory amounts in respect of the contracts at issue in the present case, registered with the Intervention Agency under Nos S 125 and S 172.

18 In its notification of intention to grant exemptions dated 19 January 1977, received by the Commission on 20 January 1977, the French Permanent Representation does not mention, among the contracts listed in the memorandum, including those relating to supplies of sugar, the contracts in question.

19 In its telex message of 25 February 1977 relating to that notification the Commission referred solely to the contracts listed in the said memorandum, requesting, on the one hand, further information regarding some of those contracts and, on the other, stating its objection to the grant of exemption from the monetary compensatory amounts with regard to other contracts, which related to the supply of cereals.

20 Thus, in the absence of notification of the intention to grant exemptions within the meaning of Article 4 (1) of Regulation No 1608/74 in relation to

the contracts at issue, and having regard to the scope of the Commission's telex message of 25 February 1977, no intervention on the part of the Commission within the meaning of the aforesaid Article 4 in respect of those contracts may be said to have taken place.

21 It must therefore be concluded that the application for annulment under the second paragraph of Article 173 of the Treaty is inadmissible, since in the present case there was no decision by the Commission within the meaning of the said article.

B — The claim in the alternative

22 The applicant alleges, however, in support of its conclusion in the alternative based on the second paragraph of Article 215 of the Treaty, that even in the absence of any intervention on the part of the Commission within the meaning of Article 4 of Regulation No 1608/74 the attitude conveyed by the Commission in the aforementioned telex message of 25 February 1977 was nevertheless responsible for the refusal on the part of the Intervention Agency which, in its letter of 30 September 1977, stated "in view of this attitude ... that it has not been possible to grant exemption from the monetary compensatory amounts in request of the deliveries of sugar which have been made ... under ... contracts Nos S 125 and S 172 entered into in March 1975".

23 Since the application of Article 4 of Regulation No 1608/74 involves the individual examination of each case, and having regard to the fact that the Commission was not put in a position to examine the contracts in question, no act attributable to it in relation to exemption from the monetary compensatory amounts may be said to have taken place in the present instance.

24 In these circumstances the relationship established by the aforementioned letter from the Intervention Agency between the decision to reject the application for such exemption and the Commission's telex message of 25 February 1977 can only be the result of an appraisal by the French authorities themselves, on the basis of which the Commission cannot incur liability in respect of the contract in question.

25 Even after receiving that telex message it was open to the aforementioned authorities to inform the Commission of their intention to exempt the

contracts in question, setting out the particular circumstances surrounding those contracts, including the fact that forward contracts for the purchase of foreign currency had been entered into, which fact, according to the applicant, has a direct bearing on the alleged damage, and thus to place the Commission in a position to reach a decision, in full knowledge of the facts, as to the possibility of granting the exemption in question by way of a reasoned opinion in accordance with the procedure of Article 4 (2) of Regulation No 1608/74.

26 Further, the letter of 7 October 1977 referred to by the applicant, which was sent to it by a high official of the Commission, stating that the decision of rejection in the present case taken by the Intervention Agency "closely reflected" the views of the Commission, does not exclude the possibility that the view expressed by the Intervention Agency in connexion with that decision was the result solely of consideration by the national authority itself, especially as that letter emphasizes that "under Article 4 of Regulation (EEC) No 1608/74 the Member States alone have the right to reject an application for exemption".

27 In these circumstances, since the refusal by the national authorities to grant exemption from the monetary compensatory amounts in respect of the contracts in question arose from an independent decision by those authorities, it does not appear that in the present case the Commission has acted in such a way as to satisfy the conditions required by the second paragraph of Article 215 of the Treaty for bringing the matter before the Court.

28 For these reasons the present action must be dismissed as inadmissible.

Costs

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

30 The applicant has failed in its submissions.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicant to pay the costs of the proceedings.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 10 May 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 26 APRIL 1978 [1]

Mr President,
Members of the Court,

On 18 and 19 March 1975 the applicant sugar *exporting* company, with its registered office in Antwerp, entered into two contracts of purchase, one with a dealer and the other with a manufacturer, for the supply, respectively, of 1 000 tonnes of French sugar to be delivered between October and December 1975 and for 5 000 tonnes to be delivered between October 1975 and May 1976.

At that time exports of sugar were subject on leaving France to the imposition of compensatory amounts due to the fluctuation of the French franc since it had left the "monetary snake" on 19 January 1974, whereas exports of sugar from Belgium to third countries benefited from the grant of such amounts.

It seems that the sugar, the subject of those transactions, was ultimately intended for export to third countries

1 — Translated from the French.